

DEDICATED

TO

KHURSHED FRAMJI NARIMAN.

THE

HERO OF THE TRAGIC EPISODE.

AS A HUMBLE TOKEN AND MARK OF APPRECIATION OF THE
COMPILER, FOR HIS UNTIRING ZEAL, INEXHAUSTIBLE
ENERGY, REMARKABLE PATIENCE AND COURAGE, FEAR-
LESS INDEPENDENCE AND ABOVE ALL MARVELOUS
INTELLECT, DISPLAYED DURING THE TEDIOUS
COURSE OF THIS LONG DRAWN-OUT TRIAL.

—o—



Mr. K. F. Nariman, B. A., L.L. B. M. L. C. Bombay.

Harvey - Nariman

LIBEL CASE.

WITH A BRIEF HISTORY OF THE DEVELOPMENT DEPARTMENT,
IMPORTANT EXTRACTS FROM 'MEARS COMMITTEE' REPORT
LEADING UPTO PROSECUTION, COURT PROCEEDINGS
INCLUDING THE STATEMENT OF DEFENCE, JUDG-
MENT IN FULL, WITH PRESS COMMENTS,
ILLUSTRATIONS ETC.

EDITED BY

S. M. SURVEYOR, B. E. (CIVIL.)

1927-28.

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“FOREWARD.”

The proceedings in the Police Court was only a culmination, the final stage of a long drawn-out and vigorous struggle that had first started some years ago in the Legislative Council of the Government of Bombay.

Perhaps no other member in the Council or Public worker outside had devoted so much time, attention and energy on this very important subject of the Development Department as Mr. Nariman. Either in the series of the searching interpellations or in his usual trenchant sarcastic and logical speeches he disclosed remarkably close study of minute details of this intricate subject and supplied a wealth of information that has as much astonished his non-official “Colleagues” as bewildered the Government benches.

Even a lawyer could understand and appreciate the difficulties of the defence in a case of this description.

To give the reader an idea of the enormous nature of the undertaking, we will consider a few out of the multifarious activities involved in such a trial. To collect materials and informations treated as confidential and official secrets from the hostile camp, to be prepared to cross examine a technical expert at considerable length on points bristling with technical details, to meet and answer the intricate points of law constantly raised by one of the ablest Criminal Counsels or by the Court, to inspect and study the voluminous and confusing records official and private and at the same time to keep constant and vigilant eye upon the movements and attitude of the several merchants and contractors in the City and Suburbs, to apply for immediate search warrants after due care and investigation, but the most difficult task of all was the collection of witnesses, persuading them to step into the box and make startling disclosures, often incriminating themselves, such was the multifarious and gigantic task with which Mr. Nariman was faced singly and simultaneously and a perusal of this book will give the readers an idea of the magnitude and enormity of this great undertaking. That Mr. Nariman faced through this terrible ordeal and came out triumphant will ever redound to his credit and glory.

By a strange and lucky coincidence the case terminated at a critical time in the Political History of the Country and it was a lucky coincidence that the Judgment was delivered only a few days before the landing of the Parliamentary commission in India who had come to visit this land to investigate and judge about the fitness of the Indians to administer in their own affairs ; so far as this Presidency was concerned that fitness and efficiency of our foreign rulers was amply demonstrated and proved by a single individual in the course of this long trial and as one of our comrades rightly remarked, the proper course, in view of this disclosures would be to appoint a Commission of Indians to inquire into the fitness of the foreign rulers to continue their domination in this Country.

It will not be out of place to mention here that I was very lucky in having the opportunity of assisting Mr. Nariman in all technical questions in Engineering. For this reason I had to be by his side, during almost all the hearings of the case and hence, being in possession of nearly all particulars regarding the case, I ventured to compile this book.

With these few words I commend this to the general public and assure them that it is a work of as great Political importance as of legal constitutional interest.

THE COMPILER.

PREFACE.

—:x:—

Bombay will not for many a year cease to curse the day on which the Government of Sir George Lloyd (Now Lord Lloyd) embarked on that reckless venture of expanding the habitable area of the City to provide additional housing accommodation for its growing population.

The Development Department which was instituted to carry out the various Development projects, has such a sorry record of achievements to present to the Bombay Public in return for the lavish expenditure of several crores of hard earned Rupees remorselessly piled up by the public tax-gatherer that the man who presided at the head of this Department has discreetly retired from the scene of his achievements to explore the means of easing his conscience during the remaining days of his life. One of the remarkable facts of English History consists in the traditional policy of sacrificing a national hero to right a national wrong. In the words of Voltaire when Admiral Byng was executed "In England it is thought necessary to kill an Admiral time to time to encourage the others." But in the History of the British Empire it is a traditional policy that a higher appointment usually awaits the audacious "Mandarin" who distinguishes himself in India by riding rough-shod over the expressed wishes and tender susceptibilities of its timid peoples. Whilst in the 18th Century Warren Hastings was impeached for seven long years for looting the Begums of Oudh, Lord Lloyd is rewarded with the High Commissionership of Egypt for endowing Bombay with a perpetual legacy in the shape of increased taxation to meet the interest charges on crores of Capital irrevocably lost in the Back Bay Bungle.

Indians are known as well for their sensitive as for their forgiving nature. The material losses, tremendous though they have been, will have to be met and would have been met without much agitation if the Government had not added insult to the injury by challenging the fundamental rights of civilized subjects to criticise the doings of the Government in the execution of its Development projects. The Government decision to sanction the prosecution of Mr. Nariman—that intrepid champion of public liberty and rights—raises grave constitutional

issues which lie at the very root of the modern conception of democracy. Our benign Government is never sick of crying for co-operation from the non-official population. In decrying the activities of non-co-operators, the Anglo Indian Press never tires of appealing to "Sober India" of adopting Constitutional methods in criticising Government actions. And now when Mr. Nariman pays them the compliment of following up their suggestion and adopts rigidly constitutional methods of asking questions and moving resolutions in the Legislative Council, of appearing before a Government-appointed Committee at the latter's request and of fearlessly giving replies in unequivocal terms to questions put to him, he is made the victim of a police Court prosecution extending over thirteen months and financed by the Government Exchequer. Mr. Nariman's strenuous constitutional fight in and outside the Legislative Council has placed our Official and Anglo-Indian friends in the unenviable position of hypocrites who find themselves hoisted with their own petard. The successful culmination of the Harvey-Nariman case must above all be reckoned as a complete vindication of the birth-right of every Indian Citizen to criticise fearlessly the doings of the Government of the country and its accredited servants in a perfectly constitutional manner.

But this is not all. For the ordered progress of the Country, it is imperatively essential that in future-God forbid-when Committees like the Mears' Committee are appointed to enquire into the working of the Public Departments, witnesses summoned by and appearing before such Committees must be deemed as privileged persons having perfect freedom to furnish the Committee with all information in their possession without risking the breach of the Law.

The Harvey-Nariman case has demonstrably proved that outsiders cannot have access to the same sources of documentary information of which the Departments concerned make a close preserve. The information supplied by non official witnesses cannot, therefore, be of the nature of legally admissible proofs, but inferences based on such information are not necessarily to be dismissed as of no value.

If the Mears' Committee had only followed up the lines of inquiry indicated by Mr. Nariman, they would, assisted by the "Official Records," have come to the same conclusion as arrived at by the learned Presidency Magistrate, who remarked in the 'Judgment' "The accused had proved that some officers of the department were corrupt and some of the witnesses did state that these officers said that they had to charge a high commission as it had to be shared by higher officers." When the Mears' committee were given

certain informations to investigate, the stereotyped reply to witnesses was to the effect that they could not go through 'tons and tons of papers.'

In one respect the prosecution of Mr. Nariman was a blessing in disguise. It gave him an opportunity of exposing to public view, on the strength of Official records, what passes under the elusive title of efficiency in Government Departments. This 'superstition of efficiency' is as real and hard to die as that instrument of many an act of injustice done to India—'Prestige.' Indians of high accomplishments are often pronounced unfit for high official appointments "in the interests of the efficiency of service." The powerful searchlight with which Mr. Nariman has reconnoitred the field of 'efficient administration' in the Development Department might very well spare Indians wringing their hands in despair for want of such 'efficiency'? Let us see what efficiency meant in the Development Department? We learn that one of the ingredients of efficient administration lies in deliberately misleading the Public by telling them that the work of the Department is 'progressing steadily' whilst Sir Lawless Hepper had the temerity to admit that at the time he made this statement the work was not being satisfactorily done. What better standard of efficiency could be imagined than that of employing petrol-supply Companies to supply building materials, of giving building contracts to people unknown to that trade and in preference to long-standing firms of experienced contractors? It is not inefficient to pay Rs. 14,000 for a bill of Rs. 140 and not to detect the error for some years. Indian Engineers are not qualified for higher executive appointments as they have not attained that standard of efficiency which enables European Engineers, to conceive the idea of buying 20 ton Cranes costing about £ 9,000 a piece and with nothing so heavy as 8 ton load to pick up and to dispose them of as scrap iron ultimately. It is a glorious conception of efficiency to requisition the services of an elephant's trunk to pick up a needle. These few illustrations culled from an endless volume of efficiency exhibits, might well be supplemented to "What Britain has done for India?"

It would not be surprising to imagine that soon after the prosecution of Mr. Nariman started in the Police Court and Mr. Nariman commenced exposing the scandalous activities of the Development Department, the Government must have felt a little uneasy inasmuch as its well advertised intention of protecting its higher officials against unwarranted allegations, proved to be ill-advised. Instead of removing suspicion from the public mind, the evidence led by Mr. Nariman simply confirmed the Public opinion and long before the learned

Presidency Magistrate delivered his famous judgment, the public could not but feel convinced that Mr. Nariman's allegations of corruption amongst some high officials of the Department were substantially correct. The unexpected turn which the case took has shattered the Government prestige. At several stages during the hearing of the case, opinions both in Indian and European circles were freely expressed that the Government could save its face better by withdrawing the case. The General member was certainly talking with his tongue in the cheek when he defended sanctioning the prosecution on the ground that Mr. Nariman would not otherwise have had such an opportunity for bringing to light the facts disclosed in this case. The Development Department had landed the Bombay Government into such a desperate situation that it has proved to have been impossible to preserve prestige and at the same time to discover loop hole for escaping from the awkward situation. History teaches us that irresponsible Governments never show the weakness of admitting their mistakes till they are buried under the ruin wrought by their follies. The ill-advised prosecution of Mr. Nariman has not only battered to pieces the prestige of Bombay Government, but has justified some of the Bombay Public into looking with suspicion on the doings of the high paid officials of the Government. If High officials can be induced by free supply of various domestic needs such as tins of ghee and gallons of petrol, and motor accessories to allow contractors to bill twice for each item of store supplied to the Department if a High official could not be expected to accept tender for disposal of surplus stores unless his palm is thickly greased it would be living in a fool's paradise to expect the Bombay public to have an iota of faith in the honesty and integrity of its public officials. Could any impartial man have any doubt as to where Mr. Manekchand Jivraj's five thousand rupees went, before he got his tender for surplus steel bars accepted? Is it possible to reconcile honesty of administration with a systematic ordering out of unnecessary large quantities of materials? It is for persons placed in high quarters to convince the public that the dredgers and plant and machinery costing enormous sums of money were not ordered out with the deliberate intentions of reducing unemployment in Great Britain. These orders, fantastic in size and cost, fit in exactly with the then prevailing craze of "BUY IMPERIAL GOODS" and such half-baked schemes like export and trade facilities Acts.

Will it not be fair for Lord Lloyd to hand over his so-called private files for inspection to an impartial tribunal of judicial men so that the public may know under what circumstances the George Lloyd Dredger came to be ordered out before the Scheme was sanctioned.

It is not possible to recall any instance in the whole history of British Administration in India in which a single individual has shown such unprecedented courage in successfully shouldering an almost impossible task of bringing to public knowledge in a convincing manner, the lack of honesty and systematic corruption which is rife in certain Government departments. Mr. Nariman can now claim to stand in a class by himself.

Mr. Nariman's dauntless fight against the mighty powers and resources of a strong Government will ever remain a unique achievement in the history of a people's struggles for the assertion of its true rights. That Mr. Nariman should have carried on this fight to a successful end and not be ruined financially and otherwise is really a matter of agreeable astonishment to the public in general and his numerous friends in particular, who have in the past had the sad experience of seeing people ruined simply because they dared to run their head high in exposing the scandalous doings of Government departments. This is mainly so because of Mr. Nariman's profession which does not for its living depend upon Government patronage or the truckling of high placed officials. Whilst rejoicing at this happy result, we do not at any rate desire to undervalue the enormous sacrifice of time, energy and money which Mr. Nariman has so selflessly made in the sacred cause of defending public rights.

ERRATA.

PART I.

Page	Line	For	Read
30	16	„ presidency	„ Presidency
„	39	„ tenour	„ tenor
31	2	„ „	„ „
33	13	„ block	„ blocks
48	33	„ memorandom	„ memorandum
50	29	„ purview	„ perview
74	38	„ feft	„ left
107	30	„ Skyes	„ Sykes
118	23	„ altered	„ ordered
131	2	„ For	„ for
132	19	„ return	„ retain

PART II.

22	36	„ extent	„ extend
35	34	„ that in	„ that niether in.
40	28	„ not make	„ not made
46	4	„ figure	„ figures
„	6	„ make	„ makes
62	34	„ far	„ for
87	4	„ Rs. 190	„ Rs. 90.
117	25	„ those other	„ those of other
161	16	„ large	„ larger
167	4	„ stantorium	„ stentorian
182	32	„ correspond- ence	„ correspondent
188	37	„ bad	„ lead

PART III.

9	30	„ large	„ larger
13	21	„ privileged	„ privilege
34	23	„ assuming	„ Assuming
„	38	„ give	„ gave
38	27	„ if	„ on
54	14	„ And	„ An
63	29	„ Indian	„ India

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PART I.

Brief history of the Development Department upto the starting of the Prosecution.

Although a detailed statement of the inception and the progress of the scheme would be out of place in this volume still we think it necessary to narrate a few important facts leading upto the prosecution, so as to enable the readers to appreciate and understand the position and follow the proceedings more intelligently and clearly.

Shortly after the commencement and launching of this gigantic scheme, a band of critics began to first draw the attention of the public to enormous commitments and the doubtful results of the said scheme, amongst these critics Mr. K. F. Nariman, was perhaps the most prominent from the very start. Although at the time he was not a member of the Legislative Council, and hence had not the opportunities and the facilities that he got at a later stage as a member, still as a spirited public citizen he passed trenchant criticisms both in the press and the platform when opportunities occurred warning rate-payers not to be deluded or beguiled by the tempting promises of huge future profits and great public benefits that were supposed to accrue as a result of this undertaking, with a wonderful integrity and foresight that turned to be almost prophetic in view of the subsequent events. He was one of the very few that did not gulp down and easily swallow all tall talk and flattering commendations with which the scheme was heralded and which as it were enamoured, bewildered, and deluded the public not only into an acquiescence but even definite approval and praise.

At the very early stage he started vigorous correspondence in the press particularly in the "Bombay Chronicle" under the heading "Development Scandals" over his own signature subscribing himself as "Development Scandal Monger," wherein he boldly alleged and exposed several irregularities and shady transactions. Though in the beginning the authorities concerned pretended to ignore these contributions but the persistency and courage of Mr. Nariman ultimately succeeded in at last compelling the authorities to break their silence, and some charges levelled against the department were so serious and definite that the authorities had to reply as usual in vague, indefinite and non-committal forms. Still neither the authorities nor even the public took Mr. Nariman so seriously, though at times a sensational contribution from him created a little stir, but as usual temporary stir subsided with a reply either from the Director

of Development or publicity Officer. Mr. Nariman felt that in order to carry on the campaign more vigorously and more effectively it was necessary to secure a seat in the Legislative Council, and in the Elections of 1922/23 he contested a seat from the most intellectual and most intelligent constituency i. e., the Bombay City South. In his Election campaign the Development Directorate was the principal plank and evidently his pertinacity had created some impression on the Public which was evident from the fact that in spite of the very keen campaign and although very well known veterans were in the field, he was returned successfully at the head of the Poll. Immediately after his return in the Council, true to his election pledges and promises, he seriously turned his attention to the internal affairs and management of the Development Department and started the most vigorous and spirited campaign. Even then, so late as in 1923/24 people were still deluded with false hopes and promises though the authorities concerned were secretly becoming apprehensive of the result; still with a view to avoid scare and panic they kept up the show by sternly resisting any attempt on the part of the public to have a peep behind the veiled screen. As a member of the Council Mr. Nariman started the campaign in right earnest and that he began to first send in a series of searching and comprehensive questions trying to elicit as much information as was possible from a reluctant and secret conclave officialdom. Further he also sent in resolution from the very start demanding abolition of the Directorate as a separate and a special reserve department and also demanding transfer of all the activities to the Public Works Department. Curiously enough about four or five months after that, the committee after examining the questions carefully came to the conclusion and made the same recommendations. Mr. Nariman contended from the very beginning that the creation of the Development Department as a special reserve subject was a constitutional manœuvring on the part of the Government because under the ordinary circumstances most of such activities of the Government Department would have fallen under the Public Works Department and as the Public Works Department is a transferred subject under the constitution and rules, its activities would have come more directly under the Control of the council and all grants of items of expenditure would have to pass through the Vote of the Council. His further contention was that by creating a special and making a Reserve department by a piece of Legislation the ordinary control, right and privileges were sought to be taken away and insinuated that this device on the part of the Government was intentional and deliberate with a view to remove the supervision and control of the House. Unfortunately under the rules guiding the proceedings of the Legislative Council that Resolution could not be balloted and hence was not formally moved. Subsequent events show great

importance of the first step and move taken by Mr. Nariman at the early stages, for there is no doubt that had he succeeded in this attempt enormous waste of Public Funds extending to Lakhs and Lakhs would certainly have been saved. However, Mr. Nariman was not to be daunted by these small reverses, he continued his efforts unabated and his next step was to get a resolution moved, calling for a vigorous and non-official Inquiry and investigation by a committee of the House into the whole administration of the Development Department. This resolution was moved in October 1924 and in spite of very strong opposition and canvassing as usual from the Government, it was carried. Mr. Nariman maintained that the attention of the House as well as Public should not be concerted merely upon plans, figures and Estimates presented by the authorities but he maintained and contended that serious attention should be paid to the internal mis-management, extravagance, jobbery and frauds that resulted in such waste of Public Funds.

Thus this second attempt on the part of Mr. Nariman in the short period of his entry in the Council to prevent wastage of Public funds and thus lessen ultimately the burden that was to fall not only on the City but the whole Presidency, failed. However the Government, conscientious of the fact, that Inquiry or Investigations demanded by Mr. Nariman would lead to disastrous results by ruthless exposures of ugly facts, always balked and evaded non-Official Public Inquiry and in spite of the resolution passed, at the instance of Mr. Nariman did not appoint any non-official Committee of Inquiry but with a view to cloud the real issues and to create wrong and misleading impression in the mind of the Public, Government invited Mr. Nariman and two or three other Councillors to join the existing Advisory committee, whose function was merely to advise the Government with regard to the future activities as to how far and to what direction the scheme should be continued or eliminated, but the said Advisory Committee had no power whatever to inquire into the past or present administration or internal management. Mr. Nariman even offered to join the said committee but only on one condition viz: that the power of the said Advisory Committee should be extended by Government and it should also have the power to inquire and investigate, as required by the other resolution passed at his instance. This, the Government would not conceive, naturally Mr. Nariman and other Councillors refused the invitation to join the impotent and futile committee.

Subsequent events proved that the attitude taken up by Mr. Nariman was perfectly justified and correct as the slightest attempt on the part of any of the members of that Advisory Committee to try into internal affairs and administration was promptly ruled out by Sir Lawless Hepper, the Director of Development, who was Ex-

Officio member of that Committee and some of the members even resigned in disgust rather than continue in such a farcical or fraudulent Committee.

That was the situation when the Council assembled in the February Session of 1925, which was February Budget Session held in Bombay. Mr. Nariman with a view to enter his emphatic protest at the attitude of the Government in not giving effect to the resolution of the Council and also to provoke further discussion on this subject moved a cut of several lakhs from the total grant demanded for the Development Scheme and it was in course of the debate on the motion for cut that Mr. Nariman delivered his famous Speech which astounded the house and created profound sensation throughout the Presidency. He openly charged the Department with corruption, fraud and jobbery and every type of mal-administration. He further challenged the Government openly for a non-official Inquiry to enable him to prove his charges against the Department and concluded by saying that if the Government would not accept the Challenge that he gave on behalf of the Public and the Rate-Payers of the Presidency of Bombay, who have invested and were to invest Thirty Crores of Rupees, the verdict of the people would be against the Government and the Department would be held to be guilty of the charges he levelled.

It was in this speech that Mr. Nariman repeated the allegations about the incident of "Mild Steel Bars", alleging that higher officers were ordering deliberately superfluous stores of wrong sizes and that there were ugly rumours in the City and Presidency that such orders for superfluous materials were given with a view to earn secret commissions.

Never before, perhaps in the annals of the history of the Legislature either Provincial or Imperial in Bombay or elsewhere had a Councillor dared to make such open and specific charges against a responsible and important Government Department, nor in this country either Government or people had heard of such bold challenges thrown at the Government. Usually the only charges levelled were for incompetency, inefficiency, negligence or even callousness but this was perhaps the first direct charge, levelled in an open Council, of Corruption, Jobbery and down-right frauds and it is but natural that such a pronouncement should have as much upset the minds of the Government Official including the heads of the Administration as also caused great stir and sensation in public throughout the Presidency. The Government saw that it was not possible for them now to remain in their entrenched position but the situation created, forced them to come out with a sort of proposal. Hence shortly after the said debate Mr. Nariman received a communication from the Government intimating that the

Government proposed to appoint a high Official to inquire into the said allegations, but curiously enough it also stated that Mr. Nariman would be given the same opportunities and facilities that is usually afforded to the Government Servants who would be incriminated viz : to examine and inspect such documents as the investigating Officer desired and thought fit to produce, and with the permission of the Government to examine witnesses etc. Mr. Nariman strongly resented the Offer describing it as a serious affront, as he could not understand why he was sought to be humiliated as a Member of the Council by reducing him to a Public Servant, who may be incriminated. He further stated that he had no faith in the 'Departmental Inquiry' particularly when discretion to produce Documents and adduce evidence was left with the Department concerned and he made reasonable counter proposal that three or four members of the Council should be associated with the Government Officials in the Inquiry and that he should be placed in the position of the Prosecutor and not as an Accused and with a right to call for and examine all relevant documents and evidence on the Subject. He appealed to the Government not to cause any delay but to start an inquiry as suggested by him forthwith, as delay was prejudicial to his case and materials, documents and evidence were disappearing on account of this delay. However as was expected the Government did not accede to this counter proposal and hence he renewed his agitation on the subject more vigorously and persistently both in and out of the Council. He succeeded in rousing considerably public opinion particularly in the City of Bombay by addressing huge Public Meetings wherein he openly denounced the Department, giving specific instances of frauds and Jobbery. In the meantime the advisory committee had also issued a report which disclosed a serious state of affairs and particularly the exhaustive minutes of dissent by Mr. Manu Subedar, the representative of the Indian Merchants' Chamber, opened the eyes of the Public not to the internal mismanagement or frauds but more to the financial losses that would accrue due to the miscalculations, errors in judgment and misleading figures given by the Authorities to delude the Public. Thus public opinion thickened and Mr. Nariman's agitation also became more persistent so that the Government could no longer refuse public demand and ultimately they recommended to the Government of India to appoint a commission of Inquiry known as the "Mears' Back-Bay Inquiry Committee."

Thus after three years of persistent clamourings in public and in Council, the Government, at last, partially gave effect to Mr. Nariman's Council Resolution of 1924.

As soon as the appointment of this committee was announced Mr. Nariman criticised in press, both its personnel, and terms of references because all along the popular demand had been for an

investigation into all the affairs of the 'Development Department, including the affairs of the Industrial Housing scheme, whereas the Committee appointed was with the limited scope to the 'Back-Bay' scheme alone. Not being satisfied with the criticisms alone, Mr. Nariman got a Resolution moved and adopted in the Municipal Corporation asking the Government of India to extend the terms of references, so as to include the 'Housing Scheme' also.

After the appointment of the said Committee, all eyes were turned on Mr. Nariman as they expected that he would stand by the allegations made in Council as well as Public criticisms outside, thereby startling disclosures regarding the Development Department would be made.

The Committee issued a Public invitation through the press requesting some members of the Public and the representatives of the various important Public bodies to submit their written statement and to submit to oral examination. To Mr. Nariman, however, it must be noted, a written invitation was sent specifically requesting him to place before the committee all the information at his disposal with regard to the allegations made by him with particular reference to his speech in the Council. Before that, it may also be noted, that the Government through the Secretary to the Government to the Development Department, had produced before the Committee various Records, including Council debates on the subject including Mr. Nariman's speeches in October 1924 and March 1925, so that the Committee had taken cognizance of this matter at the instance of the Government of Bombay.

Mr. Nariman, in response to the said invitation, submitted a lengthy written statement before the committee dealing with the subject from its very inception under the various heads such as, Constitutional, Financial and Management of internal affairs and under the last heading he repeated most of his allegations contained in the previous speech including the incident of the 'Mild Steel Bars' and several other similar shady transactions and after submitting the same statement, he himself also offered to cross-examination on the written statement. No other Witness before the committee, either Official or Non-Official had evoked so much Public interest and enthusiasm, as was evidenced by a large crowd of citizens of both sexes and representatives, both Official and Non-Official sides practically filled the Committee's room closely following the questions and answers in the said cross-examination. There was regular tussle between Mr. Nariman and one of the members of the Committee, Sir Frederick Hopkinson, who had evidently taken up the brief on behalf of the Department and acted more as its Advocate than an independent and impartial Judge. He persistently made efforts to compel Mr. Nariman to give in his position

of deliberate and intentional frauds and desired to bring him round to his views, trying to explain away all the facts as a series of bona-fide mistakes honestly made or the usual excuse of error of judgment. Mr. Nariman however, with equal tenacity would not budge an inch and maintained his point throughout strongly resisting the efforts to trap him. At one stage a mild sensation was created in the Committee's room when the Member referred to above rather insolently remarked to Mr. Nariman that he was wasting time of the Committee. Mr. Nariman was not the first non-official witness thus insulted by the same member, he at once flared up and vehemently protested against such insults remarking that the whole committee proceedings were not merely waste of time but further waste of Public money and remarked that he did not care for individual opinion of a member alone but if the Committee consisting of the other members were also of the same opinion, he would not wait in the Committee's room for a minute more, so saying he bundled up his papers to depart when however, the Chairman and other members interfered and pacified Mr. Nariman declaring that they did not agree with the remarks made by that Member.

Mr. Nariman's statement both oral and written created a sensation in the Public, and the press also gave importance to it by giving it a prominent publicity by attractive headlines and full report.

The Committee Members had given Mr. Nariman to understand before he left that the allegations and the statements would be placed before the Government for necessary action. However, instead of contemplated action by Government, two days after, the General Member Sir Cowasji Jehangir, the Director, Sir Lawless Hepper and the Complainant, Mr. T. Harvey reappeared before the said committee although the Official testimony was over and submitted lengthy written statements and also gave oral evidence refuting Mr. Nariman's charge and applied for sanction to prosecute Mr. Nariman for defamation. However the only member inclined to give such a permission was Sir Frederick Hopkinson, the others declining to make any definite statement, whereas Sir Grimwood Mears, the Chairman, who unfortunately was absent owing to illness subsequently in a Press Interview strongly disapproved such an action.

Some time after that, the complainant applied to the Government of Bombay for sanction to prosecute and subsequently to institute proceedings in a Civil Court. As the incident had happened before a Committee appointed by the Government of India, the Bombay Government forwarded the application to the Imperial Government backed with a strong recommendation and favourable legal opinion and the Government of India accordingly gave sanction upon which the Government of Bombay issued a Resolution to

that effect affording certain facilities including all financial and other help.

After about a month and a half after the said sanction was obtained Mr. Thomas Harvey, Superintending Engineer, Housing-District, on the 4th December 1926, presented a complaint to Mr. S. S. Rangnekar, the Chief Presidency Magistrate, through his Solicitor Mr. Baker of Messrs. Little & Co. On the same day Mr. K. F. Nariman was also ready with his complaint against Sir Lawless Hepper, the Director of Development, charging him also with defamation in respect of certain Defamatory statement made by him in the course of his statement in the course of his Evidence before the Committee. The Learned Magistrate issued Notices in both the cases. At the hearing of the said notices Sir Thomas Strangman with Mr. Velinkar, Bar-at-law instructed by Mr. Baker, Solicitor, of Messrs. Little and Co. argued the case at great length. As Mr. Rangnekar had been transferred to the High Court the Notice cases came up for hearing before Mr. H. P. H. Dastoor, the acting Chief Presidency Magistrate. After hearing the arguments the learned Magistrate issued a Summons against Sir Lawless Hepper. As regards the notice issued against Mr. Nariman he did not argue the case but asked the court to issue a summons against him as he desired the case to be proceeded with and did not want to take a protection under a technical point of Law. It was arranged that the case against Mr. Nariman should be proceeded first and the proceedings in the other case should begin after the termination of the first one. After the issue of the notices Sir Lawless Hepper had already departed for England (Europe) leaving instructions with his Solicitors to accept service and proceed with the case.

Thus commenced the memorable trial of the "Harvey-Nariman" Case. Mr. S. G. Velinkar, instructed by Mr. Baker Solicitor of Messrs. Little & Co., appeared for Mr. Harvey and Mr. Walker, the Public Prosecutor watching on behalf of the Government. Mr. Nariman conducted his own defence.

But before commencing with the Prosecution case it will be interesting to go through some correspondence which took place between the Government of Bombay and Mr. K. F. Nariman in consequence of the open charges of Mr. Nariman levelled against the Development Department in the course of a debate in the Legislative Council.

Press Note (Ex. 27.)

Subject:—Allegations against Officers of the Development Department.

I.

Government letter No. S. D.—651 dated 28th April 1925 to Mr. K. F. Nariman, M. L. C.

"I am directed to invite your attention to the debate in the Legislative Council on 3rd March last on a resolution moved by you that a total reduction of Rs. 61,99,000 be made in the total demand for the Development Department of Rs. 1,50,00,000," In moving this resolution you stated that you openly made charges that there had been 'serious mal-administration of Public funds' and 'serious wasting of public funds'; that there had been instances which you 'could go to the length of calling frauds'; that if you had sufficient time at your disposal, you 'would have given instances after instances which would have convinced the House that not only is there a misapplication of funds but misapplication of a nature which under ordinary circumstances, in the course of a public enquiry, would have resulted in proceedings in the court of law'; and that you might tell the Government quite frankly and openly that there are ugly rumours in the city and in the whole of the Presidency that the higher staff of officers had been receiving secret commissions from the manufacturers.

2. In referring to these allegations, the Honourable Mr. Cowasji Jehangir asked you to give him even one name privately, if not publicly, and he promised you that he would give every assistance to try and prove any allegations, even privately.

3. In the absence of any communication from you giving more specific information regarding the allegations you made in the legislative Council, I am directed to inform you that Government are prepared to appoint an officer of high judicial attainment to investigate any definite charges which you are now prepared to make and to advise Government regarding the action which it should take on his findings.

4. In this connection I am to state that Government do not ask you to supply information sufficient to prove definitely the accusations which you made in the legislative Council but only to provide such definite information regarding (1) the acts which you described as frauds, (2) the instances of misapplication of funds which in ordinary circumstances would have resulted in proceedings in a Court of law and (3) cases of receiving secret commissions together with information regarding the parties believed to be implicated, as will enable the enquiry officer to direct his enquiry and to frame definite charges against a particular officer or officers. In particular you are requested to inform Government of the names of persons who are likely to be in a position to substantiate the charges which you make.

6. Government are prepared to extend to you, in pursuit of the enquiry, the same facilities as are given to Government servants, who may be incriminated, viz, permission to be present

when evidence is recorded, to cross examine witnesses and to see documents which are admitted as Exhibits by the enquiring officer.

6. I am to request that you will reply to this letter at as early a date as possible.

II.

Government letter No. S. D—732, dated 13th May 1925 to Mr. K. F. Nariman, M. L. C.

“I am directed to invite your attention to Govt. letter No. S. D.—651 dated the 28th April 1925 and to request you kindly to inform Government whether you intend to provide the information asked for in paragraph 4 of their letter, and if so, to state when Government may expect to receive the information.”

III.

Letter dated 19th May 1925 from Mr. K. F. Nariman, M. L. C. to the Government of Bombay.

I have the honour to acknowledge receipt of your letter No S. D.—651 dated the 28th April last, regarding alleged charges against the Development Department. It is very much to be regretted that the Government have still not deemed it advisable to accept my resolution passed by the Legislative Council in October 1924 recommending the appointment of a Committee of 12 non-official and elected members to enquire into the whole administration and working of the Development Directorate..... and further the appointment of an independent officer as expert to help the said Committee.

2. If the Government will refer to the report of the debates on the said Resolution, they will find that I had based it on the right of non-official elected members, as representatives of investors of 30 crores of rupees, to investigate into the administration and working of the said Department.

3. Since the passing of the said Resolution the Government have made various attempts to baulk that non-official independent public enquiry and with a view to side-track and cloud the real issue, have offered, instead, in the first instance, a mere advisory committee without any power to investigate and is now offering a one-sided official departmental investigation, which, *from a public point of view* is more objectionable and unsatisfactory than the advisory committee; the public have by this time enough experience *of this sort of hush-hush investigations*, invariably resulting, where Government departments are concerned in white-washing reports, and unless non-official and elected representatives of the people are

associated in such investigations, the public have neither confidence nor even interest in such proceedings.

4. Besides, where allegations against a Government Department are to be investigated, principles of justice, equity and fair-play demand that enquiry should, as far as possible, be non-official and independent of the Government, as there would be a natural tendency and inclination on the part of any officer connected with and subordinate to the same Government to shield his brother-officers and protect the reputation of the Government Department.

5. The Government is greatly mistaken if they think that a demand for a non-official public enquiry can be satisfactorily met with or disposed of by starting a departmental and official investigation. Since the necessity of such investigation is now admitted by the Government themselves by proposing the appointment of an investigating officer, the impropriety of not accepting a Resolution of the Council for the same purpose becomes all the more galling and insulting.

6. The Government do not expect the author of the resolution who has all along contended and still maintains that non-official elected members as representatives of investors have a right to investigate into the working of the Department without interfering with its internal management, should now accept a most humiliating position, to be merely present with permission of Government before a Government Officer and as a matter of grace to cross examine the witnesses or examine the documents put in as Exhibits under the direction of the Government inquiry officer and what is most objectionable, as stated in your letter, to have the same facilities as are given to Government servants who may be incriminated.

7. I most strongly resent the proposal reducing an elected member of the Legislative Council, who is calling for a non-official public enquiry, to the position of Government servants who may be incriminated and I consider it a serious affront to the Council.

8. I should have expected, under ordinary circumstances, in a fair and impartial and even semi-judicial enquiry, to be placed in the position of a prosecutor, with a right to call for and examine or tender all testimony, documentary or otherwise, that are considered relative and material to the investigation instead of being extended, as a matter of favour, a mere right to be present with the permission of Government. The position seems to have been reversed by the extraordinary procedure suggested in your letter, whereby the Development Directorate is given the rolls both of a prosecutor and accused and it seems to be left to the discretion of the party charged to adduce such evidence and disclose such fact and document as it deems safe and proper, whereas I am to play the part of a dumb

spectator to the pantomime show. I am surprised that any responsible Government should seriously put forward such an unfair proposal.

9. If the Government desire to associate a Government officer of high judicial attainment with the said non-official Committee recommended by the Council, I for one will certainly welcome his inclusion in the said committee and if the selection of the gentleman is happy and satisfactory, I would not mind his presiding over and guiding its deliberations or even if the Government consider a committee of 12 non-officials as unwieldy and inconvenient, the House may even accept a reduction of the number. In short, I believe any reasonable modification of the said resolution would be acceptable to the majority of the House, provided that the principle of the right of non-official elected members to investigate is admitted. Their entire exclusion from such an investigation betrays a want of confidence and trust on the part of Government in constitutionally elected representatives of the people and it is but natural that, in view of the attitude I have taken up, I could not participate in any proceedings that, not only casts reflection and slur upon the House by admitting its incapacity to investigate, but also directly results in flouting a resolution of the Council passed at my own instance.

10. I hope I have made my position quite clear and have left no room for any deliberate misrepresentation as was indulged into in the past. I also hope the Government will accept the reasonable counter-proposals contained in this letter and take immediate steps to appoint such a committee including the said judicial officer, as I am most anxious, in the public interest and for the future safety of public funds to have this matter thoroughly investigated and thrashed out. The Government apparently do not seem to realise and appreciate that investigations in such matters, to be effective, should be started immediately after allegations are made, otherwise in the course of time all available material and evidence may, for one reason or other, disappear and thus the investigation may be seriously hampered and prejudiced and the long delay of over a year has already considerably damaged and prejudiced my case.

Hoping to receive an early and favourable reply.

IV.

Government letter No. S. D.—845, dated the 4th June 1925 to Mr. K. F. Nariman, M. L. C. :—

“I am directed to acknowledge the receipt of your letter dated the 19th May 1925, regarding Government’s offer of an enquiry by a high judicial officer into your allegations against the officers of

the Development Department and of certain facilities to you in connection therewith.

2. At the outset of your letter you refer Government to a resolution moved by you in the Legislative Council on 24th October 1924 for a committee consisting of 12 non-official and elected members to be appointed 'to enquire into the whole administration and working of the Development Directorate, to suggest ways and means of effecting retrenchments, and to report on the advisability or otherwise of continuing the schemes taken in hand' and you suggest that this committee, in a modified form, should now be appointed to investigate your allegations of fraud and similar offences. In reply I am pointing out that the object for which you moved for a committee last October is easily distinguishable from the object of the investigation now proposed by Government. In October last you did not make the allegations which were quoted in Government's letter No. S. D.—651 dated the 28th April 1925. It is not necessary to refer further to the enquiry suggested by you last October than to state that you subsequently refused a place on the Advisory Committee of the Development Department in connection with a special enquiry into the activities of the Department. The allegations, which are the subject of the present correspondence, were made for the first time in the Legislative Council on 3rd March last. An investigation into them is easily separable from an enquiry to ascertain how far departmental activities can be curtailed with a view to effecting retrenchments and Government are of opinion that the two kinds of enquiry should be kept distinct. Further Government consider that an investigation into charges, which you indicate to be of a criminal character cannot suitably be undertaken by a committee of the kind which you suggest.

3. The arrangement proposed by Government was to appoint an officer of high judicial attainments to investigate any definite charges which you are prepared to make. Your main objection to an investigation by such an officer are that it will be 'one sided official departmental investigation' and that 'there would be a natural tendency and inclination on the part of any officer, connected with and subordinate to the same Government, to shield his brother officers and protect the reputation of the Government Department.' Government do not propose to discuss these baseless allegations against the members of the judicial department as a whole.

4. The only other matter in your letter which requires a reference is your description of the offer which was made to you of certain facilities in pursuit of the enquiry as 'objectionable' and 'a serious affront' to the Legislative Council. The only definite counter-suggestion which you make does not appear, however, to

be materially different. You were offered the right to be present when evidence is recorded, the right to cross-examine witnesses, and the right to see documents which are admitted as Exhibits by the enquiring officer. You ask in reply, that you should be placed in a position "with a right to call for and examine or tender all testimony, documentary or otherwise, that are considered relevant and material to the investigation." You have only to indicate such documents or other evidence to the investigating officer and if he finds that they are relevant the documents will be open to your examination and the witnesses to your examination or cross-examination. As regards your objection that these facilities are similar to those accorded to Government servants who may be incriminated, it was assumed that you would understand that any Government servant incriminated by the charges which you brought could not be condemned unheard and that he would have an opportunity of explaining the facts brought in evidence against him. It has always been a rule of Government that, in enquiries into charges of misconduct on the part of Government servants, the accused servant should have a fair trial. This requires that he shall be confronted with the witnesses who incriminate him and be shewn the documents used to substantiate the charges against him. He is also allowed to cross-examine hostile witnesses and to call in his own for his examination and his explanation has to be reduced to writing and carefully considered. These facilities which are based on universally recognised canons of fair dealing must be attended to and the fact the charges are brought by an elected member of the Legislative Council does not affect the facilities to be given either to one side or the other in the conduct of the investigation.

5. The position is now as follows. In addition to allegations of fraud, you have stated in the Legislative Council that if you had sufficient time at your disposal, you would have given instances after instances of misapplication of funds of a nature which under ordinary circumstances would have resulted in the proceedings in a Court of law. In short, you purport to be in possession of information relating to numerous criminal offences. The right duty of a responsible citizen with such information at his disposal is to inform the authorities in order that the guilty parties may be detected and punished. If you offered this information to the authorities, the responsibility for an impartial investigation would be shifted to them. But you have refused to divulge it on the ground that the judicial officer conducting the investigation would not be impartial and that the facilities to be afforded to you in pursuit of the enquiry are similar to those allowed to persons incriminated. These are extraordinary reasons to be offered by a member of the legal profession for withholding information regarding numerous alleged offences of a criminal kind. As you made the allegations

publicly and as the matter is of public interest, Government propose to publish the whole correspondence in order that the attitude of Government may be made known and also that the public may judge for themselves whether the excuses given in your letter under reply for withholding the information which you profess to possess are reasonable, and how far the conclusion of Government, that you are unable to supply any definite information sufficient for the investigation of even a single charge, is justified.

V.

Letter dated the 6th June 1925 from Mr. K. F. Nariman B. A., LL. B., M. L. C., to the Secretary to the Government of Bombay, Development Department, referred to in the letter from the Deputy Secretary to the Government of Bombay, Development Department No. 48/3/S. D. dated the 30th September 1925 :—

“ Your letter of 4th June in reply to mine of 19th May was delivered to me only yesterday. Before I had time to reply I was surprised to find it published in the papers on the very next day ; the Government has taken over a fortnight to reply to my letter, but it is not prepared to wait for a day to receive my reply and has hastened to the Press to enjoy the supposed advantage of having a last say in the matter.

At the very outset I must at once state that a very clumsy and disingenuous effort is made to cloud the real issue by attempting to distinguish the object for which I moved for a committee last October, and the object of the present investigation. In making a desperate but futile attempt to avoid a public non-official inquiry, the Government, I regret to say, has gone to the length of making a positively misleading and inaccurate statement to the effect that in October last, when moving for a committee, I made no allegations of maladministration or frauds but only desired to ascertain how far departmental activities can be curtailed with a view to effecting retrenchment; not only the very wording of the Resolution “ to enquire into the whole administration and working of the Directorate ” clearly indicate the nature of the enquiry demanded but the position was also made clear in my opening speech as well as the final reply. I will quote below a few important passages in my speech to support my contention :—

‘ How can they deny.....the right to inquire as to what is going on, if I may be permitted to say, behind the screens, as to what is being done with 30 crores of public money. (Official Report 24th October 1924, page 852). Further at page 855, referring to agreement with Messrs. Meik Buchanan, a British firm of Engineers in England, I said “ I am constrained to call it a jobbery. I am constrained to say with full sense of my responsibility that it cannot be said to be anything else but jobbery. This firm of

Engineers have been drawing nearly one lac and fifty-thousand rupees annually from the Development Department.....scandal of a nature, which apart from any other circumstances, is enough to call for a public enquiry.....on machines and stores purchased on their own recommendation they are to get a commission of 2 per cent.....”

“Again on the same page 855, “Unfortunately the time at my disposal is too brief to narrate one after another the serious scandals of the Development Directorate.” And in the concluding remarks at page 856, I said “I am throwing this challenge on behalf of the public. I want an enquiry; if you deny that enquiry you compel us to suspect you and if you want the suspicions to be removed it is in the interests of the Department, not to shirk this enquiry.....and if he i.e. (General Member) is not prepared to accept this suggestion, the inference drawn will be adverse to the department and it will confirm public suspicion.”

The position was absolutely made clear in my final reply when I said (page 882) “I am very anxious that the terms of my resolution should remain, because, if you compare the two resolutions, the resolution of Mr. Lalji Naranji and my resolution you will find that the resolution of my friend Mr. Lalji Naranji confines itself to one point, namely, to see whether the activities of the Development Department should continue or not, whereas my resolution goes much further. I want a committee to go into the whole administration of the Development Department, such as the several public scandals that have been existing about the contracts, the establishments, the tenders, the purchase of stores, etc; I desire that all these matters should be enquired into by the representatives of this House.” These clear, definite and positive statements, both in the terms of my resolution as well as my speeches, could leave no doubt in the mind of any unbiassed and fair person that in October last, I demanded an open independent enquiry to find out what was passing “behind the screens,” to investigate into grave public scandals with regard to contracts, establishments, tenders, purchase of stores etc., to expose the jobbery with a British firm of Engineers; still a responsible Government, regardless of the facts recorded by themselves, makes a most irresponsible and inaccurate statement that these allegations were made for the first time in March last and in October last. I only wanted the committee to enquire as to how far the activities of the Department could be curtailed to effect retrenchment and thus try to create an illusory distinction between the scope and objects of these two investigations. The public have a right to expect that howsoever weak the Government case and whatever the nature of the controversy, a responsible Government, consistent with its supposed dignity and position will at least

scrupulously adhere to the truth and not indulge in inaccurate and misleading statements, with a view to create prejudice against its opponent and to throw dust in public eye.

Similarly there is no justification, for the insinuation in the last paragraph of your letter that I desire the Government servants to be condemned, unheard, and do not wish to give them any opportunity to explain the facts brought against them. I challenge the Government to point out a single passage in my letter or speeches to justify that charge and I cannot understand how my objection to be treated as a Government servant, who may be incriminated, is construed as a desire on my part to condemn the Government servants unheard. This also seems to be another unfair attempt to create a public prejudice against me.

Under the circumstances it would be better for this Department to try to learn its right duty as a responsible department of the Government, instead of presuming to teach, as it professes to do in the last paragraph of your letter, a humble citizen like me the right duty of a responsible citizen. I am glad of the decision of the Government to publish the correspondence as it has saved me the trouble of going to the press.

As regards the public verdict on the attitude of the Government, I may assure the Government, this policy of hide and seek and persistent efforts to baulk and shirk a public non-official inquiry, has naturally made the public mind more suspicious and the intelligent and commercial section of the public has drawn its own conclusion, as to why this wasteful and extravagant department, in spite of so much public clamour, is afraid to face a public tribunal." Government of India Committee appointed.—

So at last, after some years of persistent clamouring by Mr. Nariman and some others to appoint a proper committee to inquire into the suspicious affairs of Development Department, the Government of India appointed the Back Bay Reclamation Committee to inquire into the Back Bay Muddle only.

PERSONNEL AND TERMS OF REFERENCE.

Simla, July 20-1926.

The Back Bay Reclamation Committee consists of Sir Grimwood Mears, Chairman, Sir M. Visvesaraya, Sir Frederic Thomas Hopkinson and Mr. S. B. Billimoria members; Mr. R. B. Ewbank, Secretary.

The terms of reference are :—Firstly to enquire into the history of the inception and conduct of the Back Bay Reclamation Scheme; and secondly to make recommendations as regards future operations.

The Committee meets in Bombay on 2nd August—A. P.

COMMITTEE'S WHO'S WHO.

Sir Grimwood Mears is the Chief Justice of the Allahabad High Court. During the war Sir Grimwood gave up a considerable practice at the Bar and collected evidence for the Bryce Committee on the German Atrocities. He was the Secretary to the Royal Commission appointed to inquire into the causes of the Irish Rebellion of 1916, Secretary to the Dardanelles Commission 1916-17. He accompanied Lord Reading to America and was there during Reading's Ambassadorship.

Sir M. Visvesaraya was the Dewan of Mysore State 1912-18 after retiring from the Public Works Department Bombay with a distinguished record of service. He was the chairman of the Indian Economic Inquiry Committee appointed by the Government of India while his work as the Retrenchment Officer of the Bombay Municipality is quite fresh in public mind.

Sir Frederick Hopkinson is the Director of Messrs. S. Pearson and Son Ltd. He constructed the Blue Nile Dam and the Gezira-Sudan Irrigation.

Mr. S. B. Billimoria, is one of well known auditors and accountants of Bombay.

Mr. R. B. Ewbank I.C.S., is well-known as the Registrar of the Co-operative Societies Bombay Presidency. He worked as the Secretary of the Imperial Committee on Co-operation (1914-15). He was Deputy Secretary to Government of India successively in the Commerce, P. W. D. Revenue and Agriculture, and Education, Health and Lands Departments.

The very next day after the declaration of the appointment of B. B. I. Committee in press, we see Mr. Nariman's criticisms about the appointment of the same committee in the Bombay Chronicle, which is given below :—

AN UNACCEPTED CHALLENGE.

BACK BAY COMMITTEE—A MASK.

Mr. Nariman's Condemnation.

22nd July 1926.

Mr. K. F. Nariman, M.L.C., interviewed by our representative on the personnel and Terms of Reference of the Back Bay Committee appointed by the Government of India, says :—

“The long delay in the announcement of the personnel and reference of the proposed Committee had already created a

certain amount of apprehension in the public mind, that apprehension has now been fully justified. The reference is more disappointing than the personnel. The inclusion of Sir Visvesvaraya, the only independent expert on the Committee, might have in the ordinary circumstances inspired some confidence in the public, but unfortunately, only very recently he has expressed positive views on the subject. That clearly indicates an approval and appreciation of these activities and thus betrays a certain amount of bias and prejudice in favour of the development schemes. In his preliminary report on Municipal Retrenchment and Reforms published in 1924 referring to this scheme, he states: "Whatever the defects of particular measures may be, there can be no doubt that the Development schemes, as a whole, will 'prove of incalculable value to the city.' They have already brought many much needed conveniences to the public.....On the whole the city has special reason 'to be grateful' for the forward move taken by Government from time to time." Again referring to the attitude of the public he states ".....and remove some of the difficulties in the way of development itself, 'due to misapprehension of the intentions of Government' and the Municipality in the minds of the public." Thus all the public agitation creates difficulties in the way of Development according to him "due to misapprehension of the intentions of Government.....in the minds of that public." Again with certain self-consciousness and pride he refers to the speech of Lord Sydenham in 1912 wherein it is represented that Sir M. Visvesvaraya was the first to impress upon him about the question of developing and it was as a result of the impression that a special development officer, with an engineering establishment, was appointed.

NOT FAIR.

Thus he has been taking a kind of interest since 1907 and it may be safely suggested that he was the first to promote the idea of a separate development establishment since 1912. In view of such pronounced opinion in favour of the development scheme, I do not think it is fair, from the public point of view, to have included him in the Committee. And the situation becomes more serious, when we consider that he is the only independent expert engineer who is supposed to voice the public opinion on the subject.

As regards the other gentleman, Mr. S. B. Billimoria, his abilities so far as accountancy and figures are concerned are unquestionable. But it is extremely doubtful whether in spite of his abilities and best intentions, he will be able to do much from the public point of view. It will not be really a question of accounts and figures, but it is more a question of jobberies and juggleries.

But more disappointing than the personnel is the very limited reference. It is not only delightfully vague, as "The Chronicle" has stated, unfortunately it is very definitely and specifically restricted. What the public demanded was not only an enquiry into the inception and conduct of the Back Bay Reclamation scheme, but a thorough and searching enquiry into all its activities with the ultimate object of fixing responsibility and liability on individual or individuals primarily concerned, whereas this reference, limited as it is, will not promote, I am sure, investigation in that direction, I do not understand what can be the earthly use of an elaborate investigation, which is likely to cost a fairly large amount to the public, if it does not lead to fixing the liability on certain persons. But what is most objectionable is that whereas we have all along demanded an investigation into all the activities of the Development Department, the reference is deliberately confined only to the Back Bay Reclamation scheme.

OPEN CHALLENGE UNACCEPTED.

The public will remember that I have repeatedly and openly challenged the Government, both in the Council as well as on the public platform, for an open enquiry with regard to all sorts of jobberies and favouritism and patronage that have been going on with regard to the various building contracts, and purchasing of materials for the Development chawls. I have given instances wherein tenders were accepted for higher rates to favour certain contractors costing lakhs of rupees, and I have openly stated that some Executive Engineers of the Department had resigned their service and had entered into the more lucrative activities of building contractors and the chawl contracts were given to them in preference to other private contractors at higher rates. These and several other matters, for which we have sufficient material for a public investigation, cannot be brought before this Committee because its reference is confined only to the Back Bay Reclamation.

Thus you will see even from a perfunctory and cursory consideration, that the belated announcement is not only most disappointing, but is intended only to serve as a blind for the public, so as to silence the public clamour and agitation on this most disgraceful affair. I hope the public will not be beguiled by this mask, but continue the agitation till their legitimate demand is conceded and the real culprit brought to light."

Mr. Alfred Mackie, Secretary to Government of Bombay, Development Department was the first witness examined by the Committee and one of the Relevant Documents produced by him before the Committee for their information was the "Press Note

publishing correspondence with Mr. K. F. Nariman, M.L.C. regarding the charges made by him against the Development Directorate and a copy of the reply of Mr. Nariman to last letter, of the Government included in the Press Note."

Upon this the Committee wrote a letter to Mr. Nariman which is published below, for information.

COPY.

Back-Bay Enquiry Committee,
Secretariat,

No. 283.

Dated Bombay, the 13th August 1926.

Dear Sir,

The Back Bay Enquiry Committee have been hoping to hear from you in reply to my letter to your Secretary No. 161 dated August 6th, and are awaiting your written statement. The Committee invite you to attend at 11.0 a.m. or 3.0 p. m. on Wednesday or Thursday next (August 17th or 18th). If these days and times are not convenient the Committee will re-arrange its programme of witnesses and will examine you on any day and at any time during the whole of next week i.e. from August 16th to 21st inclusive which may suit your convenience.

I am to request you to give me by letter the names of the officers of the Development Directorate who received secret commissions with dates and short particulars of the contracts and the names of the manufacturers giving such commissions, the amount so given, and any other details in your possession. What the Committee want is the information upon which you based your speech of March 3rd 1925, in the Legislative Council, and any further information of a like nature which you may have obtained since that date.

Yours sincerely,
(Unsigned).

K. F. Nariman, Esq. M.L.C.

No. 311.

Secretariat,

Bombay dated the 16th August 1926.

Dear Mr. Nariman,

I am sorry that by some oversight my letter to you of August 13th was issued unsigned.

Yours sincerely,
(Sd.) EWBANKS.

Before we commence with the narration of Mr. Nariman's Evidence (oral and written) as recorded by the Back Bay Enquiry Committee, we think it will be interesting and not out of place to

put before our readers, certain parts of evidence of few other witnesses before the above-mentioned Committee, as most of these were referred to and put as exhibits in the course of proceedings of this unique, Nariman-Harvey Defamation Case, by both the sides.

First and foremost, it was Mr. W. W. Mackie, I.C.S., then acting as Deputy Director of Development and Secretary to Government in the Development Department, who produced before the Committee certain documents for inspection, including :—

- (a) Council Debates (Nariman's speeches in Debates).
- (b) A Press Note publishing Correspondence with Mr. K. F. Nariman, regarding charges made by him against Development Directorate.
- (c) Copy of Reply of Mr. Nariman to the last letter of Government included in the Press Note.

The following is a part of Mr. Mackie's evidence before the Committee on 3rd August 1926 :—

Q.—These documents have been supplied by you to Mr. Ewbank, the Secretary ?

A.—Yes, Sir.

Chairman.—Are you prepared to give us some information about the origin and progress of the scheme ?

A.—No, I am not.

Sir Frederick Hopkinson.—I take it that this is the complete list of all facts and figures ?

A.—No, it is not a complete statement of all the details by any means. Any papers on any point—every paper in the possession of Government, confidential or otherwise—will be produced at once.

Q.—These papers cover all the main points ?

A.—Yes, they go right through from beginning to end. These are official papers, and will presumably only be published when the reports or appendices are published ; only the parts required for the reports or appendices will be published.

Mr. Billimoria.—What position did you hold before taking over your appointment in the Development Directorate ?

A.—I was Collector of Ahmednagar.

Q.—You had nothing whatever to do with the Development Directorate before April 1926 ?

A.—Nothing whatever.

Q.—After you had taken over charge, was it ever brought to your notice that a report had been made by Mr. Jacob of New York which was published in the report of the Bombay Development Directorate in 1914 ?

A.—A witness referred to it in giving evidence before one of the committees, in which he said it was a mad project. I forget the exact language, but it was strong.

Q.—Why is it not produced when you have produced other documents ?

A.—I do not know whether we have got this report. I do not know the exact year of the committee. Anything that you want will be produced.

Q.—You have been in this Department from April 1926; I presume you have read all the papers in connection with this scheme ?

A.—No, I have read only those papers in connection with matters with which I had to deal. Regarding most of it I know little or nothing; for instance, I have had to deal with the stiffening of the "Colaba". There are many other points which I have not gone into at all.

Q.—So, with regard to the past history, you would not be able to throw any light ?

A. - Not beyond the production of papers.

Chairman.—You spoke about the privileged nature of the papers. Of course, the documents, which are put into the possession of the Members of the Committee, are definitely privileged, and could not under any circumstances be communicated to any outsider, but every document that is read or referred to in this room will naturally be printed in the press and no privilege can attach to it.

A.—Yes, Sir.

Q.—However privileged a document is, when the document is a matter of discussion in this room, whatever takes place is or can be published in the press ?

A.—Yes, Sir. I quite understand it.

Q.—The discussion, I take it, of any extracts or anything that is discussed, anything that you say or anything that is read in this room may be published ?

A.—I fully understand it.

Thus the Government itself introduced these documents containing matter which ultimately turned out to be the origin of this famous case.

The third witness before the Committee was Sir Lawless Hepper. We quote below a few passages from his oral evidence.

Ex. 29. Mr. Billimoria.—Sir Lawless I should very much like to know what you have to say with regard to the allegations made against your Department by Mr. K. F. Nariman. I take it that you deny the charges of fraud, jobbery, jugglery, levelled against your department by the Honourable Member of Council?

A.—I repudiate them absolutely.

Ex. 29. Q.—All that information that the public would get through the head of the Government of Bombay would be through the responsible head of the department?

A.—A press note is issued over the signature of the Secretary to Government or in the alternative the Honourable Member makes a statement in Council if it happens to be sitting.

Q.—In view of this did you not think it advisable to suspend the project until further investigation was made?

A.—We did arrange at once to suspend the work on the sea wall and all the storm water drains; except those which were concerned with the completion of blocks 1, 2 and 3, everything else was stopped.

Q.—If you won't take any affront on my remarks I will put to you a personal question, that you as the administrative head of such a large department were dealing with public finance, would it not amount to careless indifference, if not criminal negligence to keep the public in the dark as to the true state of affairs?

A.—I don't think that it has ever been my business as Director, as the head of the executive part of the Development, to communicate to the public on questions which involve *matters of policy*. I have always understood that this was a matter for Government. I would issue any information if Government wished me to. I was to keep Government fully supplied with information and they would decide what to do in the way of publication themselves. My business has always been from the beginning to try and get the work done.

Q.—Yes, Sir Lawless, but you have issued, I take it about 6 reports?

A.—These are reports that give information to public. They give information about the progress of the work as an engineering work only.

Supposing you were a managing director of a Joint Stock Company and kept back such material information from the know-

ledge of the shareholders of that company you know that you would run the risk of legal proceedings against you. Isn't that so?

Chairman.—Are you sufficiently acquainted with the section of the Companies Acts?

A.—I am not.

Mr. Billimoria.—I suppose it is every day common knowledge that if a director misbehaves, does not give material information to the shareholders he is legally responsible for his action. That is I suppose common knowledge of every one?

A.—When Government were in possession of the full information about what was going on I could not take the responsibility myself of giving any information to the public.

Q.—So you want to throw the entire blame on the Government of Bombay as far as you are concerned?

A.—No. My point is that having given full information to the best of my ability, I do not think any information was withheld from the public on the grounds that I had failed to supply it.

Q.—Taking your reports on the working of the department from year end to year end we find the happy phrase “steady progress” noticeable in every report of yours. What do you mean by “steady progress”? Year after year you find statements made “steady progress.” 1921-22 has been marked by “steady progress.” In 1923 you say “During the year 1922-23 the work of the Directorate proceeded smoothly” and according to programme. Generally speaking, the policy adopted is to push the reclamation. This was March 1923?

A.—Yes.

Ex. 48. Q.—You have the same in 1924. You say, the reclamation and housing schemes made satisfactory progress. In 1925, in your report you say “work on the Back Bay Reclamation Scheme and Housing Scheme made steady progress during the year”?

A.—Yes.

Q.—What do you mean by this “steady progress” when you knew that the work was very unsatisfactory: the dredgers had failed, your estimates had gone up almost double the amount estimated. What do you mean by informing the public that the progress was steady?

A.—What we knew was that the progress on the construction of the sea wall was going on satisfactorily and the dredgers were working, though we knew that in the first season the output had been very much lower than Sir George Buchanan estimated it to be. But he satisfied Government that the first year's working should not be taken to be a criterion and that no conclusions should be based on it, and Government agreed that the results of the season 1923-24 should be awaited. The first season was treated more or less as experimental, a sort of trial one, and I do not think it would have been a sound proposal to go and issue alarmist reports about the state of affairs at that stage. If the directors of an industrial concern such as you referred to just now, when they were having a trial run of their machinery were to find that things were not working smoothly, I do not think they issue alarmist reports, I think they would prefer to await a further trial.

Chairman.—They have got to steer a middle course. There should be no suppression of material points. On the other hand they must not create panic by making frightening statements?

A.—I am quite sure that I could have made statements in these reports, but I am quite sure that I should have been taken to task by the Government for doing so and certainly by Sir George Buchanan.

Q.—It was that fear that prompted you of getting blame from Sir George Buchanan?

A.—No question of fear at all, but I felt that the position was difficult and that Government had to decide between prematurely, if one may put it that way, causing a panic and perhaps unnecessarily doing it. There was no reason to believe that Sir George Buchanan's expectations might not be fulfilled, and in the second or third year when the staff had got more into the way of the working of the dredgers that the results might have been very much better.

Q.—We shall accept that explanation of yours. But in the light of what has turned out the statements made in your reports are not absolutely accurate. Isn't that so?

A.—I would not be prepared to agree with that. It is simply a record of the progress of the work.

Chairman.—Would you be prepared to agree that so far as your statements go they are accurate, but there are material omissions?

A.—Yes.

Mr. Billimoria.—Would such omissions mislead the public?

A.—It is just a question, that it is quite possible that if information had been given at that time it might have misled the public.

Q.—You mean the supplying of correct information ?

A.—It would have misled the public to believe that the output would never be better than it was in the first year because my statements show that it has very materially improved. In the first year, the actual reclamation done was only 5 lakhs cubic yards. If the public were informed that that was all that was going to be done it would certainly have created a false impression.

Ex. 49. Q.—Did any member resign out of resentment ?

A.—Mr. Manmohandas Ramji resigned. He was the representative of the Indian Merchants' Bureau. I have no information as to why he resigned.

Q.—Did you enquire why a representative of a public body resigned from the Advisory Committee ?

A.—As a matter of fact, though it is not definite, I understood at the time that he resigned because the views that he held did not exactly correspond with those of the Chamber he was representing.

Q.—It was only because of the difference of opinion ?

A.—That is what I understood at the time.

Q.—Not because of any treatment or because of suppression of facts on the part of Government ?

A.—It was never stated.

Q.—Now I shall come to your Report for the year ending 31st March 1922. On page 1, as I have already said, there appears that happy phrase 'steady progress.' You explained something this morning, but would not anyone reading this report infer that the progress referred to was in accordance with the estimate and that everything was all right as far as the works are concerned ?

A.—The progress of the work was satisfactory at the time.

Q.—During the period covered by this report, the dredger and plant had not arrived in Bombay ?

A.—It arrived on the very last day.

Q.—But it had not been worked ?

A.—No.

Ex. 58-50. Q.—The very first page "during the year 1922-23 the work proceeded smoothly....." This gives a very rosy picture to the public, at the end of the year 1923, third year completed ?

A.—You realise that the dredgers did not begin dredging until December 1923. Up to this date there was no question of dredging.

Q.—What are the “practical purposes according to programme”?

A.—The works covered by this were the construction of the wall and the opening out of the quarry and the construction of railway and it also refers to housing schemes and all schemes of the Development Department.

Q.—Had you any definite programme, this in 1921, this in 1922, 1923?

A.—We had a programme which is attached to the sanctioned project estimate. There is a programme showing every year how much work is going to be done, also a programme for construction and for housing scheme. According to this, this programme was being worked to.

Chairman—The Back Bay Reclamation was not worked according to this programme. Take one instance. You said that you hoped in October 1922 to have an enclosed area for the dredger to operate in?

A.—Yes.

Q.—In March 1923 you were writing that the work had gone “according to programme.” There was no enclosed area for the dredger to work in. It was lying idle for month after month?

A.—Yes. So far it was wrong.

Mr. Billimoria.—When did you first entertain any doubts as to the success of the scheme?

A.—After the first year’s dredging.

Ex. 51. Q.—We shall turn to your report for 1924. There you say, “Filling commenced in December 1923, and the reclamation made satisfactory progress. (The very first paragraph) “The reclamation and housing schemes made satisfactory progress.” The dredger had been pumping in December 1923. Did you find the dredger working satisfactorily between December and March, a period of 4 months?

A.—The actual output of 5 lakhs odd in that season was known some time in July and this report was of course drafted before that, but still we had the weekly records and we knew at that time that the results were not so satisfactory.

Q.—You had known it at that time?

A.—We knew the figures for 1923-24.

Q.—That the results were not satisfactory ?

A.—We had not the actual figure until July

Q.—The report is said to be published “to 31st March”?

A.—It is generally issued in June.

Q.—There is no indication as to when it was issued ?

Q.—You mean that when this report went out you had no knowledge. You knew about it later ?

A.—We knew it was not anything like 5 million cubic yards.

Q.—For 4 months it was 5 lakhs. So for 12 months it would be 15 lakhs as against 50. That would only make 10 lakhs against 50 lakhs ? (According to layed down programme).

A.—Yes.

Q.—That would not be satisfactory at all from any point of view ?

A.—No. I have explained that these reports have been very difficult to frame on that account. It would have been quite possible to put in this report that only about 5 lakhs of cubic yards had been pumped and that at that rate reclamation would not be completed for fifty years and the life of the dredging plant being twenty years a second dredging plant would have to be bought, and the life of the pipe lines being eight years, these would have to be renewed several times, and I would have had to make an alarming story about it.

Chairman.—Which would have been truer ?

A.—I think the results of last year would have been more correct.

Q.—But at the date of the report which should have been the more correct, to set out all the disappointing features or to conceal them ?

A.—To set them out undoubtedly. But I had to consider the *policy of the matter.*

Mr. Billimoria.—With regard to that policy, are you prepared to shoulder the sole responsibility and not shift it on to Government ?

A.—I am quite prepared to accept the responsibility for not having issued information of that kind in my report.

Q.—The Honourable Member in charge of the Department had nothing to do with that report ? He had the full report ?

A.—No. He never saw it. The Government had the information about the results of the dredger. That was after full discussion between Government and Sir George Buchanan.

Q.—Government did not instruct you to issue any report of this nature. As it is in my hands at present, not indicating the true results?

A.—This is the form in which it has always been issued and Government never drew my attention that it was in any way deficient, and I think it was reasonable for me to assume that if Government considered it desirable to issue any information that was not in my report I should be instructed to do so, or Government would do it themselves.

Q.—Is it not always left to the head of the department to draft his own report? It is generally left to the administrative heads of departments. His Excellency does not go into the details of all the work of the presidency. Reports are submitted to him. He takes it for granted that the staff, the responsible officers, are properly carrying on their duties?

A.—My position is, I was in administrative charge of the work. Questions of policy of Government I do not think came within my scope at all.

Q.—Do you want to differentiate between the question of policy and the question of fact?

A.—I think it was a question of policy as to whether at that early stage after the very first season and before an opportunity had been given to Sir George Buchanan it was wise to express an opinion. It is a difficult question I admit.

Chairman.—In the report of 1924-25 there was a great deal that could have been said but was not said?

A.—There was, undoubtedly.

Ex. 52. Q.—In your last report for the period ending 31st March 1925, you repeat the same story that the scheme made satisfactory and steady progress. It is a very bold statement to make at the end of the year 1925 after having known what the actual state of affairs was in the Department and with the knowledge first-hand that the head of the Department had at his disposal at the time?

A.—I have already explained this point.

(*Chairman.*—Sir Lawless has already said he could have written reports of a very different tenour, but for purposes of policy he thought it expedient not to do so. We must consider that among ourselves.)

Chairman.—You agree with me you could have written reports of a very different tenour ?

A.—I could have.

Chairman.—But as a matter of policy you thought it unwise to do so ?

A.—I thought it was a responsibility which I could not undertake without consultation at any rate with Government. In a report that I was simply issuing myself and which Government were not going to see before issue, I do not think I could undertake the responsibility.

Some of the above quoted passages go a great length to prove Mr. Nariman's charges against the Development Directorate mentioned in his Council speeches since 1923, that correct and full information about the progress and affairs of the Department, was withheld from the Council and public in general by the Directorate.

It was also alleged by Mr. Nariman in Council that "Stores that were not required were ordered out.....". This fact is borne out in Mr. G. M. Ororke's (Resident Engineer Kandavli Quarries) evidence as quoted below :—

Q.—That is good. Now going back to "Kalu", did you estimate on the 25th of August 1922, that the "Kalu" would require overhauling to the extent of Rs. 4 lakhs ?

A.—I do not remember it.

Q.—Here is your letter of 25th August 1922 to Messrs. Meik & Buchanan : "I have also allowed Rs. 4 lakhs for the overhaul of the 'Kalu'. We had her surveyed by Mr. McMurray of the Port Trust and he estimates this sum will be required to put her in proper working order. I send you a copy of his report herewith." Now does the passage which I have read recall to your recollection the action taken upon this. You allowed 4 lakhs for overhauling ?

A.—I think we must have.

Q.—And was that figure subsequently reduced by a letter of the 20th of February 1923 to Rs. 3,65,000 ?

A.—I do not know.

Q.—That appears to be the fact from the letter of Mr. Lewis on the 20th February 1923 in which he speaks of repairs necessary for "Kalu" and estimates them to cost Rs. 3,65,000. Now you tell me if you can, had the "Kalu" at that time when you wrote your letter done any work at all ?

A.—No ; she had done no work for us since her purchase.

Q.—The Development Department are debited with £75,000 for her purchase, and before she does any work at all, Rs. 3,65,000 have to be spent to put her into working order ?

A.—That is it.

Q.—Can you as a businessman imagine how she could be given any certificate of fitness which would persuade the authorities to buy her ?

A.—I take it, it is much the same a buying a second-hand motor car or other machine. You may buy the car from a garage where it has been thoroughly overhauled, or you may buy it from its owner knowing that it requires overhaul.

Q.—We must look into the facts in each case. But if it was reported as fit and ready for work and £75,000 was paid for her, somebody must have made a mistake ?

A.—Yes.

Q.—We must ascertain the particulars under which the Development Directorate bought her for £75,000. We must see the correspondence relating to it and if there is anybody in Bombay who acted as a principal in that transaction he ought to come and give evidence ?

Mr. Billimoria.—Mr. Neilson mentioned that both “Kalu” and “Jinga” were disposed of by the Port Trust for Rs. 8 lakhs. Was it not for the Development Department ?

Chairman.—As I understand the position, Mr. Neilson said that these two dredgers were sold out and out for 8½ lakhs to the Imperial Government and thereafter they had no further concern with them. The next thing we know is the Government of Bombay agreed to pay £75,000 for the “Kalu”. What we want to know is—we know that Sir George Buchanan advised the purchase—what we want to know is whom did the Government of Bombay employ to ascertain that for £75,000 they were getting good value ?

Chairman.—Coming to another matter, Sir Frederick asked you about cement blocks which were designed to carry the storm water drain. Is it not a fact that the use of these was either abandoned or greatly curtailed, because it was found that the bed of the sea was not suitable for them ?

A.—No ; I had no trouble about it here.

Q.—We were definitely told that, they were unsuitable for bed of the sea when they came on rock ?

A.—Yes ; I apologise ; it is so ; they found that to be so in certain section.

Q.—So that when they had carefully explored the bed of the sea or when they were actually doing the work they found that these blocks were in parts of the work unsuitable for the bed ?

A.—They were unsuitable for the sea in certain places.

Q.—About how many blocks do you estimate are lying at Kandivlee ?

A.—1,400.

Q.—How much are they worth each ?

A.—Rs. 182.

Q.—Are they ever going to be used ?

A.—Yes ; when the reclamation is completed.

Q.—So that there are at present £21,000 worth of block lying at Kandivlee ? And as Sir Frederick has pointed out, some of them have been there since 1923 ? (There is the date stamp on each one of them.)

A.—Yes.

Q.—Now as regards the 20-ton crane which we saw on the sea wall, was that ever in fact employed to lift 20 tons ?

A.—Not to my knowledge.

Q.—The crane was ordered because it was believed that she would swing out 20-ton blocks pell mell into the sea ?

A.—Yes.

Q.—In point of fact 8 tons is the biggest load that she really ever takes ?

A.—Yes.

Q.—And is that a very unusual load ?

A.—It is the maximum.

Q.—Usually the utmost is 5 tons ?

A.—About that.

Q.—Therefore to that extent the money has been thrown away ?

A.—Yes.

Q.—Now, with regard to the three navvies that we saw, they cost £3,000 each, don't they ?

A.—I have not the figures.

Q.—I think you may take that as correct. And the big one cost £9,000. Now, the object of the navvy is to shovel up ?

A.—Yes

Chairman.—On the 3rd May, the Chief Engineer writing says, "Sir Lawless Hepper agrees with me that it is best to get the cranes at present. The cranaage at the Quarry was originally allowed on the basis of 1,000 tons in a day. I have since re-allocated two 7-ton cranes, one each to Colaba and Marine Lines, and something more has to be got for the Quarry. We have to handle large blocks as these have to be stored as they are obtained in the course of quarrying operations, and in order to do this we must have adequate crane power. These three navvies will also enable us to get out the moorum which will ultimately be required and it seems to me that as they will work as 20-ton cranes at a radius of 23'-6", they would be of more use than ordinary plain cranes. In the telegram I am asking you to proceed with the purchase of all the three cranes." So that as a result of instructions of the Development Directorate three 20-ton navvies were purchased ?

A.—Yes.

Q.—Have they lifted any stone ?

A.—Occasionally they have.

Q.—You said just now 7 tons was the maximum.

A.—I forgot. It may have gone up to 8 or 9.

Sir Frederick Hopkinson.—That is exceptional ?

A.—Yes, exceptional.

Chairman.—Have they ever done anything more than a 7-ton crane could do ?

A.—No.

Q.—You might want three ordinary 10-ton cranes there ?

A.—Yes.

Q.—You had work for three ?

A.—Yes.

Q.—In fact, you have also got there the navvy costing £9,000. What power has it ?

A.—I forget at the moment.

Q.—Has it ever lifted anything ?

A.—No.

Q.—It represents £9,000 and is lying idle ?

A.—Yes.

Q.—Has it done any work as a navvy ?

A.—No.

Q.—The only ones that have done work are the three Wilson navvies ?

A.—Yes.

Q.—As regards the 10-ton cranes, would three 10-ton cranes have cost considerably less than three 20-ton navvies ?

A.—They would cost less, but I cannot possibly say how much.

Q.—You said an attempt was made to work upon the face of the murum by means of steam shovels ?

A.—Yes, it was not a fair attempt.

Q.—One of the reasons was that you had not got a sufficiently good face ?

A.—We had a good face for a very short area.

Q.—You have not been able to work the three Wilson Steam Shovels at Kandivlee ?

A.—No.

Mr. Billimoria.—A crane which cost you about £9,000 is lying idle and getting rusty ?

A.—We take care of it. We keep it as well as we can. We clean it and keep it oiled.

Q.—You do not expect to use it ?

A.—I do not see any prospect.

Q.—Is there any possibility of disposing of it ?

A.—I don't think anybody would buy it.

Q.—So, this money is gone ?

A.—We might get something. I do not know what they might get ; I have no idea. I am really not in a position to give any idea.

Mr. Hussainbhoy Lalji was the 30th witness examined and his evidence was published on the morning of the very day when Mr. Nariman was examined by the members of the Committee.

A few passages of this evidence as referred to by Mr. Nariman during the proceedings in Court are given below :

Ex. 31. *Sir M. Vishvesvaraya.*—Do you know who made the indents? You are referring to it on page 8.

A.—I do not know.

Q.—Do you have a copy of them?

A.—No, we could not get information.

Q.—Why do you think it was carelessly done?

A.—Because many times they invited tenders for the purchase of surplus stores. They must have indented for such a large quantity that the surplus stores were saleable.

Sir Frederick Hopkinson.—That is very common thing in Government Departments. You and I would not do it.

A.—The thing is we should be very careful to indent. Once it was said in the Council that surplus stores to the value of Rs. 6,00,000 were sold.

Q.—Who stated that?

A.—I remember that the Director once admitted in the Council that certain steel bars valued at Rs. 2,50,000 were indented of a wrong size.

Q.—That might have been the mistake of the *draftsman*. Mistakes will happen.

But to the extent of Indent being made of steel bars valued at Rs. 250,000. That is a big sum; there is no purchaser and I think they are still lying.

Ex. 32. *Mr. Billimoria.*—This is a public inquiry, why should names be kept back? If people who have information cannot put it forward before the Committee and simply make allegations and accusations against the Government, why should they not come boldly and give out the information?

A.—You will find out that name from the files. He is not a man of Bombay and he is again not a big contractor. I am not ordered to give that man's name and I cannot do so as I have already told you. I do not blame anybody because the Committee is there to attribute the blame to whosoever deserving.

Q.—But how is the Committee to find out without materials before them?

A.—I have given you materials namely you have to take out the letters of the contractors wherein you will find some 30 to 40 tenders which were simply invited, while only one man got the contracts all the time, in preference to several other well-known big contractors though their rates were low.

Sir Frederick Hopkinson.—That is a very serious charge to bring against the department? Is it not?

A.—I would really point out to the Committee to find all these out.

Q.—Would you not consider this a very serious charge against it?

A.—It is so and I do maintain that with regard to the Back Bay contracts several contracts of higher rates were accepted in preference to contracts of big firms quoting lower rates.

Q.—We have no facts in this connection?

A.—You have got facts. If you were to make inquiries in regard to rates and other factors, you would.

Q.—Perhaps rates would have gone high?

A.—You will find from the tenders.

Ex. 32. *Mr. Billimoria.*—Do you expect this Committee to go through a mass of papers, tons and tons of papers and files? There might be some questions on which we require definite and clear information and if nobody were to come forward boldly to give all that out, how are we to make out?

A.—Sir, I have given you everything, the rates, etc., and I see no justification in accepting the extraordinary rates.

Sir Frederick Hopkinson.—Well, if you don't give us any specific instances and names, I conclude that you have based your estimates on heresay gossip.

A.—I think sir, I have not made myself quite clear, but I do feel that I have given you sufficient data to make inquiries about.

Q.—No, you related everything on gossip. That might be, as it's nothing but gossip. You refer to cement sold without much care from the surplus, you mean cement was sold to any of the contractors?

(*Mr. Billimoria.*—His name is not given.)

A.—His name is Mr. Balkishendas Damodardas.

Q.—Why didn't you mention it ?

A.—It's business morality.

Q.—Well I don't call it that, I am very sorry there are no facts. There is not a single fact. These are only statements that somebody has told you ?

A.—What somebody has told me is true, because I am not a contractor. There was the case of a contractor who was given contracts at a rate 150 per cent. more than the prevailing rate and the lucky fellow got contracts to the tune of about 9 lakhs.

Mr. Billimoria.—150 per cent. more ?

A.—Yes.

Q.—You are thereby insinuating that somebody distinctly gave this contract to him or was sharing profits with this man ?

A.—It amounts to that unless he was a fool.

Q.—Is this the insinuation ; I want to get at it here ?

A.—I should certainly insinuate, unless the man who was in charge of that work was a big fool.

We reproduce before our readers some important parts of Mr. Nariman's written statement and Oral Evidence before the Committee as, most of it has a close bearing on the cause and origin of this Historic Case.

Ex. 33. When I failed in getting the Directorate abolished, my next effort was to get a Resolution passed in the Council in October 1924 as under :—

“ This Council recommends to Government—

- (a) That a Committee consisting of 12 non-official and elected members be appointed to inquire into the whole administration and working of the Development Directorate, to suggest ways and means of effecting retrenchments and to report on the advisability or otherwise of continuing the schemes taken in hand ;
- (b) That the Development Directorate be requested to co-operate with the said Committee and afford all facilities and help in conducting the said inquiry and in making the said report ;
- (c) That an independent officer or expert be appointed to help the said Committee.”

Government ignored this resolution of the Council, and instead of appointing an Inquiry Committee as recommended by the Council, invited some members only to join the Advisory Committee. I was one of the members thus invited but I refused to join till the Advisory Committee was also given the power to investigate in accordance with the terms of my resolution. That condition was not accepted and the correspondence on this subject between me and Government is before the Committee.

Thus not only would the Government not allow even responsible members of the Council to inquire into the administration and working of the Department that had cost crores of rupees to the public, but every effort on the part of every one to get correct information on important details was also defeated by irresponsible and false statements by responsible members of the Government in the Council. Numerous instances of such misleading statements to the public have been already exposed by the Committee, but I will add a few more glaring instances which will satisfy the Committee that a deliberate and persistent method had been adopted not only to keep the public entirely in dark but worse still, to mislead, by inaccurate and false statements.

Ex. 34. But the most glaring false statement is contained in the Interim Report of the Advisory Committee published so late as 17th February 1925. Sir Lawless Hepper was the Chairman of that Committee and is the first signatory to that report. The following is an extract from the said report :—

“It would appear, therefore, that the Back Bay Reclamation Scheme, having reached the stage it now has, should be proceeded with unless it can be established that there are serious grounds for believing that the scheme is unsound from an engineering point of view, or that it is likely to result in an ultimate financial loss greater than that which would be entailed by closing it down. As regards the first point, *the work has proceeded smoothly according to programme, and its stability has been tested by several monsoons. Whatever apprehensions, therefore, the public may have had on this score the Committee see no reason to suppose that the Project cannot be successfully completed.*

“In regard to the possibility of financial loss, the *expenditure has, up to date, approximated closely with the forecast*, the total including interest charges, to 31st March 1924, being Rs. 412·39 lakhs, against the forecast figure of Rs. 421·16 lakhs.”

This statement is made and signed by the Head of the Department in February 1925 in an important report for the information of the public and Council and on the strength of that statement, several members even recommended completion of the scheme.

It now transpires that this was a deliberately false statement intended to mislead the public and Council with the object of hushing up the bungle.

According to our information, in a departmental letter to the Government written about the same time, *viz.*, 27th January 1925, a few days before he signed and published this report, Sir Lawless Hepper has painted quite a different picture and apprehended a serious loss, and even in his evidence before the Committee he has admitted that long before this, *i.e.*, in May 1924, he had first realised that the misdescription of clay in Sir George Buchanan's report was one of the mistakes which had proved disastrous; still in February 1925, as a responsible Chairman of an important Committee, he misleads the whole Committee, the Council and the public by an absolutely inaccurate statement that the work was progressing smoothly, that public apprehensions are false and there was no doubt about the success of the project. I submit that he owes an explanation to the Committee and the public for these apparently inconsistent statements. Besides these, the Committee has already referred to misleading statements in the annual Reports. I have only given a few glaring instances, simply to show that these misstatements are not the result of mere innocent mistakes or "error of judgment," but only represent part of a policy of secrecy maintained by the Government throughout.

Ex. 35. But leaving the engineering and technical points to be dealt with by competent experts on the Committee, I shall now endeavour to place before the Committee what I consider the proper sphere of a non-official witness, namely, criticism on internal administration or rather on maladministration and the internal working of the scheme.

Even before I became a member of the Legislative Council, I had been directing my attention towards the various objectionable methods that were adopted by the administration in working out the scheme. The Committee will appreciate the difficulties under which a layman like myself had to struggle in order to have a peep behind the veiled screen, and my position will now be better appreciated in view of the fact that the Department has all along tried to maintain strict secrecy, not allowing what they consider to be departmental secrets to leak out of the happy family arrangement. Still by various means, by correspondence in press, by resolution in the Council, and by criticism during budget discussion, I have made every endeavour to lay before the public some of the grave irregularities in the procedure, which I have even characterized in the Council as well as on the public platform, as great public scandals. The Committee will also appreciate that allegations of this description, unless vigilantly investigated into, immediately

and promptly after they are made, it is not practicable and possible to detect the alleged frauds. When allegations are openly made, all parties concerned would naturally take all the necessary steps and precautions to destroy all the valuable materials in shape of documents and private records that would, in the case of an immediate investigation, throw light on the subject.

It is a pity that public appeals to the local Government to start an investigation immediately after the allegations were made, and even a resolution of the Council to the same effect, fell absolutely on deaf ears and Government paid no heed to public demands or to the Council resolution. It is now nearly two years since that resolution was passed when these allegations were made and most of the officers concerned have left the service, as well as some of the firms have also severed connections, and hence it is extremely difficult to make an investigation at such a late stage to trace the facts.

In the course of a debate in the Council in March 1925, I had stated "without any reserve, with all the responsibility that I can command, I openly make a charge that there has been a serious mal-administration of public funds and there has been a serious wasting of public funds. There have been instances which I can go to the length of calling frauds and I make this charge on behalf of the public and on behalf of investors of Bombay who have invested nearly 30 crores in this work. I say that if Government shirk an inquiry, suspicion in the public minds will be confirmed". I further stated "I only want to know what is being done of the public funds: I want to know whether these funds are honestly and legitimately applied or whether they are misapplied. I may tell the Government quite frankly and openly that there are ugly rumours in the city and the whole of the Presidency that higher staff and officers have been receiving secret commissions from manufacturers and this is the reason why in this instance the department has incurred a loss of Rs. 3 lakhs. That is the reason why stores are indented in large quantities than are necessary and stores that are not required are also ordered out. If you go to the Surplus Depot, stores worth Rs. 6 lakhs or more are lying undisposed of". The last statement was re-echoing the ugly rumours that were prevalent throughout the city. As stated above if Government had conceded the public demand and started an immediate and prompt enquiry, there and then perhaps most sensational revelations might have been disclosed. But even at this late stage, I can place before the Committee all the materials that I have been able to collect not with a view or desire to cast any aspersion against any individuals of the department, but primarily with a view to enable an independent investigation to find out the truth, and if sufficient materials

are disclosed, to take such action as the Committee thinks proper. All along my appeal to Government has always been for an investigation of certain allegations to find out the truth and in connection with this, as my statements in the Council and in public refer to the activities of the whole Development Directorate and not only to the Reclamation alone, the Committee will permit me to place all the materials before it in order to enable it to judge for itself whether I was justified or not in demanding a public investigation. Besides, the Committee is perhaps aware, at my instance the Municipal Corporation has passed a resolution requesting the Government of India to extend the terms of reference so as to bring within the scope and purview of the Committee, the other activities of the department also. Thus my statement on this subject may be taken in anticipation of this extension; if not the Committee may eliminate that part of the statement which does not come strictly within the purview of the limited reference.

First and foremost, I wish to bring to the notice of the Committee a serious complaint that with regard to the working of the Development Directorate, particularly with regard to the works extending to lakhs of rupees carried out in connection with the reclamation and other activities, the Department did not observe the ordinary procedure of business and up till very recently did not invite tenders but favoured a few individual contractors with contracts of the said work at rates very exorbitant and very favourable to contractors but causing great financial loss to the public.

I give you one important instance with regard to greater portion of the work of filling in. One Balkishan Seth *alias* Damodar Sheth was the most favourite contractor on this work, and as it now transpires, his previous record and history is rather interesting. This gentleman was formerly a clerk in a railway company in Upper India from which he was dismissed after being convicted for a very serious offence of fraud and cheating and sentenced to a long term of imprisonment. After serving his term, he came to Bombay to try and make a living as in his own province in Upper India, after the stigma it was difficult for him to earn a living. Luckily for him, just about the time, this work was started and it is not known how, but by some means or other, he got himself ingratiated in the good books of the officers who exercised absolute discretion of giving tenders or contracts of the work of filling up. This gentleman accordingly became a great favourite of all the officers from highest to the lowest and in course of time, practically enjoyed the monopoly of this particular work and the works connected with it at rates which for want of competition were practically dictated by him and accepted by the staff. A comparison of the rates charged by him in the days no tenders were invited and the

rates charged along with the tenders of others will clearly show my point.

As far as information goes this gentleman was once given Rs. 10 or more per truck of 19 or 20 tons for Colaba section filling in, which was then reduced to Rs. 6 and then to Rs 4-6-0. But after criticism in the Council it appears that circulars were issued in the Department directing that public tenders should be invited for all this sort of work, as a result of which this gentleman reduced his rate to the last figure of Rs. 2-8-0 per truck making it at two annas per ton. Thus for exactly the same sort of work, and the former work was easier as trucks were directly emptied near the rails, whereas now it is a bit expensive as the materials had to be carried to, a little distance from the rails, the same contractor who had offered and obtained the rate of Rs. 10 or more per truck was now prepared to work at the rate of Rs. 2-8-0 per truck.

It was elicited in the last Council that this gentleman had done the work to the extent of nearly 9 to 10 lakhs of rupees without tender at exorbitant rates and although he was practically a pauper when he came to Bombay to start a new life, to-day he is in affluent circumstances.

Ex. 36. Similar scandals existed with regard to purchase of stores, and I will give some of the instances that have come to my knowledge. In the course of proceedings, the Committee has already elicited a good deal of information on this subject which supports my allegations made in the Council that superfluous stores and plants costing lakhs of rupees were ordered out and which were not required and not capable of being of use, such as huge and costly navvies, cranes, etc.

Ex. c 2. In one instance, an Executive Engineer had prepared an indent to be forwarded to Manufacturers at Home for a large quantity of mild steel bars for concrete piles for the reclamation work and the size mentioned in the original indent by the Executive Engineer was 5/8". This figure was subsequently altered after the indent was prepared but before it was despatched by the Superintending Engineer into 7/8". The quantity required was about 1,200 tons, costing nearly three lakhs of rupees. The indent thus altered was sent by the Superintending Engineer to the Home firm and the bars arrived of the size and dimensions of 7/8" which were not required for the works. They were deposited in Matunga Surplus Depot and a fresh indent had to be sent with correct specifications and fresh consignment arrived, and the amount of nearly Rs.3 lakhs of the first consignment was purely wasted. When a question was raised about it in the Council, in the course of debate, the Development Director admitted it but stated that the said alteration was due to a

trifling error. No effort was made to explain how such "trifling error" could have occurred, particularly when the indent was originally correctly prepared by one Engineer and deliberately altered by the superior and no explanation was forthcoming (*Vide* Council Report, dated 24th October 1924, page 861.)

Further, in order to pacify the Council and to show that this trifling error had not cost any loss, the Director stated that there was no loss to Government and he gave the Council to understand that they were utilised in some other works and had caused actually a saving. As I knew that these bars which were recently indented were still lying in the Matunga Depot, I caused enquiries to be made some months after the statement was made and sent an intending purchaser to make enquiries from the Matunga Depot, as the result of which, the Executive Engineer, Housing District, wrote back offering these and other steel bars for sale and inviting the purchaser to the Depot to have an inspection of the same. At the same time, the Stores Department also supplied the said purchaser with a list of the bars available for sale and in which list were also included some bars in question of 7/8". This letter of the Executive Engineer inviting the purchaser for an inspection is Dated Matunga, 26th January 1925. Further comments on such an attitude are needless, and I leave it to the Committee to draw its own conclusion.

Ex. 37—It is stated that Mr. Harvey, the Superintending Engineer, was formerly getting only about Rs. 900 in Delhi and Messrs. Sykes and Lewis and one Mr. Lowe all came from the same place at the same time. It seems the whole group was bodily transferred from Delhi to Bombay. One Mr. Mitchel getting Rs. 2,000 and his sole business was mostly to test cement, as if this work required a special officer of a large salary and could not be entrusted to any other Engineer. Deputy Chief Engineer Mr. O'Rorke, drawing a salary of Rs. 2,100, was stated to be a lieutenant Port Trust Officer at Mesopotamia drawing salary of Rs. 700 or Rs. 800. Executive Engineer Mr. Gardner, similarly highly paid, was a captain in Mesopotamia on a salary of Rs. 500. One Mr. Roberts getting a fairly high salary, was stated to be a policeman in Wales during War time and thereafter engaged in some state quarry work on a very low salary.

These are some of the materials and information that I had with difficulty gathered from various sources and considering these materials *prima facie* sufficient merely to start a public investigation either to have them verified or falsified, I moved a resolution in the Council in October 1924 demanding a public inquiry. That resolution though passed by the Council in spite of strong Government opposition, was completely ignored and the issue was sought

to be side-tracked and clouded by inviting some members to join the impotent and powerless advisory Committee. The next occasion to discuss the subject was March 1925, when I strongly criticised the attitude of the Government in not even permitting an investigation on behalf of investors who had invested thirty crores of rupees and repeated the charges of maladministration and waste of public funds and described in some instances as frauds. I also frankly warned the Government about ugly rumours that were current in the city with regard to extravagant waste of public funds by ordering out plants, machinery and materials valued at lakhs of rupees that were not required and could not be used for the Department. The letter dated 26th January 1926 from Stores Department shows that on that date these unused mild steel bars were in the Matunga Surplus Depot of the value of about 4½ lakhs of rupees for sale. Before that, how many were disposed of is not known. This is only one instance with regard to which an admission is accidentally obtained from the department. Similarly, other large stores of the value of lakhs of rupees were lying in the Depot unused and getting rusty.

The question naturally arises, as to why such large quantities of superfluous stores ordered when admittedly they were not required and not used? And who ordered them out? Coupled with that, we have one instance where an Indent is altered by a Superintending Engineer. Other grave scandals were, favouritism and patronage shown to particular contractors, who were given rates five times as much as competitive rates secured by open tenders for the same work, and the very contractor is subsequently prepared to carry out the work at that extremely reduced rates.

Why were such huge profiteering intentionally allowed to particular favoured individuals causing enormous loss to public?

It could not be merely on account of friendship as no friendship could exist between an Indian convict and high European officials. Then what was the other consideration for such favouritism?

The Committee while dealing with these questions will realise the grave financial loss not only to the city but to the whole Presidency. This mad and chimerical venture has practically mortgaged the resources of the Presidency for at least a generation to come. All other schemes of public utility, even such as primary education and medical relief must be suspended till the huge gap in the Bombay treasury is filled up.

According to the last Budget, three crores are to be funded, i.e., twenty lakhs every year for the next thirty years are going to

be set aside for paying the loss on the Back Bay Reclamation. This is no doubt a modest estimate to prevent a scare and panic in the public ; ultimately it is bound to be much more and all this on a Province that is already most heavily taxed and most heavily burdened with loans. The incidence of taxation per head of this province is higher than other provinces and the debt charges are more than two or three other provinces put together.

In connection with this Investigation, before closing my remarks, I may be permitted to refer to some of the sections and rules laid down in the Government of India Act that appear to me to be relevant and useful in fixing the responsibility. Under Auditor General's Powers, Part II, Duties and Powers as regards Audit, the following canons are laid down (page 141, Government of India Act, 1919) :—

10. (1) Every public officer should exercise the same vigilance in respect of expenditure incurred from Government revenues as a person of ordinary prudence would exercise in respect of the expenditure of his own money.

(4) Government revenues should not be utilized for the benefit of a particular person or section of the community.

Thus the standard laid down to be observed by a public officer when dealing with public funds is very high. The question is whether the officers, from the highest to the lowest, concerned have exercised same vigilance as a person of ordinary prudence in respect of his own money. In view of the revelations and disclosures made before the Committee during the last few days, there could be only one reply to the above query.

Further rule 37, Devolution Rules, lays down the function of Finance Department :—

37. The Finance Department shall perform the following functions, namely :—

(a) It shall be in charge of the account relating to loans granted by the local Government and shall advise on the financial aspect of all transactions relating to such loans.

(d) It shall examine and report on all proposals for borrowing by the local Government ; shall take all steps necessary for the purpose of raising such loans as have been duly authorised ; and shall be in charge of all materials relating to the service of loans ;

(e) It shall be responsible for seeing that proper financial rules are framed for the guidance of other departments and that suitable accounts are maintained by other departments and establishments subordinate to them ;

(g) (iii) It shall examine and advise on all schemes of new expenditure for which it is proposed to make provision in the estimates and shall decline to provide in the estimates for any scheme which has not been so examined.

Therefore under the circumstances disclosed, the Finance Department of the Government of these days cannot entirely be exonerated and further Section 124 of the same Act (Government of India Act) also defines certain Acts which constitute misdemeanours on the part of any person holding office under the Crown :—

(2) If (except in case of necessity the burden of proving which shall be on him) he wilfully disobeys or wilfully omits, forbears or neglects to execute any orders or instructions of the Secretary of State; or

(3) If he is guilty of any wilful breach of the trust and duty of his office.

If these wholesome provisions of the Imperial Act, introduced for the safety of public funds and to secure due discharge of public duties, are not merely ornamental dead letters, but are intended and meant to be used on proper and fitting occasions, then my submission to the Committee is that there never was, nor ever will arise a more befitting case for the operation and application of these sections to this most cruel act of vandalism on the part of the Government of Sir George Lloyd. That course alone will satisfy public demand and restore both public confidence and Government's prestige. If private trustees had played such havoc with funds entrusted to their care, there is no doubt that they would have been made to answer in a Court of Law and compelled to make good the amount. Public also expect a higher standard of morals, vigilance and prudence with regard to public funds.

Mr. NARIMAN'S Supplementary written statement dated
23rd August received on 24th August 1926.

As desired by the Chairman in course of my oral evidence to supply further particulars about irregularities, etc., if within my knowledge, I beg to submit the following supplementary statement.

Besides the instance of dry filling in contract given at page 19 of my written statement, I had referred at page 21 towards the end that "similar favours were shown to the same contractor Balkishan Seth, with regard to other contracts of painting etc." I beg to submit the following further particulars:—

Last year or year before contract for painting pontoons was given to the same contractor, Balkishan Seth, and the cost on that item came to over a lakh of rupees. This year, tenders were invited

for the same work and the cost came to about Rs. 53,000. Thus about half a lakh of rupees were paid extra for the same work without tenders.

Again at page 22 of my written statement I have stated that "similar favouritism existed in connection with Kandivli quarries where one Mr. Patker, a petty contractor of the suburbs, was fortunate enough to get monopoly of contract.". With regard to that I beg to submit the following further particulars :

That in or about September 1922, Mr. Patker's tender for 13 annas per ton for quarrying rubble, etc., was accepted although there were other tenders of lower rates and the lowest of under 9 annas per ton was rejected. Since then Mr. Patker enjoys the monopoly of the work.

Similarly, in March 1925 Mr. Patker's rate for excavation only was Annas 10 per ton and subsequently on account of the agitation it was reduced to Annas 8 per ton. The present rate after public tenders for excavation as well as freight, is Annas 10-8 pies per ton. The freight costs about 50 per cent., hence the excavation alone, according to the present tender rate, comes to about Annas 5 per ton, whereas Annas 10 were given for the same work to Mr. Patker. The total amount of contract work done by him comes to Rs. 5 or 6 lakhs.

Besides this, the contractor was allowed free use of plants and tools of the Department such as Cranes, etc., and according to my information the working and maintenance charges, even during the period the crane and tools were used by contractor, were paid for by the Department. These charges alone came to about Rs. 1½ lakhs.

This irregularity of giving work to Mr. Patker without tender was also brought to the notice of Government, but I am given to understand that Government condoned this irregularity on the part of the Chief Engineer but issued memorandum in November 1925 directing that tenders should be invited in future. There was a memorandum also with regard to the use of plant and tools free of charge by the contractor.

That Mr. Patker has made huge profits on account of this monopoly, is evidenced by the fact that recently *i.e.* after these contracts he has bought several valuable properties at Bandra including a bungalow at Bandra Hill worth about a lakh of rupees and another for about Rs. 80,000 besides two or three other smaller properties. Before that, he was a small contractor in the suburbs.

I hope you will place these particulars before the Committee supplementing my written statement.

Mr. Nariman's Oral Evidence before the Back Bay Committee.

Q.—You have given us a large number of instances of alleged irregularities and neglect. We should be glad if you would give us some further details with your explanations where necessary.

A.—You want me to confine myself only to the Reclamation scheme ?

Q.—We have no instructions to go beyond our terms of reference.

A.—With regard to that I must make my position clear. I understand that the Director was questioned with regard to the allegations made by me as to what was his opinion about the allegations and he said that according to his opinion they were false. I understood that reference was to my allegation with regard to the whole management of the work. I have never made any separate allegation with regard to the reclamation. I have always dealt with the Directorate as a whole.

Sir Frederick Hopkinson—You are doing in this statement ?

A.—In this statement I have referred to several irregularities.

Q.—To the Back Bay ?

A.—To the Back Bay also.

Chairman.—We will only ask questions about the Back Bay.

A.—May I point out the particular irregularities which in my opinion relate to reclamation alone, leaving out the rest ?

Q.—In your statement, you don't devote many pages to the other irregularities ?

A.—There are several instances, particularly with regard to chawl contracts and stores ; I suppose I cannot go into them.

Q.—I believe the stores are included ?

A.—Partly.

Sir Frederick Hopkinson—We want to hear nothing but what refers to the Back Bay.

A.—That very much limits my scope, but if that is the ruling certainly I have to confine to that alone.

Mr. Billimoria.—That is the scope of the enquiry ; we cannot go beyond that.

Witness.—I may point out the Corporation has passed a resolution, at my instance, requesting the Government of India to

extend the scope of your reference. If, in anticipation of the extension, you are prepared to take my statement as a whole.

Chairman.—We cannot go into that as a whole.

Witness.—I must tell you frankly that that very much limits my scope so far as the statement is concerned. I must confine myself according to the ruling of the committee.

Q.—What makes you raise this question of constitution at this stage when you did not raise it in the Council ?

A.—I did try to raise it. But this is the first opportunity that Government has given us to raise this question at all. We have been clamouring for an opportunity. There was a resolution in October 1924. Even that might cover this question also. It was as under :—“This Council recommends to Government that a committee consisting of 12 non-official and elected members be appointed to enquire into the whole administration and working of the Development Directorate, to suggest ways and means of effecting retrenchments and to report on the advisability or otherwise of continuing the schemes taken in hand ; that the Development Directorate, be requested to co-operate with the said committee and afford all facilities and help in conducting the said enquiry and in making the said report.” To my mind, we could have brought this question even if the Government did not give effect to the resolution in spite of the Council passing it by a large majority ; that opportunity was also lost. This resolution was passed in October 1924 and was not given effect to by Government in spite of repeated requests and demands.

Q.—You mention certain constitutional irregularities in the inception of this scheme.

A.—Yes ; I would like to ask, if it is within the purview of this Committee, whether this creation of the department, under a special act, was not *ultra vires*, if the Government of India Act gives constitutional rights to the council.

Q.—You could raise that question ; we have noted it ; we cannot say what recommendation we will make on it. You think, when introducing this bill to create a new department, the object was to remove the trammels and control of the legislative council ?

A.—That was what His Excellency Sir George Lloyd said while introducing the bill. I think it was referred to in the corporation statement, “that a project of this description in order that it may be expedited should be as little hampered by outside control as possible, and in order to remove that control we want a special

department and thus make it a reserved subject." That was in His Excellency's first speech. And he has referred to it subsequently too.

Q.—And then you end that recommendation on page 2 of your notes, "My submission is that the first recommendation should be to deprive the executive of these special extraordinary powers and transfer the rest of its activities to P. W. D. and thus restore the supervision and control of the Council" ?

A.—That is my first recommendation. I should say now that both on constitutional grounds and on point of expediency, and in view of the experience we have gained, I do not think that the department should be entrusted any more with the conduct of the scheme.

Q.—Was there a public demand at the time the scheme was originated ? Were the public in favour or against it ?

A.—So far as the Council report shows, there was not any serious opposition, and that was due to the misleading figures and very tempting profits being shown by responsible Government officials, and the gentlemen who did not oppose the scheme in the Council, when questioned subsequently, explained that their conduct was due to the fact that they were misled by very tempting calculations and reports of huge profits that the scheme was going to make, and they took it for granted that what was stated by responsible officials was correct. If they had doubted it then, they would have opposed it.

Q.—But the scheme was expected to prove a productive undertaking ? The public also had great hopes ?

A.—According to the Government statement. On that statement the public were taken in, I would say.

Q.—You are judging the conduct of affairs in a year of boom, after years of adversity ?

A.—That is true.

Q.—The conditions are different from what they were then ?

A.—I make allowances for that.

Q.—The Government also went with the public ?

A.—I do not agree ; the public were duped by Government. If it was not for the statement of Government officials and responsible members that after calculation and meditation they have come to the conclusion that the scheme was going to be a huge success, had it not been for the statement of these officers there would have been opposition in spite of the boom.

Q.—You know people went crazy for land in those days ?

A.—I think that craze came a little later on, not at the time the scheme was introduced.

Q.—There was no inclination on the part of the public to disown the scheme ?

A.—Not at that time, disown in the sense that the public had nothing to do with it. It is all a Government affair, the public were not consulted, the public were not associated in it.

Q.—Before the Reforms the public were not consulted ?

A.—Even after that. In 1919 was the Government of India Act, and in 1920 was the scheme introduced.

Q.—It was discussed informally before ?

A.—Yes ; after that came the public demand of various associations to be associated in the scheme.

Q.—You have made a large number of allegations. You ought to remember the main causes of failure ; in considering the details we may forget the main issues.

A.—Yes.

Q.—The chief reason according to you was that the usual checks, constitutional, financial and technical, were set at nought, that is your main contention ?

A.—Yes ; if those checks were allowed to exist, probably this disaster might not have happened.

Q.—That is your contention. You also say that the responsibility was not definitely fixed : it was not known whether the Development Directorate or the Consulting Engineer or engineers were responsible for it ?

A.—So far as the Council was concerned, it was disclosed that the whole thing rested with the Consulting Engineer till a very late stage.

Q.—You also complain that the technical supervision of the regularly constituted department was withdrawn ?

A.—Yes.

Q.—That was another drawback and one of the causes of the failure or partial failure ?

A.—Yes.

Q.—You say the chief causes are two, the failure of the dredgers to give the required output and the fall in land values. If the price of land were very high now your criticisms would have been in a very different tune ?

A.—Possibly ; I do not agree that the failure was due to these two causes. I think the main cause of the failure was the appointment of what now at least turned out to be an incompetent gentleman for this post. That is my first complaint, that the gentleman who was responsible for the appointment is responsible for this failure.

Sir Frederick Hopkinson.—You are going on the assumption that it is a failure ?

A.—As the matter stands, I don't think there is any doubt, unless things take an entirely different turn in the future. At present there is not a single individual to say that it is not a failure.

Sir M. Visvesvaraya.—You say, “ I will add a few more glaring instances which will satisfy the Committee that a deliberate and persistent method had been adopted not only to keep the public entirely in the dark but worse still, to mislead, by inaccurate and false statements.”

A.—I say so.

Q.—Is it not a strong statement ?

A.—Perfectly justified.

Q.—We have not got the facts before us. We are collecting them.

A.—I will produce my facts, I will particularly refer to one fact.

Q.—You refer to the dredger “ Kalu ” in the first place ?

A.—Yes. It was reported to be a good bargain. The actual expression used by Sir Lawless Hepper is that “ the Government of Bombay did not at all make a bad bargain ” in October 1924. It was made with a view to remove scare or panic.

Q.—It was purchased before the scheme was sanctioned ?

A.—That is admitted now. I may add one thing which is not in the statement I submitted. It is, that even the Government of Bombay through the Director of Information has made a statement with regard to the purchase of the “ Kalu ” and given a different date. They say in a letter that the dredger “ Kalu ” was bought by the Government of Bombay in direct communication with the Government of India, Marine Department, in February 1920. That is signed by Mr. Clee, Acting Director of Information. It is published in the *Bombay Chronicle* of 31st May 1924 in reply to a question raised by me.

Sir Frederick Hopkinson.—Just let me have that. What are you reading that from ?

A.—This is a letter published by Mr. Clee, Acting Director of Information, in reply to a correspondence sent by me. It was a very short letter : “ With reference to Mr. Nariman’s letter on the Development Directorate, which appeared in your issue of 27th instant, the following facts may be of interest to your readers.

“ Sir Lawless Hepper relinquished the post of Controller of Munitions, Bombay Circle, in August 1918, and did not take up the appointment of Director of Development until November 1920.

“ The dredger, ‘ Kalu ’ was purchased by the Government of Bombay in direct communication with the Government of India, Marine Department, in February 1920.” This was the query raised by me whether Sir Lawless Hepper, as the Controller of Munitions, Bombay Circle, had anything to do with the sale of the “ Kalu ” as it was sold by the Military Department. In reply to that in order to show that Sir Lawless Hepper had nothing to do, they gave us various dates.

Q.—Are you making any suggestion of anything wrong in the sale or purchase of the “ Kalu ” ?

A.—I do.

Q.—What is it ?

A.—With regard to the sale of the “ Kalu,” my contention is that according to information obtained, it was sold by the Port Trust to the Military Authorities.

Q.—That was long ago.

A.—The amount of the purchase is important.

Q.—We have got all that in your statement. I rather gather from it that you are suggesting something sinister in the actual dates about the sale and purchase of the “ Kalu.”

A.—Considerable amount of surplus stores were lying unsold and the Government did not know what to do with them. It was dumped on to the Development Directorate simply to dispose of them.

Q.—Was anyone interested ?

A.—The Military Department was certainly interested in having the stores disposed of, and as there could not be any other buyer available, it was dumped on to the Directorate.

Q.—It was a public transaction between two public authorities ?

A.—Of course, it is.

Q.—And no one individual can be interested in it. What is it you suggest?

A.—I suggest that the surplus stores of Government which were lying idle and could not be disposed of were dumped on to the Development Directorate and the public made to pay for it from public funds.

Q.—You suggest it was an improper price?

A.—I say it was.

Q.—Who agreed to pay this price?

A.—Apparently Sir George Lloyd's Government.

Q.—What you suggest is that the Government made a bad bargain?

A.—Very bad bargain in order to relieve the military stores.

Q.—In order to relieve solely?

A.—I won't say solely, but that was one of the considerations.

Q.—I know you make that statement. But it is only a statement.

A.—After all it cannot be anything more than that. What else do you expect?

Q.—I suppose there was a willing seller and a willing buyer.

A.—Certainly, who would not be willing to get rid of.....

Q.—You suggest that the Bombay Government was not a willing buyer?

A.—If the Bombay Government looked to the interests of the public and not the military stores, they should not have bought it. I don't say they were compelled against their will. This dredger, they knew or had ample means of knowing, was useless for the purpose of reclamation and therefore they should not have bought it without due enquiries for such a large sum.

Q.—You are putting yourself in the position of an expert.

A.—I gather from the evidence of experts and not from my own knowledge. I refer to the statement of Messrs. Jacobs and Davies. I have attached a copy of it which clearly shows that long before the Government bought this plant or dredger there was material which the Government could have consulted which would show that this was useless. If you will permit me to refer, Mr. Billimoria of Messrs. Tatas, while giving evidence before the Development Committee on 12th December 1913, stated that in the opinion of those experts (Jacobs and Davies) the life of the Dredgers was not

very long and the Port Trust dredger was also coming to the end of its usefulness. Messrs. Jacobs and Davies are considered to be a reputed firm of Engineers.

Q.—When were they built, in 1914? This is 1920.

A.—My position is this that the Bombay Government were in a position to know the exact conditions of this dredger because in the record of the Development Committee of 1914, at page 321, Mr. Billimoria gives evidence. There he says they (Jacobs and Davies) said that the life of the dredger was not very long.

Q.—What was the date of this evidence? The dredgers were new in 1914.

A.—They were bought in 1907 from Simons & Co. and they were used by the Port Trust for reclamation till they were sold in November 1915.

Q.—Eight years old. When the report was made they were only 6 years.

A.—According to the experts they were being used when it was said that they were coming to the end of their usefulness and Mr. Hewett was of opinion that the Port Trust dredger would not last long for the purpose of the reclamation. They should not be utilised for the proposed new reclamation scheme. That is the definite opinion of an expert, which was available for the Government before they went in for this dredger. One instance only will do to make the Government cautious.

Sir M. Visvesvaraya.—They transferred it from one Government department to another.

A.—That is admitted. If you will permit me to refer to Mr. Cowasji Jehangir's statement in the Council; he says that 9 lakhs worth of stores were taken from the military including the dredger. This was in reply to the question raised by me as to whether the Consulting Engineers earned a commission on that.

Q.—Are you sure about that?

A.—Yes.

Q.—Have the Government acknowledged that anywhere?

A.—I raised the question in the Council, to which the reply was given by Mr. Cowasjee Jehangir that the total amount was 9 lakhs of which the price of the "Kalu" was part.

Sir Frederick Hopkinson.—I have got now to give you an expert's opinion. We have a dredger built in 1898 doing first class work,—pump dredger?

A.—May be, there are dredgers and dredgers and experts and experts.

Q.—That is a fact for you ?

A.—May be. There are exceptions to every rule.

Sir M. Visvesvaraya.—As regards the “Kalu” you say that the Government of India transferred it to the Development Directorate?

A.—That is so. Mr. Cowasji Jehangir was asked whether any stores from the Government surplus stores were purchased. He said that stores worth about 9 lakhs including the dredger “Kalu” were purchased and that the Consulting Engineers earned a commission on that although it was transferred from one department to another. I raise the question as to whether they were entitled to it.

Sir Frederick Hopkinson.—Mr. Nariman, perhaps I can help you about the value of these things. The “Kalu” built in 1907 pre-war was sold after the war. The prices of such dredgers were trebled and quadrupled in that period and therefore the price paid for the dredger in 1907 would not bear any reasonable comparison with its value in 1920 ?

A.—I quite agree with that. At the same time, I might say that when you are going to buy a plant which is to be used for a particular purpose, it is no use buying it if it is not useful and efficient for that purpose.

Q.—The prices were very high ?

A.—I know.

Sir M. Visvesvaraya.—But it was difficult in those days to get makers of machinery to supply plant at short notice.

A.—They should not have bought it at all, knowing the condition of it, the previous history. It is no use buying it as it would be useless. If the public funds were to be properly protected, some enquiries should have been made knowing that its previous history was next door to Government.

Sir Frederick Hopkinson.—Unless you give some evidence to the contrary the presumption is that the dredger, built in 1907, which was taken care of for some time ought to be a good dredger in 1920 ?

A.—My submission is that there was evidence to the contrary : the Port Trust has working experience and *prima facie* the statement of those experts, that should have at least warned the Government.

Q.—That statement is of no value ?

A.—To laymen it has very great value. Besides that, there is the working experience of it with the Port Trust.

Q.—We had no complaints about its working ?

A.—The fact is there. Its output was much less.

Sir M. Visvesvaraya.—The output is usually less, though the dredgers work up to maximum output ?

A.—Is it suggested that the statement given by the manufacturers as regards the output is usually inaccurate. It does not come up to their statement.

Q.—If they work under ideal conditions.

A.—That is a matter for experts.

Q.—Next you come to estimates ?

A.—Yes, Mr. Cowasji Jehangir never told us the original estimate. In reply to a specific question that I asked, he said that the sanctioned estimate was never 4 crores, that it was only the estimate made by Sir George Buchanan and that it was never accepted by the Government.

Q.—Was not the 4 crores announced at any time ?

A.—No, it was never known. When questioned there was a misleading statement about it. They only announced that the estimate was increased from 4 crores to 7 crores. We wanted to know how it took such a big jump without any sanction from the authorities.

Sir Frederick Hopkinson.—It has been never mentioned. How do you know it was a big jump ?

A.—We came to know that when a statement was made by the Governor before the Indian Merchants' Chamber wherein it was stated that the estimate was raised to 7 crores. It was made long after. That speech came into my possession and I asked a question whether that was so, but it was denied.

Mr. Billimoria.—That was in 1921. You are talking of this in 1923 ?

A.—The question in the Council was long after. That was after I went into the Council. My most serious complaint is regarding the statement in the *Ad Interim* Report. That is a very serious matter. The Advisory Committee had consented to make false statement in February 1925 when the bubble had

absolutely burst, that the project was undoubtedly successful. As a matter of fact, in 1924, Sir Lawless Hepper paints a different picture.

Sir M. Visvesvaraya.—Probably he must have thought that if the dredgers had worked some time longer the operators would have improved.

A.—There is no question but it means that he knew in 1924 that on account of the different nature of the clay the disaster was certain. He says that in evidence, which I read in newspapers. In 1924 he knew it was a failure, still in November 1925 he gives a false impression.

Q.—He had hopes of improvement ?

A.—It is not that he said that in the future he expected. He might have thought of the future but that was not the case.

Q.—You consider that 7 crores was excessive ?

A.—From the original figures certainly. They told us that the estimate was placed before the Government. I am doubtful if the Government would have so meekly sanctioned the scheme. They wanted to raise loans which would not have been raised. If money was not raised the scheme could not have come into effect, a very serious matter. The Advisory Committee has made a false statement in February 1925 when the bubble had absolutely burst. As a matter of fact, in 1924, Sir Lawless Hepper paints a different picture.

Q.—You refer to incorrect statements of responsible public officers ?

A.—Yes. I have given an instance.

Q.—“The work has proceeded smoothly according to programme” ?

A.—That is what Sir Lawless Hepper says.

Q.—“And its stability has been tested by several monsoons. Whatever apprehensions therefore, the public may have had on this score the Committee see no reason to suppose that the Project cannot be successfully completed.” That was on 17th February 1925 ?

A.—Yes.

Q.—“In regard to the possibility of financial loss, the expenditure has up-to-date approximated closely with the forecast, the total including interest charged to 31st March 1924 being Rs. 412'39 lakhs, against the forecast figure of Rs. 421'16 lakhs”. It may be

that he thought that the dredgers were being worked under improved conditions. That was probably his idea ?

A.—That should have been put in if it were so.

Q.—Upon that statement the members of the Sub-Committee recommended the completion of the scheme ?

A.—Some of them. Others were more cautious. The Committee proposed to appoint a Sub-Committee to examine the financial prospects of the scheme in detail who recommended that the scheme should be proceeded with.

Sir Frederick Hopkinson.—Have you given a copy of the statement to the press ?

A.—No.

Q.—I am wondering whether it would not save time if they could deal with it and pick up parts of it to publish.

A.—I understand it was given just now. I did not think it right to give it before I was examined.

Sir M. Visvesvaraya.—You say again on page 21 that tenders were not open to the public ?

A.—Well, at first no public tenders were invited but after about eighteen months public tenders were invited. Mr. Thomas who opened the tenders, was in charge and he asked all the contractors to clear out of his room when he opened the tenders. The merchants naturally protested and desired that the tenders should be opened in their presence but he paid no heed and allowed only one contractor to enter the room whenever he liked.

Mr. Billimoria.—Who was that man ?

A.—Well, I have already mentioned his name, his name is Mr. Balkishendas, a man from upcountry.

Q.—Is there any proof ?

A.—The fact is there and it is for you to find out. Of course you cannot expect where discrepancies of such kind turn up there can be regular accounts or passing or exchanging of cheques so that proper evidence might be recorded but as ordinary and reasonable persons would do taking all the circumstances into account you will find out that this man got contracts to the tune of about 9 lakhs.

Sir Frederick Hopkinson.—Was that the amount of profit he carried ?

A.—Not actually profit, because as far as information goes this gentleman was once given Rs. 10 or more per truck of nineteen or

twenty tons for Colaba section filling in, which was then reduced to Rs. 6 and then to Rs. 4-6-0. But after some objections that we took in the Council it appears that circulars were issued in the department directing that public tenders should be invited for all this sort of work, as a result of which this gentleman reduced his rate to the last figure of Rs. 2-8-0 per truck making it at two annas per ton. Thus for exactly the same sort of work and the former work was easier as trucks were directly emptied near the rails whereas now it is a bit expensive as the materials had to be carried to a little distance from the rails, the same contractor who had offered and obtained the rate of Rs. 10 or more per truck was now prepared to work at the rate of Rs. 2-8-0 per truck.

Sir M. Visvesvaraya.—What have you to say in regard to the cement contract ?

A.—Well, Sir, I would not repeat that an agreement is made by the Development Directorate with four cement companies the names of which I have already stated in the statement, and these companies were given the monopoly of supplying all the cement required up to 60,000 tons per annum for ten years commencing from about September 1922 at a rate equivalent to ninety per cent, of the actual cost of cement in the financial year of the company concerned preceding the season in question plus 15 per cent. According to this term, cost to Government came about to from Rs. 60 to Rs. 70 per ton. Shortly after the agreement was executed, the price of cement began to fall considerably in 1923, it came to Rs. 40 per ton and in 1924, even from Rs. 40 to Rs. 30 per ton and the rates were particularly low for large quantities. At a difference of Rs. 30 per ton the total difference for 60,000 tons, the full requirement of the Directorate, would come to Rs. 18 lakhs a year and if the rates remain the same or go lower still in the course of 10 years. *i.e.*, the full period of the agreement, the total loss would be one crore and 18 lakhs. Besides this annas 14 per ton are spent for testing the cement supplied. Thus in one transaction alone the Directorate would sustain a heavy loss of 1½ crores and to that extent the Indian Cement Companies will be benefitted at the expense of the public. This agreement binding the Directorate for such a long period was made at a time when every shrewd man of business in this line knew that there was bound to be a slump in trade in this particular commodity and even from the year 1921 the slump had commenced in Europe and America and the prices were rapidly going down. About two years ago, one of the contracting companies expressed its inability to continue the terms of agreement and by an arrangement with the Directorate the benefits accruing to that company were transferred to another company for consideration. Thus the Directorate instead of availing itself of

the opportunity of reducing the liability, again deliberately renewed the agreement with another company. Another way of saving loss to public fund was to allow the contractors to buy cement cheap from the market as there was nothing in the agreement to compel private contractors to buy the cement under that agreement, while it is reported that the Directorate compelled the contractors also to buy at these rates from the four Indian Companies alone.

Sir Frederick Hopkinson.—Were these local companies? Do you mean to say that they should not make profits, won't you like to make profits?

A.—Certainly they should make profits but I should not like it to profiteer and allow public funds to suffer.

Q.—You say that in the establishment department out of 20 posts of high salaried officials 19 posts were filled up by Europeans and only one by Indian?

A.—Well, I objected to this high-salaried officials who had no knowledge of such work and who were carrying such high salaries which showed a clear waste of public money.

Sir Frederick Hopkinson.—Were you ever told of the qualifications of these officials?

A.—Well, Sir, it won't perhaps be out of place to mention that the Development Directorate paid a high salary of Rs. 6,000 to the Director Sir Lawless Hepper, a salary next to the Governor in this province and who is also provided with a bungalow of the cost of about 3 lakhs. We repeatedly protested against this in the Council and as a result only about two years ago his pay has been reduced to Rs. 4,000. How was he qualified to be the head of the largest work of the world? Had he any experience of the reclamation work? A man who has simply worked as an agent to a particular railway or as Controller to a Munition Board? From his evidence before you, Sirs, he has entirely disowned all engineering responsibilities hence his duties were only administrative, *i.e.*, similar to those discharged by the Chief Secretary to Public Works Department with some additional autocratic powers. My contention is that Secretary's salary does not exceed generally Rs. 2,000, then why was he favoured with such an extravagant salary of Rs. 6,000 with a commodious palatial bungalow worth about two or three lakhs.

Sir Frederick Hopkinson.—If they received salaries, do you object to it? Don't you like to receiving one?

A.—Of course if I deserved it, I would, why should I not, but God forbid I would not receive any salary as I have my profession. But apart from the above example, there are many I have stated in

my statement. Many a man with meagre or no qualifications were provided with fat and high salaries either as deputy or assistant engineers. Perhaps your Committee, Sir, I submit, will be able to find out, with regard to most of the officials getting salaries of Rs. 2,000 and upwards as to what appointments they held prior to this and what were their salaries. This is not the only carelessness and waste of public money but as I have stated already several consignments were also coming in Sir George Lloyd's name.

Mr. Billimoria.—But Mr. Nariman, I have already made it clear that that name perhaps might have been put for the reason that these consignments must have been belonging to the said dredger "Sir George Lloyd" ?

A.—Well, to tell you, it seems to me a very ingenious explanation.

Sir Frederick Hopkinson.—We have gone through this item, and why should you waste time over discussion of this nature ?

A.—Well, if it's a waste of time for the Committee, and if a witness is insulted like this, I would clear out of the hall. It's your view and not the view of the Chairman and other members of the Committee. If they too say so, then I would leave at once and waste not a minute of mine here. It's very regrettable that you don't appreciate that I am on the contrary helping you.

(Mr. Billimoria.—Mr. Nariman, perhaps you have taken a wrong interpretation of Sir Frederick's view.)

Q.—Finally, you point out that the transactions were conducted in opposition to the rules prescribed ?

A.—That is what I say. That is also the strongest point. I have got all the rules and sections of the Government of India Act.

Q.—You have given us all the criticisms you have to offer. Can you tell us what you wish done in future if you had your own way ? For instance, we had an Advisory Committee. Do you want a Committee or do you want the work to be carried out departmentally ?

A.—I want first of all the Directorate to be abolished immediately, and their activities to be transferred to the Public Works Department and brought under the control of the Council, and it should be left to the Council to do what they think necessary. If they think there ought to be a Committee of citizens to watch this or an executive Committee to be associated with the Department, it is for them to decide. It is the function of the Council to decide as to how they should proceed further with the scheme.

Q.—It has been suggested that a board like the Port Trust or the Improvement Trust should be appointed. What opinion have you as to a separate board for this?

A.—I am not in favour of that. I do not think it is necessary. I am more in favour of its being transferred to the Council in its ordinary original activity, I mean to the Public Works Department. The Executive Committee members may be associated with the Public Works Department for this particular scheme. It will be a matter of arrangement between the Government and the members of the Council. Supposing the Council passes a resolution that there is to be an Executive Committee and that members of the Council as well as outside advisors should be associated with this particular committee, and they should be advised constantly by the Department, that can be done.

Q.—Such a Committee you want to control, and to sanction estimates?

A.—Sanction estimates, internal administration, retrenchment, contract, everything.

Q.—Do you wish the work to be carried out departmentally or by contract or by sections?

A.—I do not want the whole work to be completed at all. Certainly not. And as regards the work that is in hand, the military land as well as opposite Churchgate, that may be done either by the Public Works Department or by contract, whichever is the cheaper and efficient method.

Q.—You want to finish that and leave the other portions incomplete?

A.—It is impossible to leave them where they are. That must be finished as a matter of necessity. There is no choice in the matter.

Q.—In your statement you have made certain definite charges of corruption against certain individuals in connection with Back Bay. There are several of them.

A.—I adhere to every statement made in that statement.

Q.—When did you learn about that corruption?

A.—Some time in the beginning of say 1923 or 1924.

Q.—Were not you offered in July of last year a judicial inquiry into those cases?

A.—No. I was not offered the inquiry which I had been demanding.

Q.—Were you not offered judicial inquiry into cases of corruption?

A.—No, I will tell you what I was offered. The terms which were offered to me are not a judicial inquiry.

Q.—I am dealing with charges of corruption. You have gone further than you did last year. You have given no names.

A.—I have given instances in my Council debates. In March 1924, I have given instances. Names I have not mentioned to-day. I have said, "Superintending Engineer" and if I was allowed to be associated with the Department and get information officially, I would have given all particulars.

Q.—In the statement you have given names?

A.—About Mr. Thomas you are referring. That was a subsequent event.

Q.—About Mr. Balkishan the contractor. That is a definite case. You declined to have that inquiry last July?

A.—I did not decline. I wanted certain conditions.

Q.—As a good citizen of Bombay, don't you think it was your duty to do anything you could to prevent such things?

A.—Certainly, that was what I tried by having a resolution passed by the Council.

Q.—But you were offered a judicial inquiry.

A.—It was not a judicial inquiry.

Q.—An inquiry presided over by a Judge?

A.—With no opportunities given to me. I was asked to stand before it as an accused person, and I would be given only the documents which the Department thought it advisable to give me.

Q.—You did not mention any names last year. You were offered an inquiry presided over by a Judge in order that you may prove this case. Instead of that, you presumably allowed these things to go on?

A.—I was quite helpless.

Q.—You could have stopped it!

A.—I could not have, when the Government would not have an enquiry by the Council members.

Q.—Don't you think a Judge is better fitted?

A.—May or may not be.

Q.—You had made direct charges of fraud, and the Government gave you an opportunity to have them proved.

A.—They did not.

Mr. Billimoria.—There are those letters to Mr. Nariman, letter dated 28th April 1925 and 13th May 1925.

A.—There are my replies if they are before the Committee. I have explained my position there. I adhere to the position to-day.

Q.—Your statement is full of innuendo. For instance, in the middle of page 17, you say, "It is now nearly two years since that resolution was passed when these allegations were made and most of the officers concerned have left the service."

A.—Yes.

Q.—And then at the top of page 17, "When allegations are openly made. . .". Allegations are easily made, are not they? You had made general allegations and you were asked to convert those into specific allegations which you declined to do.

A.—No, I did not decline. I wanted the resolution of the Council to be respected. What was the objection to the Council members inquiring into the matter?

Q.—Have you any other cases than have appeared in this statement?

A.—About the corruption with regard to reclamation alone? No. I must make my position clear, that I am placed at a great disadvantage on account of the limited reference to this committee. I have got instances which are really fraudulent, if you will allow me to go into them.

Q.—But you see we cannot do.

A.—I quite realise that. Therefore, I have applied the terms should be extended and I hope the Government of India would have granted the resolution of the Corporation.

Q.—Then at page 32, three-quarter of the way down you say, "It could not be merely on account of friendship as no friendship could exist between an Indian convict and high European officials." You tell us who these European officials are.

A.—Those who had to deal with the contract to Balkishan Seth. How many officers had to do I cannot say. It is a departmental secret. I do not know who it was. I only say it could not be merely on account of friendship.

Q.—You suggest there must have been some other arrangement that the gentleman you have been speaking of as a fact has been corruptly giving commission to one of the Engineers?

A.—That is my submission. I cannot find any other reason for this conduct.

Q.—If that is the case, it is a matter for a criminal court to investigate far better than we could do it.

A.—Decidedly.

Q.—I presume Government will take some steps.

A.—I hope so, although it is too late in the day. They ought to have taken it on my resolution in 1924.

Q.—You did not give names.

A.—I wanted a committee of investigation. Why should they have refused it if their hands were clear.

Sir M. Visvesvaraya.—You see, this Committee is now sitting for an enquiry.

A.—I beg your pardon. I am talking about the Government of Bombay. The Government of Bombay has consistently refused investigation in spite of the resolutions of the Council and it is over the head of the Government of Bombay that the Government of India has appointed this Committee. I am talking of the Government of Bombay and I say they did not allow an investigation.

Mr. Billimoria.—It was at the instance of the Government of Bombay that the Government of India have appointed the Committee.

A.—The Government has changed. I know the present Governor's attitude in the matter.

Sir F. Hopkinson.—When did the Government change?

A.—December 1923. The new Governor took time to study the question, and I think his attitude is satisfactory so far as the public are concerned.

Q.—Have you any other substantial instances of corruption?

A.—I have numerous, but not with regard to the reclamation. But unfortunately I have not been allowed to mention those.

(*Mr. Billimoria.*—Whatever instances you have quoted will be brought to the attention of Government.)

Sir F. Hopkinson.—With regard to your remarks about the "Kalu" you will be interested to hear that in March 1916 the Kalu was surveyed by the Chief Constructor and the Inspector of Machinery of the Royal Indian Marine Dockyard, Bombay, and the Surveyor to Lloyd's Register and certified by them to be in good working order.

We give a few extracts from the evidence given before the committee, jointly, by Sir Lawless Hepper and Messrs. Elgee, Harvey and Thomas to repudiate the charges made by Mr. Nariman.

Sir Hopkinson.—Turning to page 17, he says, “when allegations are openly made all parties concerned would naturally take all the necessary steps and precautions to destroy all the valuable materials in the shape of documents and private records that would in case of an immediate investigation, throw light on the subject.”

Do you think you and your principal officers would naturally take all the necessary steps to do that criminal Act ?

Sir Hepper.—We should certainly do nothing of the sort.

Q.—Is it the practice in Government departments to destroy such documents ?

A.—I have never heard of it ; I do not believe it is so.

Q.—Do you think it possible that Mr. Nariman had in his mind somebody whom he had to defend ?

A.—It is more than likely.

Q.—In those circumstances, he may consider that all the Government employees were all of the same character ?

A.—I think that corruption of that sort is probably more rife in the circles in which he moves and that he is inclined to think that the same thing may be done in the Government offices.

Mr. Billimoria.—You suggest that evidence of that nature would not be destroyed by any officer in Government departments.

A.—No ; we have as a matter of fact submitted the whole of the original documents. In connection with all these contracts and with the steel case, the whole of the documents are in those papers ; there is not a single case referred to the original documents in connection with which have not already been submitted.

Sir Frederick Hopkinson.—What I propose to suggest to Government is that this committee is not competent to deal with criminal charges, that if the Government think these allegations by Mr. Nariman are of a sufficiently definite character, they would take up the matter through their legal advisers ?

A.—Mr. Harvey, I understand, proposes to ask the Committee for a permission to prosecute Mr. Nariman, provided the Government will give the necessary permission to do so.

Q.—The strong wish of this Committee is that the truth should be brought out, at any cost, by any body ?

Chairman.--About other matters, the Government can undertake them.

Mr. Billimoria.--I take it, Sir Lawless, that you will have no objection to Government instituting proper enquiries as to the charges levelled against your department, departmentally I mean?

A.--None whatever.

Q.--This Committee cannot go into that?

A.—These cases have already been enquired into by Government, and Government are satisfied that there is no foundation whatever for such allegations.

Sir Frederick Hopkinson.--Would you welcome any further enquiry that would go into these matters?

A.—Certainly.

Chairman.--Your reply referred to all the allegations made in Mr. Nariman's statements.

Sir Frederick Hopkinson.--We must take one at a time; I want to take each allegation and deal with it.

Q.—At the end of the same page 17, he says "I openly make a charge that there has been a serious maladministration of the public funds and there has been a serious wasting of public funds. There have been instances which I would go the length of calling frauds and I make this charge on behalf of the public"We cannot deal with a general charge of that kind of serious maladministration, but I take it, if he brings any definite charge, the Government would be only too happy to investigate. Is that so, Mr. Harvey?

A.—*Mr. Harvey.*--I hope so, Sir.

Q.—On the top of page 18 he says "There are ugly rumours in the city and the whole of the Presidency that the higher staff of officers have been receiving secret commissions from manufacturers and that is the reason why in this instance the department has incurred a loss of 3 lakhs." Do you know of any one having received secret commissions?

A.--I do not.

Q.--Then it is merely a statement of Mr. Nariman repeating ugly rumours? I do not see how you can meet him.

A.--*Sir Lawless Hepper.*--Our difficulty has always been that these charges are of such a general nature that it is extraordinarily difficult to meet them. He made these charges in Council where he

is privileged and he has been repeatedly asked to produce definite charges on which Government or I can form some opinion and start some enquiry and he has also been offered by Government a judicial enquiry. He has been told in that connection that it was not necessary for him to produce sufficient evidence to prove what he said, but that all that was necessary for him to do was to indicate the directions in which the judicial enquiry should proceed. He has been told by Government that they will have an enquiry presided over by a judge. But he has absolutely declined to come forward and give any evidence before any enquiry of any sort or kind.

Q.—It is really rather in the nature of an anonymous letter ?

A.—It is very much the same.

Q.—He says, “If you go to the Surplus Depot, stores and plant worth 6 lakhs of rupees or more are lying undisposed of.” What have you to say about that ?

A.—*Mr. Harvey*—We had a good deal of surplus stores which was due to the curtailment of the Housing Scheme, most of which has been disposed of now.

Q.—Has it been disposed of with heavy loss ?

A.—No Sir. We reckoned in the project estimate for the scheme a credit of 33½ per cent. of the original cost of plant. We have got up-to-date for the plant disposed of about 40 per cent. credit.

Q.—So there was considerable loss ?

A.—The plant has done considerable duty.

Q.—It is only plant ?

A.—Yes, it is principally plant.

Q.—I think he is referring to his favourite subject of surplus stores. He has indicated 6 lakhs worth of steel bars disposed of ?

A.—There certainly was not 6 lakhs worth of steel bars there, but taking the plant and the steel bars together there possibly was.

Q.—It is largely the plant that has fulfilled its purpose that is disposed of ?

A.—Yes.

Q.—Was it no good keeping it ?

A.—It is no good keeping it as no further work has to be carried on.

Q.—Therefore it was a proper businesslike thing to dispose of it.

A.—Yes.

Q.—It is due to the curtailment of programme ?

A.—It was.

Q.—Will you please tell us, Sir Lawless, one thing ? He says that an indent was intentionally altered. Mr. Nariman has written a letter to ask whether we would not allow him to discuss these things on the ground that they did not come within the terms of reference. If these steel bars were not required for the Back Bay Reclamation we won't go into it at all ?

A.—*Sir Lawless Hepper*.—This is the only case in which he is making any definite allegation.

Q.—It does not refer to Back Bay Scheme at all ?

A.—This is his favourite allegation. It is the one in which he committed himself to a definite allegation.

Mr. Billimoria—If you made a general denial that the steel bars had nothing whatever to do with Back Bay Reclamation it can serve our purpose. You can issue a memorandum and refute the charges he makes.

Sir Frederick Hopkinson.—What were the bars required for ?

A.—For piles for chawls.

Q.—He is dealing with the whole of the bars. I think it would be irregular for us to go into the matter ?

A.—*Mr. Harvey*.—He had his say the other day.

Sir M. Visvesvaraya —We thought the purchases referred to the Back Bay Scheme. It is quite true that he went into the matter.

A.—*Mr. Harvey*.—He must have known definitely that it did not belong to the Back Bay Scheme. He knew that he was going into the Housing Scheme.

Sir Frederick Hopkinson.—Personally, I should prefer to have the allegations answered.

A.—*Sir Lawless Hepper*.—I should revert to his oral evidence. The question was “I only say it may have been a mistake” ? He says, “I say it is an intentional alteration.” Then he was asked. “Why should man make such an intentional mistake ?” His reply was. “In order that the manufacturers might be profitted. There is no other explanation that I could see”. He was then asked by *Mr. Billimoria*, “Do you suggest that there was an ulterior motive ?”

A.—“Yes.” He was then asked again by *Mr. Billimoria* coming to the question of favouring a particular contractor, “Do you also suggest any ulterior motive here ? The witness replied in the

affirmative." My submission is that Mr. Nariman having been allowed to express these views and to make these definite charges before this Committee, it is only fair that the officers of the Directorate should be given an opportunity of conclusively refuting his statements.

Q.—If any one of these bars has been used in the reclamation work I think we can properly listen to your explanation.

A.—*Mr. Harvey.*—I think some of these bars have been passed on to the reclamation.

Q.—Only one will do ?

A.—*Sir Lawless Hepper.*—You have got it in writing and also by Mr. Harvey.

Sir Frederick Hopkinson.—I want this to go on the notes so that I can find it in the future.

A.—*Mr. Harvey.*—I have not seen that complete statement.

Q.—Will you explain to us how this indent was altered by the Superintending Engineer ?

A.—*Sir Lawless Hepper.*—The indent was originally submitted by the Executive Engineer who inadvertently omitted to enter in it the steel bars required for the piles, and this mistake was discovered in the Superintending Engineer's Office.

Q.—He did not put them in at all ?

A.—No. This omission was discovered and orders were given in consultation with the Executive Engineer that the necessary addition should be made to the indent.

Q.—That is not an alteration. That is a supplementary indent.

A.—It had been apparently intended to use 5/8" bars.

Q.—That did not appear in the indent.

A.—Not in the original indent. The piles had been designed to be made with 5/8" bars, but by some mistake, either of a draftsman or a Supervisor, 7/8" was entered instead of 5/8". It has not been possible to prove who made the mistake, but the Superintending Engineer has always accepted responsibility for the error, because it was made in his office. After the bars had been ordered the mistake was discovered and an attempt was made to stop the supply, but it was too late. It was then decided to redesign the piles making use of 7/8" bars instead of 5/8" and that was done, and the 7/8" bars were used up without any loss to Government and without any effect on the stability of the buildings. Another point is

about the Surplus Stores. That there was a surplus of steel bars does not affect the question. The surplus was due to the curtailment of the housing scheme. It was a question of tonnage. The original programme was to build 50,000 tenements in eight years commencing with a small number of chawls the first year, and as the organisation improved, it was proposed to increase the number of chawls to be put in hand annually. The steel bars were arranged for through the High Commissioner, because Messrs. Tata who make steel informed us that they were unable to supply as they were engaged on other works, and the indent had therefore to be sent Home about nine months before delivery could be effected in India, and when the programme was suddenly curtailed from 50,000 to 16,000 tenements the steel supply for that particular year had just arrived and it was inevitable that there should be a surplus. But it was not due in any way to the alteration of 5/8" to 7/8". That matter did not affect the surplus at all and there was no loss whatever to Government on account of the change of size.

Q.--I suppose the reduction in the number of chawls is due to circumstances.

A.--It was due to the fact that as these chawls were completed and placed on the market it became evident that there was less demand for the tenements than had been expected. The Government decided that having in view that the population had probably decreased owing to trade depression, the programme should be stopped at 16,000.

Q.--Is there any difficulty in altering the design of the piles in order that the 7/8" may be used?

A.--I should like Mr. Harvey to deal with it in detail.

Q.--Is Mr. Harvey an Engineer?

A.--*Mr. Harvey.*—I am the Superintending Engineer against whom these allegations have been brought.

Q.--Is there any difficulty in altering the design of the piles without increasing the total weight of the steel per cubic foot?

A.--Not only were the piles altered but the columns and compression bars of beams and so on. I consider not.

Q.--It is, in fact, the ordinary common sense thing to do?

A.--How we could do we did it in the best way as far as steel was concerned. We reduced the cement by 10 per cent. It reduces the strength of the concrete to a certain extent but that was compensated for by the extra strength of steel.

Q.--The net result was that the total cost of the Government was no more.

A.--If you work on that basis, no.

Mr. Billimoria--The allegation made by Mr. Nariman is that the figure 5/8" was altered to 7/8". That is, in the reply you say it was a mistake.

A.--An addition was made. I have got the figure. The original document is here.

Q.--That does not mean an alteration.

A.--There was no alteration. It was an addition.

Sir M. Visvesvaraya.--The Executive Engineer has got that here.

A.— The Executive Engineer forgot the bars for piles and I talked to him about the ordering of these bars and he said that he had forgotten all about it. I asked him then to work out the number of bars required and to let me know, as the indent had got to go to the Secretary of State. This figure was 80,000 altogether. This was divided into two : one for the local indent for steel that was to be supplied immediately and the other, 50,000 bars, was included in the indent of the Secretary of State.

Sir Frederick Hopkinson.-- Shortly, now, if the indent can be shown not to have been altered, then Mr. Nariman's allegation is false.

A.— It is absolutely false.

Q.--He can see that indent at any time he likes.

A.—Yes.

Q.--You agree with me, that a man who never makes any mistake never makes any thing ?

A --I agree.

Q --I am bound to say that Mr. Nariman is sanctimonious. He says, "I can place before the committee all the materials that I have been able to collect not with a view or desire to cast any aspersion against any individuals of the department but primarily to enable an independent investigation to find out the truth". Would you take that as accurate ?

A.--*Sir Lawless Hepper*.--His great desire is to damn the Government

Q —Not to ascertain the truth ?

A. -I don't think he cared whatever whether it was the truth or not.

Q.--Then he goes on somewhere to say about the officers having left the service.

A.--May I before finishing this question of steel bars refer to the answers to his questions in Council which I have attached to my statement, because it seems to be rather important to show that he was given very clearly the whole story about the steel bars? In spite of that he makes these allegations again. I have attached copies of questions and answers to my statement. He knew perfectly well what the facts were.

Q.--I want every word of this.

A.--*Mr. Harvey.*--Before this question is finished may I make a request? Well, Sir, you have had the allegations that Mr. Nariman has made against me. You have the statement of fact in front of you of what has actually happened and you can judge best as to whether he was justified in making these allegations or not. My legal advisers state that these allegations are malicious and as such are calculated to damage my career. I must therefore take a very serious view of the case and I request that I may be permitted by the members of this Committee subject to the sanction of the Local Government to prosecute Mr. Nariman for defamation.

Mr. Billimoria.--It is beyond the scope of this Committee. That is a domestic affair between you and Mr. Nariman. This Committee cannot give you any directions.

A.--I may take it that he is not protected in any way by the Committee.

Sir Frederick Hopkinson.--We have nothing to do with it. If you wish to prosecute Mr. Nariman you can by any means do it.

Sir Lawless Hepper.--I was not sure whether what he said was privileged or protected. In his oral evidence which was reported in the press, Mr. Nariman appears to have gone further than in his written statement. He is reported to have stated--

(a) that the alteration from 5/8" to 7/8" was made intentionally by the Superintending Engineer in order that the manufacturers might be benefitted.

(b) in regard to the favouring of a particular contractor there was an ulterior motive.

(c) resulting in a loss of 2,50,000.

I submit for the consideration of the Committee that in view of the explanation already given to Mr. Nariman in Council these allegations are clearly malicious and that no privilege or protection should be accorded in respect of them.

Sir Frederick Hopkinson.--Unfortunately our Chairman is not here. He said the other day that anything given here was protect-

ed unless it is malicious, in which case there was no protection here for malicious or defamatory statements.

Q.--In the middle of page 17 he says, "it is now nearly two years since that resolution was passed when these allegations were made and most of the Officers concerned have left the Service." What Officers have left the Service?

A.--We had a separate Superintending Engineer in charge of the suburban schemes.

Q.--Of Back Bay.

A.--*Mr. Harvey.*—One officer has left. Mr. Billington who was in charge of the construction of the sea-wall at Colaba. Most of his previous allegations were in connection with the Housing Scheme and it is not the officers who left the service of the Department within the past 2 years that were responsible but the officers who left immediately before he made those allegations that were responsible for them, to my mind, some of them.

—x—

Sir Frederick Hopkinson.—Can you tell us the number of wagons so that we should know if there is any substance in the complaint? Can you give me any idea?

(*Elgee*) A.—There were not more than 200 trucks.

Q.—Therefore the total cost was about Rs. 2,000?

A.—Yes, about that.

Q.—Now the rate is Rs. 2/8 per truck. Can you tell us why it has come down to this figure?

A.—Because the work has now become steady.

Q.—It is altered in character?

A.—It is altered in character. At that time the work was confined to small area and with a long lead. When we had to utilise more moorum filling we decided to call for further tenders. These were tendered by 4 companies and the tender which was accepted was at the rate of annas 2 per ton with a lead of 100 feet, Re. 0/2/3 per ton with a lead of 200 feet and Rs. 0/2/6 a ton with a lead of 300 feet. That is about Rs. 2/8 a wagon taking 100 feet lead.

Mr. Billimoria.—Did you invite any tenders when you gave a rate of Rs. 10?

A.—Not at that time because there was not sufficient work and it did not keep the contractor employed during the whole time. I

can put in a letter from the Deputy Chief Engineer explaining the reason why the contracts were given on that rate.

Sir Frederick Hopkinson.—As I understand what you say is that the rate of Rs. 6 was paid for small and intermittent supply of material?

A.—That is so.

Q.—When you got a regular, steady and larger output you arranged it at Rs. 2-8-0.

A.—Yes.

Q.—From my experience, Mr. Elgee, I think I am justified in saying that nobody is going to make a big profit out of unloading moorum at Rs. 2-8-0 per truck?

A.—Yes.

Q.—It seems to me a very low price?

A.—It is. I have got the total amount at least that was paid to Balkishan Seth on the contract for unloading at Rs. 10 per wagon. The total amount paid at that rate was Rs. 3,080.

Q.—What year was that?

A.—It was in March 1924.

Sir M. Visvesvaraya.—Can you tell me how much money was paid to that contractor during the whole period he was working here?

A.—It was 9 lakhs.

Sir Frederick Hopkinson.—If he did that work at 2/8 per truck I am quite satisfied that he did not make an unreasonable profit out of it?

A.—The contract was not confined to that, he had other contracts also.

Mr. Billimoria.—What time elapsed between 10 and 6. What year it was charged Rs. 10 and what year Rs. 6 and what year Rs. 2/8? The allegation made is that a very substantial profit was made by the contractor because you allowed him very high rates. Have you got anything to repudiate that allegation by any statement?

Sir Frederick Hopkinson.—What Mr. Billimoria means is how much work he did for Rs. 10 and for Rs. 6 as compared with Rs. 2/8. If the information is not ready you can send that?

A.—He did nothing at the rate of Rs. 2/8.

Q.—His tender was not accepted; was it higher than others?

A.--There were 3 tenders at the rate.

Q.--Which of these did you accept? No. 3 seems to be the lowest.

A.--It was not the lowest. When Balkrishna Seth's tender was received, the papers were sent to Government.

Q.--The tender accepted then was actually higher than No. 3 and the note you give is this? "Recommended for acceptance. Here is a contractor who is at present doing the work and has the necessary labour on the spot?"

A.--Yes.

Q.--Was it brought to your notice that he had served long terms of imprisonment?

A.--I was absolutely unaware of that. I think he came with very good recommendation to Mr. Lewis as a contractor and I have submitted copies of the original recommendations. They are attached to the statement. It was 12 years ago that Mr. Balkrishna was convicted in the Punjab of fraud and sentenced to years' imprisonment. But in the meantime he seems to have done a great deal to rehabilitate himself and lead an honest life and he came to us with very good certificates, one of which was from the Agent, Eastern Bengal Railway, a man, whom I have known 30 years, and who would never give any man a certificate unless he knew that man well and thought him suitable for employment.

Q.--Can you imagine, Sir Lawless, a right thinking man making such statements to the public about a man who has been convicted 12 years before but has done a great deal of rehabilitating himself. Does not it seem to be a particularly mean and spiteful remark?

A.--It seems to be a very spiteful and mean remark but Mr. Nariman is not a right thinking man.

Then the Honourable Mr. Cawasji Jehangir requests the Committee to give its opinion whether prosecution should be launched against Mr. Nariman in the evidence narrated herewith:—

A.--Mr. Nariman had a chance to appear before you and he made those allegations. The officers of the Department also appeared before you this morning and showed you all the facts, what was the result of that, I do not know because I was not present. What do you think Government ought to do.

Q.--I am stating it as my personal opinion. These charges ought to be proved in some legal way?

A.—One or two of these charges have been examined by me personally when they were made not so openly as they have been made now and I found them to be groundless. In one case I had to give a reply in Council to Mr. Nariman and he was not satisfied with that reply and has repeated them here. I hear that the officers have demanded that they should be allowed to prosecute him. I would like an expression of an opinion whether they should get the sanction of the Government if ever they apply? What is the reply of the Committee?

Mr. Billimoria.—The reply we give is that as a Committee we have no powers to give any permission to anybody but that any officer concerned is at liberty to take any action he chooses.

A.—That is your opinion, I want the opinion of the Chairman.

Mr. Billimoria.—I think it was my suggestion and the Committee accepted it.

Sir Frederick Hopkinson.—My opinion is that they ought to be proved or disproved by Government in a court of law. I believe Government have gone into them and found them to be untrue?

A.—All those that I have examined, I found to be untrue.

Q.—A large number of allegations seem to be untrue but what about the remainder? They seem to be personal allegations of corruption and as such can only be dealt with in a court of law?

A.—We will take down whatever opinion you may give us. You heard the officers yourself and you heard the allegations. I have only read the written statement but one of the charges that Mr. Nariman has repeated was investigated and proved to be untrue. I believe all the other charges will prove to be untrue.

Chairman.—So far the Committee is concerned, it is not our business. We may make a recommendation after the whole enquiry is over.

A.—I want to know what I am to take down.

Q.—If you wish to note down the opinion of Sir Frederick Hopkinson, you may do so.

Sir Frederick Hopkinson.—We have had no time to discuss these but it is my personal opinion that Mr. Nariman should be made either to prove or have these charges disproved.

A.—The officers have disproved some of the charges. It is clear that when charges are made against officers, it is the duty of Government to have them investigated. These charges have been

made before the Committee in the course of their inquiry. You will oblige us by expressing your opinion. Some charges have been made on which Mr. Nariman was not examined by you because they related to other parts of development, I find that these charges have been printed in newspapers; the whole of Mr. Nariman's statement appeared in the press. I want to know from you authoritatively just now whether you are going to allow the officers of Government to repudiate those charges.

Chairman.—It does not concern us.

Honourable Mr. Cowasji Jehangir.—They have appeared in the press through the instrumentality of this Committee and the officers of Government have not been given an opportunity to repudiate them. You refuse to do so?

Chairman.—We have not refused them the opportunity of repudiating those charges but we have to attend to our own work. We have not asked a single question so far as those charges are concerned which do not come under our terms of reference.

Honourable Mr. Cowasji Jehangir.—Then in your report you will delete all those charges which have been made against officers of Government which do not concern you.

Chairman.—That is so.

Honourable Mr. Cowasji Jehangir.—And you have definitely refused the officers of Government to hear them on those points.

Chairman.—Yes, and also Mr. Nariman.

Honourable Mr. Cowasji Jehangir.—Except on one point on which you have also heard the officers.

Chairman.—Yes.

Honourable Mr. Cowasji Jehangir.—You desire, Sir Frederick Hopkinson, that Government should proceed further in this matter. You say that, after the very full investigation that you have had of all these points before you this morning, Government should further investigate them.

Sir Frederick Hopkinson.—I think they should proceed against the maker if the Government are satisfied that they are untrue.

Honourable Mr. Cowasji Jehangir.—We are satisfied that those points are untrue and I am satisfied that the points that I have investigated up to now are untrue. Then I take it that you express an opinion that Government should allow the officers sanction to prosecute Mr. Nariman.

Chairman.—That is the opinion of one Member,

Honourable Mr. Cowasji Jehangir.--I want the opinion of the Committee.

Chairman.--We cannot give an opinion on that point but we leave the question open for Government and the officials concerned to do whatever they like.

Honourable Mr. Cowasji Jehangir.--Then Mr. Nariman had no privilege to make those allegations, he was not a privileged party in making defamatory statements.

Chairman.--I believe it is a purely legal matter.

Sir Frederick Hopkinson.--But that privilege does not cover malicious statements. There is a difference between defamatory and malicious.

Honourable Mr. Cowasji Jehangir.--Then I want your opinion.

Sir Frederick Hopkinson.--I am of opinion that if these statements were defamatory, Mr. Nariman should be prosecuted.

Mr. Billimoria.--It is open to any officer concerned to take any action he chooses against Mr. Nariman. We are not a judicial court and therefore we do not want to express an opinion on the legal points. That is my opinion.

Chairman.--It will be done by the Committee as a whole later. I express no opinion except that I say we are not concerned.

Honourable Mr. Cowasji Jehangir.--I ask this because if an officer desires to proceed against Mr. Nariman, he has to get the sanction of the Government of Bombay and I want your opinion since you have been appointed by the Government of India. That is of course if a contingency arises.

Sir Frederick Hopkinson.--Were the annual reports made by the Development Directorate the only means of communication with the public?

A.--There are other methods of communication, by press communiques, by press notes through the Directorate of Information.

Q.--Were those used to communicate the progress of the Back Bay Reclamation?

A.--No, I do not think so.

Q.--So that I may take it that the annual report was the only means for communicating the results?

A.--No, also the Legislative Council through questions and answers and discussions.

Copy.

PROSECUTION

Application from Mr. T. Harvey, Superintending Engineer, Housing Suburban Circle, for permission to prosecute Mr. K. F. Nariman, B. A., LL. B., for defamation.

GOVERNMENT OF BOMBAY.

Development Department.

Resolution No. S. B. 1726.

BOMBAY CASTLE, 29th October 1926.

Letter from the Superintending Engineer, Housing and Suburban Circle, No. 5370 dated the 25th August 1926—requesting that, in the circumstances stated, sanction to the immediate Prosecution of Mr. K. F. Nariman, B. A., LL. B., criminally for the Defamation may be accorded, and that he may be granted all the privileges in the matter of Legal advice, etc., which under the rules are permitted to Government Servants; and adding at a later date he will request further permission to institute further proceedings to claim damages in a civil action.

Letter to the Government of India, Department of Industries and Labour (Public Works Branch), No. S. B. 1537—dated the 18th September 1926:—

“I am directed to forward herewith the copies of papers noted in the margin*, and to state that, as the allegations

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| <ol style="list-style-type: none"> 1. Proof copy of the written statement and oral evidence of Mr. K. F. Nariman before the committee of Enquiry on the Back Bay Reclamation Scheme appointed by the Government of India in their Industries and Labour Department Resolution No. Mis. 81, dated the 29th July 1926. 2. Copies of the Oral evidence as reported by the Times of India, the Bombay Chronicle, and the Indian Daily Mail in their issues of 22nd and 23rd August 1926. 3. Written statement of Mr. T. Harvey and Proof copy of his evidence on the 24th August 1926 as corrected by him. | <p>REGARDING the purchase of Mild Steel bars contained in Mr. Nariman's evidence both written and oral and marked by a marginal line in ink are defamatory and levelled against Mr. T. Harvey Superintending Engineer, Housing and Suburban Circle of the Development Directorate and as they are calculated to damage his future career, Mr. Harvey has applied to this Government for sanction to prosecute Mr. Nariman criminally for defamation. This application was referred to</p> |
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4. Letter from Mr. T. Harvey, Superintending Engineer, Housing and Suburban Circle No. 5370, dated the 2nd September 1926.
5. Letter from Solicitor to Government No. 1972, dated the 2nd September 1926.
6. Opinion of the Advocate General No. 42 dated the 1st September 1926.

the Law Officers of this Government, who are of opinion that Mr. Nariman's written statement combined with his oral evidence about the purchase of mild steel bars will sustain a charge of defamation. If the statement referred to had been made in any other place, the Government of Bombay would have, with-

out hesitation, been prepared to sanction the prosecution, which is within their power; but since the statements were made before a committee appointed by the Government of India, the Government of Bombay are prepared to abide by the decision of that Government.

"2. I am to add that in 1925 this Government offered Mr. Nariman in connection with similar statements made by him in the Local Legislative Council a judicial enquiry presided over by a judge in order to enable him to make good his charges but Mr. Nariman failed to avail himself of the offer. He has nevertheless repeated the same statement, before the committee, and, now that an opportunity has arisen of compelling Mr. Nariman to produce the evidence of his allegations, the Governor in Council is requested that it should not be missed. The members of the Committee who also interested in this question, did not come to an unanimous conclusion. While Sir Frederick Hopkinson expressed a definite opinion that Mr. Harvey should be given an opportunity of disproving the charges in a court of law, Mr. S. B. Billimoria thought Mr. Harvey should be free to do what he pleased. The Chairman Sir M. Vishvesvaraya did not desire to express an opinion one way or the other. The committee evidently believed that it was not incumbent upon them to investigate the charges. If the committee had been prepared after mature consideration, to express an authoritative opinion the complexion of the whole question would have been different. As the case stands, allegations have been made and they have been refuted, but there is no one to express an authoritative opinion except the Bombay Government. That Government has already fully explained the facts in answer to a question in the Local Legislative Council, but that explanation has not prevented Mr. Nariman from repeating his allegations. In the opinion of the Governor in Council, it would be unfair to Mr. Harvey to refuse to give him the sanction asked for by him and thus enable him to have these allegations proved or disproved in a court of law. The officers of the Directorate have for years been subjected to Mr.

Nariman's undeserved attacks and have shown exemplary patience in the face of them.

"3. In the circumstances, I am directed to say that the Governor in Council very strongly recommends that a prosecution should take place. I am to request that an answer to this letter may be sent by telegram as soon as possible since, as at present arranged, Mr. Harvey is to proceed on leave on the 13th October 1926. The papers accompanying this letter may be returned with your reply".

Telegram from the Government of India. Department of Industries and Labour (Public Works Branch), No. Mis. 81, dated the 11th October 1926,—returning the papers.

RESOLUTION.—The sanction, asked for by the Superintending Engineer, Housing and Suburban Circle, to institute a criminal prosecution against Mr. K. F. Nariman, B. A., LL. B., for defamation for certain statements made by him before the Back-Bay Enquiry Committee, is accorded. The proceedings should be instituted at the cost of Government but if the complaint is dismissed due to Mr. Nariman proving his allegations, the cost should be borne by Mr. Harvey.

2. The Solicitor to Government should be requested to take the necessary steps to institute the proceedings in consultation with Mr. Harvey.

By order of the Governor in Council,

Secretary to Government.



MR. NARIMAN'S CHALLENGE.
 NOT AFRAID OF PROSECUTION.

: o :
 ALWAYS PREPARED TO DO HIS DUTY.
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Mr. K. F. Nariman, M. L. C. was interviewed by a representative of the "Chronicle" on 26-8-1926. Asked what his impressions about the Back Bay Committee were, he said :—

"When the personnel and terms of reference of Committee were first announced I had expressed my disappointment at both and had apprehended that an effort would be made to white-wash the whole affair. Particularly the attitude of one member Sir Frederick Hopkinson has fully justified and realised these apprehensions; he makes no secret of the role he has assumed. The public impression is that he is more an advocate for the Development Department and the Government than an impartial judge making an effort to find out the truth. Particularly the pantomime show that was enacted on the last day between Sir Lawless Hepper and the officials and Sir Frederick Hopkinson had reduced the Committee's proceedings to a farce. As if by a happy family arrangement such questions were put to which the ready and willing witnesses had only to nod and assent. As opposed to that contrast his attitude and behaviour towards the non-official witnesses; to many of them he was unusually curt and even impertinent, at times he tried to bully. Like Baron Lloyd he too was trying to boss over the whole show here, particularly on the last day, in his keen desire to defend the Department and the officials; he evidently forgot his responsible position and even indulged in personal abuses and insult that would ill become the position of a judge. Insulting personal remarks about me that he dared not have uttered in my presence for fear of receiving a prompt and biting retort, he indulged in safely, in my absence and behind my back; thus it is not I but he who has abused his privilege as a member of the Committee.

It is rather unfortunate that the other two gentlemen representing public point of view were not strong and powerful enough to curb his overbearing autocracy, though the courtesy and patience displayed by them stands in redeeming contrast with the attitude of their colleague."

UNSATISFACTORY PROCEDURE.

Referring to the procedure adopted by the Committee, Mr. Nariman said :—

"The procedure adopted by the Committee seems to me to be unsatisfactory and extraordinary. The Committee is appointed to

decide for itself independently on questions coming within the terms of its reference. One of the questions, is the manner in which the Department was conducted and in this category are included all the allegations made against it. It is undoubtedly one of the functions and duties of the Committee to go into the matter independently and decide for itself after hearing all the evidence on the subject. But the Committee has abruptly closed the proceedings after hearing allegations on one side and denial on the other, without giving an opportunity to other witnesses to have their say and seems to have adopted the strange procedure of referring the subject-matter of these allegations again to the Government and the Head of the Department for further investigation and action, in spite of the fact that Mr. Cowasji Jehangir on behalf of the Government declared that the Government, even before the investigations had started, had already come to the conclusion that these allegations were groundless and, therefore, did not propose to take any action. That was the result of an *ex parte* Purdah departmental enquiry. Hence so far as the public is concerned it is just where it was two years ago when the Government refused to accept the resolution of the Council to start an independent investigation. If the statement were vague Sir Frederick Hopkinson's "sense of justice" was offended and he refused to take notice of them on account of their vagueness. He called for specific instances and when specific instances were given and a demand made to find out the truth on the basis of these specific allegations, a threat of a criminal prosecution was held out in the hope that the critic might be scared away by such a threat and the department concerned might again be allowed to repose in peace. A dozen prosecutions or half a dozen Hopkinsons will not deter me from discharging my public duty as the humble representative of the rate-payers. The bungle has taken place in the constituency that I have the honour to represent and in spite of Hopkinsons, Heppers and Harveys, every effort would be made to bring the truth to light regardless of the consequences either to myself or to anybody else. The Government cannot gloss over the whole thing by permitting their agents to indulge in vile calumny against their critics. It is not Sir Frederick Hopkinson that is to be satisfied or whose biassed opinion is worth anything, but it is the public of Bombay, whose money has been so ruthlessly and callously squandered and who are the real sufferers, that is to be satisfied and placated."

NOT MALICIOUS.

Referring to his allegations which were described as "malicious," Mr. Nariman said that he did not know the officials concerned personally and hence there could be no malice on his part. All that he had said was in the public interest. As regards the mild steel bars, Mr. Nariman drew attention to the admission made by Sir

Lawless Hepper regarding "the inadvertance of the Executive Engineer omitting to enter into the Indent Steel bars," and to his statement that "by some mistake either of the draftsman or the Superintendent 7/8ths were entered in place of 5/8ths and that it is not possible to say who made that mistake."

Mr. Nariman said:—"What a confession of inefficiency and neglect of the Department! Further it is admitted that superfluous bars of large value did arrive and a second indent had to be sent with proper specifications."

With regard to tenders, Mr. Nariman referred to the admission of Sir Lawless Hepper. "It will be seen that it is correct that when work was first started at Colaba certain work orders were given without tenders." Mr. Nariman added:—"Mr. Elgee further admits that the rates paid to Balkisonseth was first Rs. 10 per truck which were subsequently reduced to Rs. 2½ per truck thus making a difference of nearly 800 per cent. in the rate, for the same work in the course of two or three years, during which period the conditions and price of labour practically remained the same, and further it is admitted that the total amount of work done by him is nearly 9½ lakhs. These figures with regard to rate and the total amount are almost the same as given in my statement. But what is more important is that this gentleman, as alleged by me, is now removed from the list of contractors though they are silent as regards the causes of his removal, and the important circumstance of other contractors coming to the Council Hall and making a complaint to Mr. Cowasji Jehangir in connection with this matter and the subsequent enquiry started by this gentleman are passed over and Mr. Thomas was not produced before the Committee at all."

Mr. Nariman added, as regards the third specific allegation regarding Kandivli quarry contract, in respect of which he had also submitted a supplementary written statement: "That subject is not referred to at all either in the written statement or oral testimony of any of these officers. The Department evidently thought that it was safest to leave it alone and by a lucky "coincidence" it also escaped the vigilant eyes of Sir Frederick Hopkinson, although no circumstance in favour of the Department escaped his attention."

Mr. Nariman summed up his impressions by saying:—

"In spite of my disagreement with Sir Frederick on various points, I am inclined to agree with his view, when he suggested to several witnesses that their testimony was waste of public time. Not only the testimony of individual witnesses but to my mind the whole fiasco of this white-washing Committee is both waste of public time and further waste of public funds, merely throwing away good money after bad."

IN THE ESPLANADE POLICE COURT.

Case No. 252/N of 1926.

Thomas Harvey *...Complainant**vs*Khurshed Framji Nariman... .. *...Accused.*

The information of Thomas Harvey Esquire, made on oath before His Worship the Chief Presidency Magistrate at the Esplanade Police Court, Bombay,

Charge under Section 500 of the Indian Penal Code.

1. The complainant was at all times material to this complaint Superintending Engineer No 1 Housing and Materials Division of the Development Directorate, Government of Bombay. Mr. Khurshed Framji Nariman is a pleader and he was at such times a member of the Legislative Council of the Government of Bombay and also of the Municipal Corporation. He is hereafter referred to as Mr. Nariman.

2. On the 21st August 1926 Mr. Nariman gave evidence before the Back Bay Enquiry Committee which was sitting at the Secretariat Bombay under the Chairmanship of Sir M. Vishweswaraya. Mr. Nariman had already submitted a written statement which was read on the day in question. The following are extracts from the Written Statement wherein Mr. Nariman referred to statements made by him in the Council when dealing with what he charged as "a serious maladministration of Public Fund." In his written statement he quoted the following extract from his speech in Council :

"I may tell the Government quite frankly and openly that there are ugly rumours in the City and the whole of the Presidency that higher staff and officers have been receiving secret commissions from manufacturers and this is the reason why in this instance the department has incurred a loss of Rs. 3 lakhs".

The complainant was one of "the higher staff" and says that this statement of Mr. Nariman suggests that he among other officers in his grade were receiving secret commissions.

3. Mr. Nariman then proceeds to make the following statement:-

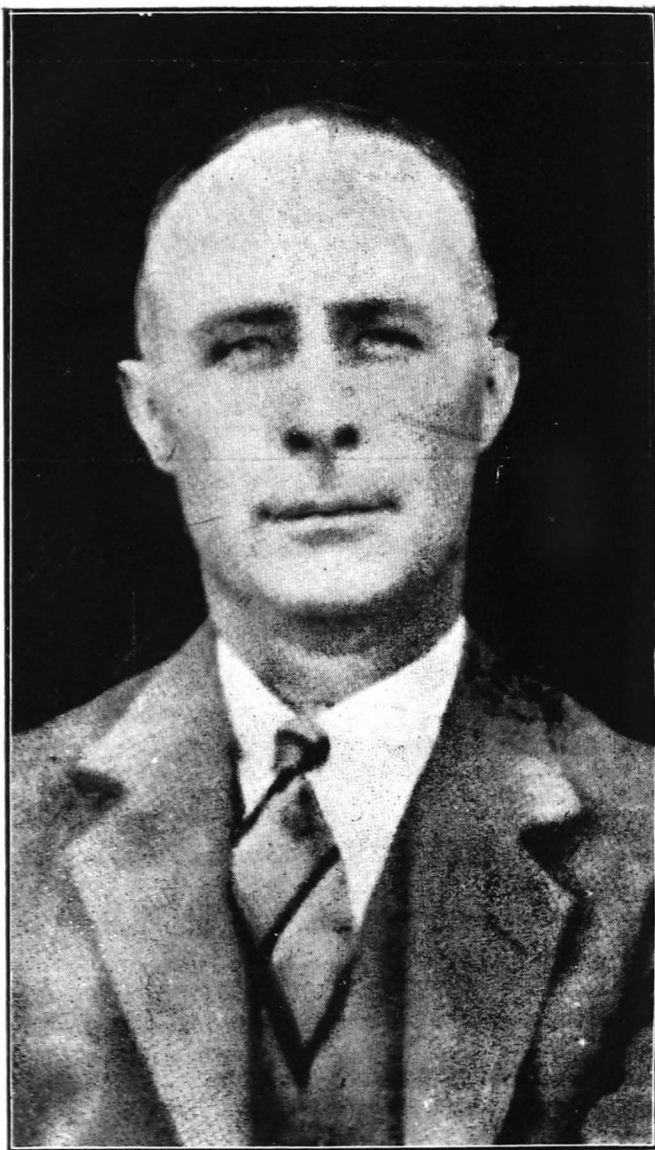
"In one instance, an Executive Engineer had prepared an indent to be forwarded to manufacturers at Home for a large quantity of mild steel bars for concrete piles for the reclamation work and the size mentioned in the original indent by the Executive Engineer was 5/8". This figure was subsequently altered after the indent



LORD LLOYD.



Sir Lawless Hepper,
Development Director.



Mr. T. Harvey.

Superintending Engineer, Housing & Suburban Circle,

B. D. D.

was prepared but before it was despatched by the Superintending Engineer into 7/8". The quantity required was about 1200 tons, costing nearly 3 lakhs of rupees. The indent thus altered was sent by the Superintending Engineer to the Home firm and the bars arrived of the size and dimensions of 7/8" which were not required for the works. They were deposited in Matunga Surplus Depot and a fresh indent had to be sent with correct specifications and fresh consignment arrived, and the amount of nearly Rs. 3 lakhs of the first consignment was purely wasted. When a question was raised about this in Council, in the course of debate the Development Director admitted it but stated that the said alteration was due to a trifling error. No effort was made to explain how such "trifling error" could have occurred, particularly when the indent was originally correctly prepared by one Engineer and deliberately altered by the superior and no explanation was forthcoming. (Vide Council Report dated 24th October 1924, page 861).

"Further in order to pacify the Council and to show that this trifling error had not cost any loss, the Director stated that there was no loss to Government and he gave the Council to understand that they were utilised in some other works and had caused actually a saving. As I knew that these bars which were recently indented were still lying in Matunga Depot, I caused enquiries to be made some months after the statement was made and sent an intending purchaser to make enquiries from the Matunga Depot, as the result of which the Executive Engineer, Housing District wrote back offering these and other steel bars for sale and inviting the purchaser to the Depot to have an inspection of the same. At the same time, the Stores Department also supplied the said purchaser with a list of the bars available for sale and in which list were also included some bars in question of 7/8". This letter of the executive Engineer inviting the purchaser for an inspection is dated Matunga, 26th January 1925. Further comments on such an attitude are needless and I leave it to the Committee to draw its own conclusion."

The complainant is the Superintending Engineer referred to in the above statement and Mr. Nariman referred to him by his name in his written statement as follows:—"It is stated that Mr. Harvey the Superintending Engineer was formerly getting only about Rs. 900/- in Delhi."

x

x

x

x

x

The following questions were put to Mr. Nariman by the Committee during the enquiry:—

“ Q. And you are not in a position to give the name of that gentleman?

“ A. I have mentioned the name of the Superintending Engineer.

“ Q. Was he alone or several others were associated with him or any particular party?

“ A. Well that is very easy for the Committee to find out...

4. The effect of this part of the written statement made before the Committee is that an Executive Engineer, (Mr. Abdul Hamid) had prepared an indent for mild steel bars for concrete piles mentioning the size required as 5/8" and this size was deliberately altered by the complainant who sent the Indent thus altered to a Home firm (name not given) in order solely to benefit that firm although mild steel bars of 7/8" dimensions were not required.

5. Mr. Nariman also refers in his written statement to a question asked by him in the Council on the 24th October 1924. A copy of the question and answer is hereto annexed and marked "A". In the reply given to Mr. Nariman's question he was informed officially in the Council that the Executive Engineer, (as is the fact) had omitted from his indent the steel bars necessary for making piles. The first statement therefore made by Mr. Nariman that the Complainant had deliberately altered an indent is untrue and was untrue to the knowledge of Mr. Nariman at the time that he wrote the words complained in para 3 above. Mr. Nariman also knew that the addition was made by complainant's Supervisor and not by the Complainant although as the head of the office he had to accept responsibility. As the true facts are, that a consolidated statement dated 5th August 1922 was sent to the Superintending Engineer No. IV project, who was the officer whose duty it was to indent for the storage required. A letter was thereafter addressed to that officer dated the 8th August 1922 a copy of which is hereto annexed and marked Ex "B" showing the additional number of steel bars which were required for foundation of piles of the Worli Chawls.

6. Later in his said written statement (Vide line 24 of pages 389 of the proceedings) in referring to quantities of superfluous stores having been ordered out which were not required, Mr. Nariman adds "coupled with that we have one instance where an Indent is altered by a Superintending Engineer" (meaning the complainant.)

7. The subject of the enquiry before the Committee was the Back Bay Reclamation Scheme and Mr. Nariman in order to defame the Complainant incorporated in his written statement matters which related to the Housing and Materials Division of which the Com-

plainant was the Superintending Engineer in spite of the fact that from the reply given to him in the Council by The Hon'ble Mr. Cowasji Jehangir, he must have known that those materials or stores were purchased for the chawls at Worli. The complainant had nothing to do at that time with the Back Bay Reclamation Scheme.

8. Mr. Nariman on being questioned by the Committee repeated the defamatory imputations against the Complainant in the course of his oral evidence. The complainant craves leave to refer to the whole record but hereto annexed and marked Ex "C" is an extract from this oral evidence, in which Mr. Nariman again states that there was an alteration from 5/8" to 7/8" made deliberately by the Complainant that it was not a mistake but that it was an intentional alteration in order that certain manufacturers might make some "earning" out of the order and when it was suggested to Mr. Nariman by a member of the Committee that it might have been a mistake he refused to accept this suggestion and said that the alteration was made by the Complainant with "an ulterior motive" and that he had mentioned the Complainant's name.

9. The complainant says that the imputations referred to above made against him by Mr. Nariman are false.

10. In these circumstances the complainant states that Mr. Nariman in the month of August 1926 at Bombay defamed him by making and publishing in his written statement and oral evidence the imputations hereinbefore set forth concerning him intending to harm or knowing or having reason to believe that such imputations would harm the Complainant's reputation and prays that process may be issued against Mr. Nariman and he may be dealt with according to law.

Drawn by,
Messrs. Little & Co.
Solicitors
and settled by
S. G. Velinkar Esqr.,
Barrister-at-law.

Witnesses,
Mr. Chunilal K. Moree
,, Abdul Hamid
,, P. V. Palnitkar
Sd. THOMAS HARVEY.

Taken on oath this }
Day of December 1926. }
Before me.

Intd. S. S. R.
Chief Presidency Magistrate.
Bombay.
Notice.
Intd. S. S. R.

4-12-26.

Ex. "A"

Question No. 14 put by Mr. K. F. Nariman, M. L. C., (Bombay City, South) at the ensuing session of the Legislative Council.

Mr. K. F. Nariman, M. L. C., (Bombay City, South) asked:—

14. (a) Will the Honourable the General Member be pleased to state whether it is a fact that about two years ago an indent for 1,200 (Indent for mild steel bars, Development Directorate).

mild steel bars for concrete piles of the size 5/8 and of the value of about Rs. 2,50,000 was made by the Executive Engineer in charge and that in the said indent the size of the said bars was altered by the Superintending Engineer to 7/8"?

(b) If so will the Honourable General Member in charge be pleased to state whether it is a fact that on account of this alteration in the indent mild steel bars of the size 7/8" arrived in Bombay, whereas the requirements of the Directorate was for size 5/8" and that the said large quantity of bars of the value of nearly Rs. 2,50,000 are thus lying unserviceable in the stores of the Development Directorate, which have been unable to resell them in spite of the public advertisement?

The Honourable Mr. Cowasji Jehangir (Jr) C.I.E., O.B.E. replied

14. (a) The facts are not as stated but are as follows:—

The Executive Engineer sent in his indent for steel which the Superintending Engineer scrutinised. He discovered that the Executive Engineer had omitted from his indent the bars necessary for making piles.

The matter was discussed with the Executive Engineer with the result that the bars required for piles were added to the Executive Engineer's indent by the Superintending Engineer's office supervisor apparently on the verbal instructions of the Superintending Engineer who has accepted responsibility in the matter. The diameter of bars added to the Executive Engineer's indent was 7/8" whereas bars of 5/8" diameter were actually in use at the time.

(b) It is not a fact that the bars are lying unserviceable. When the error was discovered, the piles and frame-work of chawls at Worli were redesigned utilising 7/8" instead of 5/8" bars without loss to Government. The 7/8" bars so far thus used up, amount to over 800 tons. It is not possible at this stage, to state what bars if any, will be surplus to the Department as this depends on whether the chawl construction programme is to proceed after the chawls under construction are completed. If any bars remain

over, it will be due to the curtailment of the original programme for which the steel was necessarily ordered in advance. If it is found necessary to dispose of the bars at any time, Government anticipate that there will be no loss on the transaction.

(c) Will the Honourable General Member in charge be pleased to state whether it is a fact that a second indent with the correct size required namely, 5/8" had to be sent?

(d) If the reply to (a) and (b) in the affirmative will the Honourable the General Member in charge be pleased to state whether any action has been taken in the matter?

(c) This is not a fact. On the other hand only a sufficient number of 5/8" bars to make an economical re-arrangement of reinforcements was ordered in the succeeding indent for steel.

(d) No action was considered necessary.

Ex. "B"

S-5/3371 of 1922.

BOMBAY, 8th August 1922.

From

THE SUPERINTENDING ENGINEER,
No. I Project Division.

To

THE SUPERINTENDING ENGINEER,
No. IV Project Division,
Matunga.

SIR,

In continuation of this office U. O. Reference No. S-5 3329 dated the 5th instant, I have the honor to inform you that in addition to the number of bars as shown in the list, sent to you with the letter under reference, I shall require for piles at Worli 30,000 7/8" x 19' rods up to 31st December 1922, and 50,000 rods of the same dimensions between 31st December 1922, and 1st October 1923 weighing approximately 520. 18 and 866. 96 tons respectively.

I have etc.,

Sd.—

M. INST. C.E.,
Superintending Engineer,
No. I Project Division.

Ex "C"

"An Extract from the Oral Evidence."

Q. You refer to "criticism on internal administration or rather on maladministration and the internal working of the scheme".

I believe you mean the administration of the Department?

A. Yes.

Q. Are your contentions confined to the Back Bay Scheme?

A. That would be covered by the three instances I have given. I have referred to a number of others but as they do not come within the scope of the Committee, they may be left out.

Sir Frederick Hopkinson--You cannot escape from what you have put down?

A. I do not wish to escape.

Sir M. Vishweswaraya.--What are the three instances?

A. First is about favouring a contractor, Balkishan Seth, second is about mild steel bars when the indent was changed and the third about the cement contract.

Q. About No. 1, do you wish to add any thing to what you have already stated in your written statement?

A. I have nothing more to add to that statement and I have drawn my conclusions on that. The second is about the alteration in the indent which was also admitted in the Council.

Sir Frederick Hopkinson.--I have read your document and perhaps all it implies is that a mistake was made by somebody in ordering 5/8" bars instead of 7/8". What would you say?

A.--I cannot take it as a mistake. I take it as unnecessary superfluous order which was not required.

Q.--What do you suggest it was ordered for?

A.--They were ordered to be dumped in Matunga Stores Depot. Five-eighths bars were required but 5 was changed into 7 by the Superintending Engineer and 7/8" bars arrived which were not of course required and were dumped into the depot and a fresh indent was sent for 5/8" bars.

Q.--But I suggest that a mistake was made?

A.--I do not agree that a mistake was made. It was not made in the original preparation of the indent but in a properly prepared indent figures were altered subsequently.

Q.--But even that may be a mistake because it is not a difficult thing to write 7/8" instead of 5/8" and the Superintending Engineer had nothing to do with the indent?

A.—The Executive Engineer prepared it and it was submitted to the Superintending Engineer who altered it.

Q.—Again that might have been a mistake? Do you not make mistakes? Have you never made a mistake?

A.—Not of this description which is unaccountable which has cost so much, and I shall never make a mistake of this kind.

Q.—You do not say it was intentional?

A.— I say it is intentional. From the circumstances I can say that it was not a mistake.

Q.—We wish to get at the bottom and would like to know why he should make such an intentional mistake?

A.—These surplus stores were ordered in order that certain manufacturers might make some earning out of this order. As far as I can see, there is no other explanation, otherwise these stores would not have been ordered to be used as scrap iron. When I asked a question in Council they said there was no loss, those bars were either disposed of or used otherwise. In order to verify the statement I found a bogus purchaser who wrote a letter to the Matunga Depot Officer. The Executive Engineer in reply wrote on the 25th January 1925. "In reply to your letter of the 24th instant, I write to inform you that your representative can obtain information on any week days from my Assistant Engineer of stores whose office is also at Matunga. The mild steel bars can also be inspected at Matunga." He also received a list of mild steel bars available for sale to the value of 4½ lakhs and amongst it were included these bars which were ordered by mistake and were supposed to have been used by the Department and no loss was caused.

Mr. Billimoria.—You have stated in your statement that some of the mild steel bars were indented for by the Executive Engineer to which year do you refer?

A.—This was in 1921.

Sir Frederick Hopkinson.—Perhaps this might be for housing contracts?

A.—Well Sir, it was meant for housing contracts or for the development directorate, but the instance is there.

Q.—You say that this was altered, by whom was it altered? By the Superintending Engineer?

A.—That is for the department to answer.

Sir M. Vishweswaraya.—Will you please give the date of that letter?

A.—The letter is dated 26th January 1925.

Mr. Billimoria.—How do you know that he altered the indent? It might be a slight error?

A.—My charge in the Council was that an indent prepared by an Executive Engineer to be forwarded to Manufacturers at Home for a large quantity of mild steel bars for concrete piles for the reclamation work, and the size mentioned in the original indent by the Executive Engineer was 5/8" which was subsequently altered after the indent was prepared but before it was despatched by the Superintending Engineer into 7/8". The quantity required was about 1,200 tons costing nearly three lakhs of rupees. The altered indent was sent to the home manufacturers by the Superintending Engineer and the bars arrived of the size and dimensions of 7/8" which were totally useless for the work.

Q.—But there can't be any dishonest motive, it might be a slight error of judgment?

A.—Whatever that might be, Sir, but it is for the Committee to decide whether this was a waste of the public's funds or not.

Q.—By whom was the indent altered?

A.—The Superintending Engineer.

Sir Frederick Hopkinson.—Have you seen that altered indent?

A.—How can we? We were not shown that.

Mr. Billimoria.—Do you suggest any ulterior motive?

A.—Yes.

Q.—And you are not in a position to give the name of that gentleman?

A.—I have mentioned the name of the Superintending Engineer.

Q.—Was he alone or several others were associated with him, or any particular party?

A.—Well that's very easy for the Committee to find out. If you will refer to the Development Department they will tell you.

Sir M. Vishweswaraya.—Can you give us any idea of the magnitude of loss caused by this transaction?

A.—This one transaction alone caused according to the information given to us a loss of about 2 lakhs as the original indent was based for 2,50,000 which we came to know only in January 1925.

Q.—This is said to be due to a clerical error?

A.—Whether it is due to error or at anybody's intention, but the public moneys were wasted and it is for you to decide.

Mr. Billimoria.—Perhaps they would not have required this afterwards?

A.—Well, it's for them to explain.

LODGING OF COMPLAINTS IN COURT.

We are informed that soon after Mr. Harvey lodged his complaint against Mr. Nariman, the latter did the same against Sir Lawless Hepper. This whole complaint, with the hearing in Court is narrated below, the contents of which will disclose to our reader whether the Accused and Sir Frederick Hopkinson were actuated with malicious motives as complained by Mr. Nariman.

IN THE ESPLANADE POLICE COURT, BOMBAY.

Case No. of 1926.

Khurshed Framji Nariman... .. *...Complainant.*

vs

Sir Lawless Hepper *...Accused.*

Charge:—Defamation under Sec. 500

I. P. C.

I the Complainant above-named, beg to state on oath as follows:—

1. I am a graduate in Arts and Law and have been enrolled as a pleader of the High Court of Bombay. My practice is usually confined to the Police Courts for the last about sixteen years.

2. About three years ago, I was elected a member of the Bombay Legislative Council, representing the Non-Mahomedan constituency of the City of Bombay (South). I am also a member of the Bombay Municipal Corporation and the Improvement Trust Committee.

3. The accused above-named has been the Director of the Bombay Development Department and as such has had that Department under his management and control.

4. For several years past, shortly after the inception and creation of the Development Directorate and even long before I was elected a member of the Council, I have criticised the policy, management and administration of the Development Directorate and had often had occasion to strongly criticise the same in the interests of the public, both from the public platform and through the press.

5. I continued to be an unpleasant critic of the Department, even after I became a member of the local Legislative Council. In October 1924, a resolution was passed at my instance in the Council, demanding an independent inquiry, through a non-official Committee, into the management and various other activities of the said Department. During the annual Budget discussion also I had to refer to several instances, exposing the gross mismanagement of the department and consequent waste of public funds.

6. In the due execution of my duty to the Public, and to safeguard their interests, I had bona fide to adopt this attitude of criticism of and opposition to the said Department, after I had closely studied and thoroughly inquired into the working, control and management of the Department which was shown to have been conducted in a manner most detrimental to public interests and resulting in enormous waste of public funds.

7. This uncompromising attitude of mine and particularly my persistent demand for a public non-official inquiry, which was not granted by the Government in spite of the Council's resolution, naturally caused great annoyance to the heads of the Department and engendered in them a bitter feeling of ill-will and malice towards me. So far as the accused was concerned, this feeling was further accentuated by a personal grievance against me, inasmuch as his exorbitant salary of Rs. 6,000 a month was reduced to Rs. 4,000 as a result of this strong and persistent agitation of mine. As an instance of his inveterate ill-will towards me may be cited the occasion on which in the course of a debate on the subject in the Council, he used a very personal, unparliamentary and highly-offensive expression towards me, but had promptly to be called to order by the President and made to withdraw the same in the open Council.

8. In 1926, the Government of India appointed a Committee, called the Back Bay Enquiry Committee, which amongst the terms of its reference included an inquiry into the administration and management of the said Department. The said Committee commenced its sittings at the Secretariat at Bombay and invited members of the public to give evidence.

9. As I had for several years taken considerable pains to study the facts supplied to me and great interest in this matter of vital public importance, I felt myself compelled to offer and give evidence before the Committee. I received a letter from the Committee in reply to my offer to give evidence, asking me to submit a written statement at the same time inviting me to give oral evidence. Another letter from the Committee called upon me to furnish all the particulars with names with regard to certain allegations of fraud and mismanagement that I had made in one of my Council speeches.

10. In response to that invitation from the Committee I presented on 21 August 1926, a full and detailed statement dealing with the various activities of the Department and specifying the charges of favouritism, mismanagement, misapplication of public funds etc. In my oral evidence before the said Committee I maintained the position I had taken up in my written statement.

11. In my written statement referring to the post held by the accused, I had to state as follows :—

“ In this connection, it would not be out of place first and foremost to mention about the Director himself who carried a salary of Rs. 6,000 which was the highest salary next to the Governor in the Province and is provided with a Bungalow which cost 3½ lakhs. As a result of repeated protests the salary was only about two years ago reduced to Rs. 4000. How was he qualified to be at the head of the largest work of reclamation in the world? Had he gained any experience or knowledge on this special subject in the course of his duties as an Agent G. I. P. Railway or as Controller of Munitions Board? He disowns all engineering responsibility, hence his duties mainly were only administrative *i.e.*, similar to those discharged by the Chief Secretary, Public Works Department, with some additional autocratic powers. The Secretary's salaries usually do not exceed Rs. 2,000. Then why was he favoured with such an extravagant salary of Rs. 6000, with a Commodious palatial bungalow worth 3½ lakhs? Even the General Member who was supposed to be the head and controlled several other departments besides, got a salary less than the Director.”

“ These are some of the instances how this Department was used as a dumping ground for providing fat salaried posts for a number of officers at the cost of public funds. Government seems to have treated the Department as a convenient asylum for retired gentlemen. Sir George Buchanan, retired Port Engineer, Rangoon, is accommodated as a Consulting Engineer. Sir Lawless Hepper, retired Agent to a Railway Co. and retired Controller of Munitions, becomes Director with a fat salary of Rs. 6000 and a bungalow worth Rs. 3½ lakhs”.

12. Again referring to the same subject in my oral evidence, I state as follows :—

“ I objected to these high-salaried officials who had no knowledge of such work and who were carrying such high salaries which showed a clear waste of public money”.

“ It won't perhaps be out of place to mention that the Development Directorate paid a high salary of Rs. 6,000 to the Director, Sir Lawless Hepper, a salary next of the Governor in this province and who is also provided with a bungalow of the cost of about 3 lakhs.

We repeatedly protested against this in the Council and as a result only about two years ago his pay had been reduced to Rs. 4,000. How was he qualified to be the head of the largest reclamation work of the world? Had he any experience of reclamation work? A man who had simply worked as an Agent to a particular Railway or as Controller to a Muniton Board? From his evidence before you, Sir, he has entirely disowned all engineering responsibilities hence his duties were only administrative *i.e.* similar to those discharged by the Chief Secretary to Public Works Department with some additional autocratic powers. My contention is that Secretary's salary does not exceed generally Rs. 2,000 then why was he favoured with such an extravagant salary of Rs. 6,000 with a commodious palatial bungalow worth about two or three lakhs?"

13. Besides this, in public interests and to help the Committee to come to a right decision in apportioning the blame for the mismanagement of the department to proper persons, I had also to cite several instances where the transactions appeared to me to be shady or fraudulent, and I requested the Committee to investigate into these matters to find out the truth. I may also state that in the course of my evidence, I had to take umbrage at an offensive remark by one of the members of the Committee—Sir Frederick Hopkinson.

14. Three days thereafter Tuesday the 24th August 1926, as though by a previous arrangement, the accused and other officers of the development Directorate were specially recalled by the Committee to refute the statements made by me, although the evidence of the departmental Officers including the accused, had already been taken at the very initial stage of the Committee's proceedings and had concluded several days before the 24th August 1926.

15. Evidently smarting under the unfavourable remarks made by me in my evidence and bearing grudge and malice towards me for my outspoken criticism of his work and his department, the accused in the course of his oral evidence before the Committee, indulged in grossly defamatory and maliciously false allegations against me personally, and generally against the profession of pleaders as a class. These scandalous remarks were absolutely irrelevant to the subject matter of the inquiry and were the outcome of bitter ill-will, malice and animosity.

16. Besides, Sir Frederick Hopkinson, one of the members of the Committee, whose insulting remark was strongly resented to by me, also tried to avenge himself against me behind my back, by himself publicly indulging in personal and grossly offensive remarks and

by encouraging the witness repeating them. The proceedings of that day appeared on their face to be a pre-arranged affair, when a set of leading questions were put by Sir Frederick Hopkinson to which the accused had only to nod an assent or denial, and the whole object of this re-examination seemed to be to make a desperate effort to restore the credit and prestige of the Department, after its adverse criticism by non-official witnesses giving no further opportunity to anybody else to refute these maliciously scandalous and grossly defamatory statements, the Committee having closed its session in Bombay immediately after this evidence.

17. The following are some of the questions and answers between Sir Frederick Hopkinson and the accused, making the grossly defamatory allegations and insinuations against me personally and against my professional brothers :—

“ Sir Frederick : Is Mr. Nariman what is known here as a pleader ?

Sir Lawless : He is.

Sir Frederick : As such it is part of his professional business to defend criminals in the Police Courts.

Sir Lawless : I think he is.

Sir Frederick : Some of his charges are so extraordinary that I venture to suggest that possibly his point of view is somewhat clouded by his professional activities particularly criminal.

Sir Lawless : I have always thought so.”

Again little later, in an evidently pre-arranged set of questions and answers, the following dialogue took place between Sir Frederick and the accused :—

“ Sir Frederick : Do you think that your officers would naturally take the necessary steps to destroy evidence ?

Sir Lawless : Certainly not.

Q.—Is it a practice in Government Department to destroy valuable documents ?

A.—No. I have never known of it.

Q.—Do you think somebody in the circle in which Mr. Nariman is moving would have done it ?

A.—Quite likely.

Q.—In that case he may think that all Government employees are of the same character.

A.-- I think corruption is more rife in circles in which he (Nariman) moves and probably he is inclined to think that the same class of thing may be done in Government offices."

18. Thus direct and defamatory imputations are made against me and my character and against the circle in which I am moving viz., my professional brothers suggesting that I am moving about with such low associates who are so criminally disposed as to be capable of destroying important evidence. The allegation of corruption being rife in the circle in which I am moving about, is also grossly defamatory and likely to harm my professional and personal reputation. Besides, these scandalous insinuations and allegations were absolutely uncalled for, were quite irrelevant to the subject matter of the inquiry and under the circumstances mentioned above, they were made with an inveterate malice toward me and a deliberate intent to damage my reputation and lower me in estimation of the public.

Under the circumstances, I charge the accused as above under Sec. 500 I. P. C. and pray for process against him and that he be dealt with according to law.

Sworn at Bombay, }
 this day of November 1926 }

Before me

Presidency Magistrate.

We regret to note that before Mr. Nariman could issue summons against the accused to vindicate his character the latter left India perhaps for good.

POLICE COURT PROCEEDINGS.

Harvey-vs-Nariman.

When the case was called on Mr. Vasavada, Pleader for Balkisen Seth informed the Court that his client was bound for Europe on urgent business, that his client had not kept any books of account since 1924, and that he should be exempted from attending Court. He said that his client would be leaving Bombay for Europe on the 15th. Mr. Kanuga on behalf of Mr. Nariman opposed the application and said that it was incredible that Balkisen Seth who had such extensive business had kept no books of account. At this stage the Magistrate said that he would give a search warrant. Mr. Kanuga said that search warrant would be useless and that he

should come into the witness box and make a statement to that effect. The Magistrate then informed that Balkisen Seth should be examined the following day.

—:o:—

Mr. Kanuga also requested the Magistrate to note that in a previous instance a similar application was made in connection with Messrs. Shalebhoy Tyabji and Co., and it is significant that these important witnesses are not willing to bring forward their evidence.

Mr. Velinkar who appeared on behalf of the Complainant then began to open the case for prosecution as follows :—

Mr. Harvey the complainant in the case was the Superintending Engineer No. 1. Housing and Materials Division. Mr. Nariman the accused needed no introduction except that at the time material to this case he was a member of the legislative council and a municipal corporator. The complaint against the accused is that he had defamed the complainant in August 1926, under the circumstances which I am going to relate presently but before I do that I want to take a note of the few dates which I am going to give and you (Court) will be able to follow them exactly from the evidence of Mr. Harvey. On the 24th of October 1924, Mr. Nariman asked questions in the Council at Bombay which are annexures A to the complaint. These questions bear intimately on the case.

The first question is :—

A.—“ Will the Hon'ble the General Member be pleased to state whether it is a fact that about 2 years ago an indent for 1200 Tons of mild steel bars &c.

Replying to the said question the Hon'ble General Member said :—

“ The facts are not as stated but are as follows :—The Executive Engineer (Hamid) sent his indent for steel bars which the Superintending Engineer scrutinised and he discovered that the Executive Engineer had omitted &c.

The second question is :—

B :—“ If so will the Hon'ble the General Member be pleased to state whether it is a fact &c.

Here I may say that the 5/8" bars that were ordered were not intended for foundation piles but were for columns and beams etc. However, I do not want to precipitate the matter. The answer given by the Hon'ble the General Member is as follows :—

" It is not a fact that the bars are lying unserviceable. The error was discovered etc.

The next question is as follows :—

C.—" Will the Hon'ble General Member be pleased to state whether it is a fact that a second indent with the correct size required, namely, 5/8" had to be sent."

The answer is :—

" This is not the fact. On the other hand only a sufficient number of bars &c.

The next question is :—

D :—Whether any action was taken by the Government in the matter.

The answer is :—

No action was considered necessary.

So far back as the 24th of October 1924 Mr. Nariman was given to understand the facts were as they appeared in the answers given by the Hon'ble the General Member.

In March 1925 Mr. Nariman referring to the maladministration of funds stated in the Council as follows :—

"I do state without any reserve and with all responsibility.".....

Thus in March 1925 Mr. Nariman stated that public funds have been mal-administered and as an instance refers to the mild steel bars of the value of Rs. 3 lacs and makes a charge with regard to this that the higher staff and officers have been receiving secret commission.

On the 29th of July 1926 the Government of India by a resolution appointed a Committee to inquire Re : The Back Bay Reclamation scheme. On 3rd August the Committee began its sittings in Bombay and in response to the invitation of the Committee Mr. Nariman submitted a written statement, which begins at page 379 and from which I have read the passage at page 385. On the 21st August 1926 Mr. Nariman's written statement was read before the Back Bay Inquiry Committee. As I read to you in this statement he recites an extract from the speech made in Council in 1925 (Page 386 line 50). This is what Mr. Nariman says " In one instance an Executive Engineer (Hamid) had prepared an indent &c..... no explanation was forthcoming." Mr. Nariman's idea that the original figure was 5/8" but was subsequently altered to 7/8 was wrong. I am going to open this at considerable length taking Your Worship through all the papers so that Mr. Nariman himself will recognise that statement is incorrect and will admit it. I am taking a chronology from the dates which I will do presently.

Mr. Nariman was examined on the same day and he gave his evidence. At page 403 Line 56 Mr. Nariman in answer to Sir Frederick Hopkinson with regard to these bars said

(Read upto. These surplus stores were ordered in order that certain manufacturers make earnings of this order"I have mentioned the name of the Superintending Engineer."

Well that is his statement in regard to that. Now briefly put, it comes to this that the imputations which Mr. Nariman made against my client are at least 7 in number. The first is that the complainant is one of the higher staff and is one of those who corruptly received secret commissions from the manufacturers.

- (2) That a loss of 3 lacs of rupees to the department was the result of such corrupt practice.
- (3) That the complainant deliberately changed with corrupt motive the figure 5 into the figure 7 in an indent that was prepared by Hamid Executive Engineer and ordered 7/8 bars weighing about 700 tons.
- (4) He did so with the ulterior object to enable some Home manufacturers to earn monies and thereby secure for himself secret commissions.
- (5) That these 7/8 bars were entirely useless and a fresh indent had to be sent in with correct specification and a fresh consignment arrived.
- (6) That an amount of nearly 3 lacs of rupees which the first consignment had cost was purely a waste.

Now the prosecution case is that these imputations every one of them was defamatory per se and Mr. Nariman intended and knew it to be likely that these imputations would more seriously affect the complainant's reputation and he made these imputations with that intention. It is also the prosecution case that he made these imputations on false information knowing them to be false.

(Paper Book No. 1 and Paper Book No. 2 handed over to Magistrate)

If you look at the first compilation Paper Book No. 1 you will find at page 33 that on the 10th of February 1922 the complainant asked the Executive Engineers Districts Nos. 1 and 2 to send in statements of their requirements for the years 1922-23. (Reads the letter)

If you look at the next page, on 17th March Mr. Hamid who is Executive Engineer No. 2 Division sent a statement of his requirements for the Worli chawls. (Reads the letter). Now

in regard to this if you will look at Book 2 you will find these statements at pages 1 and 2. At page 1 you will find the statement of what materials Mr. Hamid would have in stock and at page 2 is a statement of his requirements. These statements when they were looked into, it was found out that they required certain alterations and revision. So they were sent back to Mr. Hamid to be revised, and on 23rd May 1922, if you look at page 37 Hamid sent his letter forwarding his revised statement (Reads the letter). I ask you to see this particular statement and of the peculiarity of the statement. You will see that in this statement there are columns 11 and 12. These columns 11 and 12 show the quantities of bars to be indented from England. Column 9 shows the urgent quantity which is required and which has to be bought locally. Now below there are remarks about the minus quantities in columns 9. This shows that it was the Executive Engineer who decided what quantities were to be ordered from England and what quantities were to be ordered locally. In this particular instance it was Mr. Hamid who decided what quantities should be ordered and not Mr. Harvey; this disposes of Mr. Hamid's statement.

Now we will deal with No. 1 Engineer. This is paper book No. 3. If you will see at page 13 of this paper book you will find that the Executive Engineer No. 1 Division Mr. Mehta wrote to the complainant forwarding his statement regarding Naigaum and De Lisle Road chawis. Page 13 letter dated 31st May 1922 (Read) That happens in 31-5-1922. The next point to be noted is that about the end of June 1922 Worli Chawl designs were altered. On 1st July the complainant sent his memo which you will find at page below the last letter (Reads). On 10th July reminders were sent to both these Engineers. On the 15th July, if you will now turn up book No. 1 page 39. Hamid sent his letter (reads). So it was further revised and that revised statement you will find at page 4 of brief No. 2 and this is a very important document for several reasons. It shows first of all that as corrected in all 10230 cwt. equal to 511½ tons were to be ordered through the High Commissioner. Then certain quantity were to be ordered locally. That you will find in previous column and it includes as you will observe 5/8" bars 19' long and also these 5/8" bars 19' long were required for columns and beams etc., and not for foundation piles. That 5/8" by 19' requirements for 5 chawls of new designs are under column 4. Then you will find here also that there is alteration in the number of 3/16" bars (last item). If you look at column No. 6 you will observe that 64,920 has been increased to 88320 and in column 8 you will observe that 4540 is reduced to 1880 and similarly in column 9 the figures have been changed. Some of the 3/16" bars were in stock

with Mr. Sykes who was the Superintending Engineer No. 4 Division and Mr. Sykes could give these bars from his own stores. So the number was reduced in consequence of that.

Now we are proceeding again to the 24th July 1922 (page 40 of the 1st brief, Mr. Mehta Executive Engineer No. 1 Division wrote this letter to the complainant forwarding his statement of requirements for Naigaum chawls only (reads). That is at page 5 brief 2. Now we have got Worli statements and we have got the Naigaum statement. De Lisle Road comes in on 31 July 1922. (p. 41) (Reads) The statement of Mr. Mehta Re: De Lisle Road Chawls in p. 6. You will find that the total of Mr. Mehta's requirements as per his statement was 14400 cwts. and they had to be ordered through the High Commissioner, and certain quantity had to be ordered locally. On 1st August there is an unofficial reference (page 42) from Mr. Sykes who is the Superintending Engineer No. 4 Division (reads). Below that you will find another unofficial reference, that complete information is ready &c. That is Saturday morning 5th August. Though it is signed by Mr. Harvey on the 3rd August it was not sent until 5th August. Then on the 3rd of August 1922 his office Supervisor Mr. Palnitkar prepared a consolidated statement in which the requirements of Mr. Mehta No. 1 and the requirements of Mr. Hamid No. 2 have been included for Worli, De. Lisle Road and Naigaum chawls. So far as this is concerned the correspondence shows that we have got 2 revised statements. The consolidated statement prepared by Mr. Palnitkar is at page 8 of the 2nd brief and the total quantity of requirements according to this consolidated statement (only for columns beams etc., and not for foundation piles) was 1568'62 tons.

On the 5th of August at page 42 of that brief, an unofficial reference from the complainant is sent to Skyes and it was sent along with this consolidated statement. (at page 8 of the brief). This statement, if you turn up page 7 of the 2nd brief, is the original statement prepared by Mr. Palnitker in his own handwriting. You will find in this statement that 526.95 tons of steel had to be bought locally and the total required through the High Commissioner at Home was 1568'62 tons.

We have come so far that this consolidated statement prepared by Mr. Palnitker was sent to Mr. Sykes whose duty it was to order these goods. Mr. Harvey did not order these goods. It is Mr. Sykes' duty to send indent or order for these goods. Now the next thing that happened is that after the time this consolidated statement was prepared and sent Mr. Hamid (whom I will call as a witness in this case) who is Executive Engineer No. 2 happened to see Mr. Harvey in his office in the course of official duty and in the course of their conversation they discussed the questions

whether bars for foundation piles were ordered in this consolidated revised statement which had been sent out to Mr. Sykes for goods to be ordered through the High Commissioner. In passing I may say that goods were to be ordered through the High Commissioner who could place orders with merchants that he thought fit and not Mr. Harvey or anybody. In the course of the discussion it was discovered that bars required for foundation piles had not been ordered at all. When this was discovered Mr. Hamid and the complainant worked out the figures and the probable requirements. I may tell you at this juncture that it was necessary to have piles for foundation in the commencement of chawl buildings. Each chawl required 104 piles and each pile required four bars. Having worked this out they had to find out whether any bars were still in stock and so Mr. Hamid went to Worli where he had his own stores to find out any of these bars for foundation piles were in stock. Now later on, it is the belief of Mr. Harvey that Mr. Hamid sent a statement of his requirement and in this statement Mr. Hamid put down 7/8" by 19' bars. Hamid put this down and not Mr. Harvey at all. It is also the complainant's belief (we will prove by evidence) that Mr. Hamid sent in a note of his requirements in which the figure 7/8" by 19' was mentioned. This note is not forthcoming. It is a slip of paper which cannot be traced in the large quantity of papers which have been stored. Accordingly when the complainant Mr. Harvey got this memo from Mr. Hamid of his requirements and the size in it was 7/8" by 19' he told his office Supervisor Mr. Palnitkar to write a letter to Mr. Sykes, Superintending Engineer No. 4 Division to include 50000 bars which were to be ordered through the High Commissioner in London, and 30000 bars of 7/8" by 19' which were to be ordered locally. On the 8th of August Mr. Palnitkar wrote the letter (Important document page 43). (Reads the letter) On this you will find a note in pencil not in the writing of Mr. Harvey but in the writing of Mr. Sykes "add these two amounts." What happened is this, after receiving the requirements from these two engineers a consolidated statement was prepared by the office Supervisor who sent it to Mr. Sykes whose duty it was to order goods through the High Commissioner and thereafter it was discovered that bars for foundation piles had been omitted. In fact the bars for foundation piles were omitted and a note of that was sent by Mr. Hamid to the office. In this note Mr. Hamid mentioned the size as 7/8" by 19' On the strength of the note the requirements for these chawls so far as the foundation piles were concerned were indented by the letter of 8th August to Mr. Sykes and Mr. Sykes put a pencil note in the letter saying add this omission.

Then what happened is this (page 44) On the 9th August you have this unofficial reference No. 2609 dated 9-8-22 (reads) sent

by Mr. Sykes to the Secretary Government Development Department. On 10th August 1922 (page 46) you will find indent No. 4. (reads). This is sent by Mr. Sykes Superintending Engineer No. 4 Division and accompanying that you will find on the next page (47) this unfortunate indent No. 7 7/8" by 19' bars quantity 866. 968 tons. This item comes in here the history of it being that the figure 7/8" was never altered by Mr. Harvey at all and the 7/8" was the figure supplied by Mr. Hamid that had been originally omitted in the consolidated statement. This was brought to the notice of Mr. Sykes by a separate letter and it was altered in Mr. Sykes' office and in regard to this the necessary indent was prepared on 10th August (45). You will also find the forwarding letter (Reads). Therefore the points to be noted are first as regards the alteration, the second point, the complainant Mr. Harvey had nothing to do with the actual preparation of the indent and this was prepared in Mr. Sykes' office and thirdly that indent never came into the hands of Mr. Harvey at all. Fourthly that Mr. Sykes made this indent and the requirements from the original consolidated statement submitted by him and also from the contents of the letter of the 8th August 1922 to which I have referred more than once in this case.

On the 17th August 1922 (page 49) a letter was written to the Director General of Stores India Office London (Reads). It was forwarded by the Ag. Secretary to the Government to the Director General of Stores India Office.

On the 18th August (p. 50) the complainant wrote to Mr. Sykes (reads). On 12th September 1922 it appears that Salebhoy Tyebji were asked to offer for the purchase locally to be made. On 12th September 1922 Salebhoy Tyabji's tender for the supply of bars was accepted by resolution No. 1570, of the same date. The firm of Salebhoy Tyebji began to deliver these 7/8" by 19' bars. When they began to deliver these bars and these bars came into the stock the mistake about 7/8" bars was discovered. 7/8" bars it may be stated, were, as a matter of fact, not required for the designs of the foundation piles at all. This should have been 5/8" by 19' but Mr. Hamid for reasons which he will be able to explain however made a mistake or it was an error of judgment. Mr. Hamid put in 7/8" by 19' bars and it is on Hamid's statement that a note was sent. If you look at page (51) as soon as the error was discovered it is Mr. Sykes who asks Mr. Harvey what is the best thing to be done and should a cable be sent to cancel that portion of the indent or should 5/8" bars be substituted for 7/8" which had been indented for. (page 5) (reads the letter). This happened on January 3rd. On 4th January he sent letter to Mr. Sykes and on the next page you will find an unofficial reference from Mr. Sykes (reads). This happened on 5th January 1923.

Then the High Commissioner was cabled to make this alteration in the indents. It was found too late to cancel the item of 7/8" bars as an order had already been placed. 7/8" bars came and they were not at all wasted or dumped down as alleged by Mr. Nariman but they were utilised in beams and columns instead of 5/8" bars, and by so doing Mr. Harvey proposed to utilise them and he proposed to reduce the amount of concrete mixture by about 10 per cent. The beams and columns were redesigned. 46340 bars were utilised and 33660 bars were transferred to the surplus stock. These became a surplus stock owing to the curtailment of the chawls.

Before I close my part of the case I wish to point out that these bars were required for Worli chawls and they had nothing whatever to do with the Back Bay Reclamation. The complainant himself had nothing whatever to do with the Back Bay Reclamation at all. He was Superintending Engineer No. 1 Housing and materials so that these are the real fact and figures upon which the prosecution say that Mr. Nariman, having been informed of the true facts deliberately misstated the facts and on such mis-stated assumption drew an unwarrantable information about the complainant. Mr. Nariman was appraised of the true facts of the case. I now propose to call Mr. Harvey.

Before Mr. Harvey was called Mr. Kirke Smith stated that he was watching the case on behalf of the Government and that Mr. Nariman has asked the Government to produce certain documents which are irrelevant in the opinion of the Government, and he had brought two cartloads of documents and he wanted the Court's direction. Mr. Kanuga on behalf of Mr. Nariman stated that it is not for the Government to say whether the documents asked for are relevant or not but it is for the Court to say so and that he will ask for the necessary documents whenever required. However he told that he will not be requiring them till Monday.

EXAMINATION-IN-CHIEF OF PROSECUTION WITNESSES.

(Examination in Chief of Mr. Harvey).

*Thomas Harvey Examined on Oath:—*I was the Superintending Engineer No. 1 Project Division (Housing) of the Development Directorate. I have heard of Nariman. I have seen him in Court and in the inquiry before the Back Bay Committee. I am aware that Nariman has been criticising the scheme of the Development Department for some time. I had nothing whatever to do with the Back Bay Reclamation Scheme prior to the ordering of those bars. I subsequently became Superintending Engineer Hous-

ing and Materials Division. It was about the end of 1923. We supplied such materials as sand, shingle and coal to the Back Bay Reclamation Scheme, as the Materials Division was the purchasing Agent of the Development Department. Annexed to my complaint is a copy of the Questions put by Nariman in the Council on 23rd October 1924. In March 1925 Nariman referred to the Maladministration of the funds of the Development Department in a speech made by him in the Council. This shown to me is the Official Report. His speech appears at page 545. (Velinker tenders it. Put in as Ext. B) At page 571 in Ext. B. there appears to be a statement made by Sir Lawless Hepper with reference to the statement made by Nariman in regard to the steel-bars in question. (Put in as Ex. B1) At page 525 there appears another statement with reference to these bars. In July 1926 the Government of India by Resolution appointed a Committee of inquiry regarding the Back Bay Reclamation Scheme. This shown to me is the Official compilation of the evidence, oral and documentary, recorded by the Committee Part I. (Book put in as C.) At page 385 line 10 I find a reference of a quotation made by Nariman from his speech made in the Council (Lines 10 to 23 put in as Ext. C1). At page 386 line 58 Nariman refers again to the steel bars in question. (Para put in as C2). On the same day Nariman gave evidence as appears from this book. (Velinkar puts in Nariman's evidence appearing at pages 403 to 405. (Put in as C3). This is his oral evidence with reference to the steel bars in question. The Superintending Engineer referred to therein is myself. (Shown page 388 line 8.) I am mentioned there by name. The Executive Engineer referred to in Lines 29 and 44 at page 404 is Hamid. (Shown C1). I am one of the higher staff and officers referred to in C1. At this date I was getting about Rs. 2000 a month. I have never received any commission secretly or publicly from any manufacturer or merchant or any body else. It is absolutely untrue that the Development Department suffered loss of Rs. 3,00,000, because of any commission received by me. It is grossly untrue that stores are indented in large quantities than are necessary or that stores that are not required are also ordered out because I received secret commission from manufacturers. (Shown Ext. C3). It is not true that I made any intentional mistake regarding these 7/8" bars. It is grossly untrue that these surplus stores were ordered in order that certain manufacturers might make certain earnings out of that. Hamid was not authorised to make an indent. The Superin'tending Engineer No. IV Department was the only officer authorised to make indents for store, etc., on behalf of the Department. (Reads lines 40 to 45 page 404). There is absolutely no truth in that passage. Hamid sent in a list to me of the steel bars he required for beams columns

flooring etc., for chawls at Worli. But this did not contain bars required for foundation piles. This list I altered in respect of 3/16" bars. I reduced the quantity by about 10 tons which Hamid had requested me to order. That is the only alteration I made in Hamid's requirements.

High Commissioner. (Reads lines 45 to 47) It is absolutely untrue. I sent no indent of any kind to England. It is untrue that the 7/8" bars were totally useless for the work. It is true that a certain number of 5/8" bars were ordered subsequently through the High Commissioner to make an economic rearrangement in the 7/8" bars for the chawls. The 7/8" bars cost roughly about Rs. 2,25,000. It is not true that this whole amount was wasted as we used about 46340 bars out of 80000 bars. The rest were transferred to Surplus stores because the number of chawls that were to be built was curtailed. The decision to curtail the number was taken 9 months after the order was placed. (To Court) If the original programme had been adhered to we should have required about 10000 tons of all kinds of steel bars including 7/8" bars by 19. The original programme was for 625 chawls. This was curtailed to 207 chawls. On these 207 chawls out of 8000 bars we used up 46370 bars. That is to say on 1/3 of the programme. So that the remaining 33000 would easily have been used up for the remaining programme. (To Velinker) The history of the order for these 7/8" is as follows: - On 10th February 1922 I asked the Executive Engineer Districts Nos. 1 and 2 to send in their statements of requirements of steel for 1922-23. The official year commences on 1st April. Mehta was the Executive Engineer No. 1 Hamid was the Executive Engineer No. 2. Mehta was the Executive Engineer in charge of construction of Naigam and DeLisle Road chawls. Hamid was in charge of the construction of the Worli Chawls. I produce my letter dated 10/2/22 addressed to Executive Engineers I and II (Put in as Ext. D) I produce Hamid's letter dated 17/3/22 addressed to me enclosing two statements. (Letter put in as Ext. E) These are the 2 statements. (Put in as Ext. E & E1) These required alteration and were sent back to Hamid to be revised. I produce Hamid's letter dated 23/5/22 (Put in as Ext. F) I produce the revised statement enclosed with Ext. F). (put in as Ext. F1) (Shown columns 11 and 12 of F1). These columns contain the quantity to be ordered through the High Commissioner. Column 9 shows the bars that remained in stock after completing 9 chawls. The minus quantities in column 9 show the quantities required to be ordered locally. The steel ordered through the High Commissioner usually took 6 to 12 months to arrive. Therefore urgent requirements had to be locally purchased. The Executive Engineer Hamid had to decide the

quantity to be ordered through the High Commissioner. (To Court) I was Hamid's Superior. (To Velinker) I decided to a certain extent in as much as I had to decide the programme. Apart from that the Executive Engineer sent in the requirements. He noted what requirements he needed. On 31st May 1922 Mehta wrote to me this letter. (Put in as Ext. G) These are the requirements for the Naigam & Delisle Road Chawls. The letter was accompanied by these 4 statements. (Put in as Exts. G1, G2, G3, G4.) About the end of June 1922 the design for all chawls including Naigam Worli and Delisle was altered. On 1st July 1922 I sent a memo to Executive Engineer No. 1 for revised statement. This is the memo. (Put in as Ext. H) Reminders were sent to both the Executive Engineers on 10-7-22. That appears from the endorsement on 15-7-22. Hamid sent me a letter with his revised statement. This is the letter. (Put in as Ext. I) This the revised statement. (Put in as Ext. II) II as corrected shows that 10230 cwt. were to be ordered through the High Commissioner. That appears from column No. 9. The alterations in column Nos. 6, 8 & 9 are in my handwriting. Some of them relate to 7/8" bars by 15' and 7/8" bars by 16'. These are insertions. Because column 6 showed the stock the Executive Engineer had at Worli at the time, when the list came in from the Executive Engineer I ascertained from the Superintending Engineer No. IV that he had 500 bars of 7/8" by 15' and 1150 bars of 7/8" x 16'. Also I ascertained that he had 23500 bars of 3/16" x 18'. I therefore reduced the indent for 3/16" x 18' bars from 628 cwt. 17 lbs. to 210 cwts. Those are the only alterations, I made in the indent. The latter alteration is in respect of the bars to be ordered from the High Commissioner with regard to 7/8" x 15' & 16' bars. I showed on this statement that they could be had from Sykes at Worli although the Executive Engineer did not ask for any. The object of altering this was to bring to light this stock. I reduced the 3/16" x 18' bars from 628 cwts. to 270. In I, there is an item of 5/8" x 19' bars. They are principally for beams and they could be used for columns as well. No mention is made of any bars required for foundation piles. A chawl ordinarily has 104 Foundation piles. In each Pile there are 4 vertical bars. According to the design each of these bars was 5/8" x 19'. I have drawn a rough sketch of a foundation pile showing the rods and the bars. (Put in as Ext. J.) The piles have to be cured before they are used for foundations. In the original design it was contemplated to use only one pile with 7/8" by 19' bars. The design was changed subsequently and we used two foundation piles with a cap for a column using half the quantity of vertical reinforcement in each and for that we used bars 5/8" x 19'. The original intention to use 7/8" bar was scrapped and the idea of using two 5/8 bars was substituted. This idea continued till 7/8" x 19' bars arrived from England and we transferred the 5/8" bars ordered for

the beams to the foundation piles and the 7/8" Bars which were ordered we utilised for the beams.

On 24th July 1922 I received this letter from Mehta, forwarding a statement of his requirements for Naigam A & B. (Put in as Ext. K). I produce the statement. (Put in as Ext. K 1). On 31-7-22 I received a letter from Mehta enclosing his requirements for De Lisle Road Chawl. This is that letter. (Put in as Ext. L). I produce the statement accompanying that letter. (Put in as Ext. I 1). The total requirements of these two come to 1412 tons. The notes and figures in pencil are in the handwriting of Palnitkar. They were made on the authority of my red and blue pencil notes made on the statement. The notes in Black pencil appear only in the Naigam list. These lists sent by Hamid and Mehta were checked and consolidated in my office. A consolidated statement of the requirements was prepared. This consolidated statement of the requirements was for beams columns and floors and walling. It was prepared by Palnitkar. This is his statement. It is initialled by him. (Put in as Ext. M) Ext. M was kept in my office. A typed copy of it was sent to Sykes S. E. IV. I produce the fair copy of Ext. M. (Put in as Ext. M 1) This had to go to the office of Sykes and he had to make an indent from this. On 1-8-22 I received an unofficial reference from Sykes. This is that U. O. R. It was on the subject of the Indent to be sent home. (Put in as Ext. N). It was the duty of the Secretary, Government Development Department to send the indent to the High Commissioner. It was the duty of Sykes the S. E. IV to communicate to the Secretary, Government Development Department. Below the U. O. R. from Sykes I found a reference to a U. O. R. from me dated 3-8-22. It was despatched on the 5th August. (Put in as Ext. O). (Shown Ext. M 1). M 1 is the office fair copy. I produce the original sent to Sykes. It is signed by me and is dated 5th. (Original put in-as Ext-M 2). I produce a U. O. R. sent by me to Sykes. It is dated 3-8-22 and despatched on the 5th. Ext. O is that U. O. R. Along with Ext. O the consolidated statements Ext. M 2 were forwarded to Sykes. (Shown M 2). It shows that 546 tons were to be ordered locally and 1568 tons through the High Commissioner. Hamid always came to my office twice a week. Hamid saw me about the time this consolidated statement was prepared. I don't recollect the exact date on which I saw him in connection with this. At this particular interview I asked Hamid if he had included in his list the necessary steel bars for foundation piles. He considered for a few moments and said he had forgotten to enter in his list the requisite bars for the Foundation Piles. Hamid and I then proceeded to work out how many bars would be required for

the year and for a part of the succeeding year that is roughly upto a year *i.e.* about December 1923. I think we actually worked out the number of bars. But the question arose then as to how many bars we had in stock at Worli or how many Piles he had manufactured as these naturally had a bearing in the number of the Piles that would have to be ordered. The Department had a store then at Worli. I therefore instructed Hamid to return to Worli and after he had seen the stock of the bars and Piles to let me know his requirements for bars for Foundation Piles which he had originally forgotten. To the best of my recollection Hamid either brought in or sent in a slip of paper showing the diameter, the length and the number of bars required. When this came to my office I handed it over to Palnitkar, the Supervisor who drafted a letter to Sykes asking him to order in addition to the bars previously contained in the consolidated list, 30,000 bars 7/8" x 19' for work upto 31-12-1922 and 50,000 bars of the same dimension for work between 31-12-22 and 1-10-23 weighing approximately 520 and 866 tons. This is the draft made by Palnitkar. (Put in as Ext. P). I produce the fair copy sent to Sykes. (Put in as Ext. P 1). Ext. P 1 is dated 8th August. Ext. P 1 is signed by me. On looking at Ext. P again I say it is not the draft of Palnitkar's letter of which Ext. P 1 is the fair copy. Ext. P 1 bears an endorsement in pencil thus "H.C. (Head Clerk) add this to the two amounts" It is in Sykes' handwriting and initialled by him and dated 8-8-22. Piles are distinctly mentioned in the letter. I had nothing to do with the preparation of the actual indent prepared in Sykes' office. The indent prepared by Sykes and sent to the Secretary to Government Development Department never came in my hands then. In one of my inspections to Worli the Ext. E Hamid told me that the 7/8" bars had arrived and that he required 5/8" instead. Remembering the slip that had been sent by Hamid to my office I went forthwith to see his file at Worli to see if a copy of that slip was there. I could not find it there. When it was not to be found there I went to my office and looked up at my own files but without success. I have always accepted the responsibility as the head of the office. The slip was not on record. When we contemplated launching this Prosecution I looked up Hamid's records. I thought I might find some clue as to how this mistake arose. I found nothing. But the next day I took Hamid's file to the Solicitor to Government to ask him if it was of any use. He opened the file. On the very first page he opened there was a pencil note in Hamid's handwriting, on the back of one of the documents of about the date on which the mistake was committed. I was present when Kirke Smith opened the file. This is that paper and this is the pencil notes in Hamid's handwriting on the back of it. (Put in as Ext. Q.) On 12/9/22 Salebhai

Tyabjee's tender for supply of bars of various dimensions including 30,000 bars 7/8" x 19' was accepted by a resolution. I produce the Resolution. (Put in as Ext. R) In course of time Salebhai Tyabjee began giving the delivery of these bars. The mistake was discovered after they began to deliver these bars. In due course it was brought to my notice. I spoke to Sykes on the phone if the order with Salebhai Tyabjee for 7/8" bars could be cancelled or if a telegram could be sent to the Secretary of State asking him to substitute 5/8" bars for 7/8" ordered. On 3/1/23 Sykes sent me a U. O. R. This is the U. O. R. (Put in as Ext. S) In consequence of that I wrote a U. O. R. On the same date but it was sent on the 4th. This is that U. O. R. (Put in as Ext. T) It was ultimately found impossible to cancel the order as the Secretary of State had already placed the order. The 7/8" Bars arrived in due course. They were unsuitable for Foundation Piles. I redesigned the columns, beams and other parts of chawls and I substituted these 7/8" bars for 5/8" and 1/2" Bars wherever possible and used the 5/8" bars with Foundation Piles. I redesigned and proposed to reduce the cement in the concrete mixture by 10 per cent on account of the additional strength given by the 7/8" bars for the 5/8". I went on leave on 7/3/23 and Hanid acted as S. E. in my absence and he then used some of the 7/8" bars in the Foundation Piles. These 7/8" bars had nothing whatever to do with the Back Bay Reclamation. These 7/8" bars were utilised wherever possible.

CROSS EXAMINATION RESERVED.

Thomas Harvey Recalled And Examined:—I had never seen the man who was examined this morning by the Court. I have had no dealings with him whatsoever. (Witness refers to Balakrishna Shet who was examined in reference to an application made by him).

(2) *Edward Francis Sykes Examined On Oath:*—I am a member of the Legislative Assembly. I am the Manager of the Bundi Agricultural Syndicate. In the year 1922 I was the Superintending Engineer in the Development Department in charge of No. 1V Project. I continued to be in that place till November 1923. I resigned after that. I practised as a consulting Engineer, at Delhi. In 1925 I joined the Bundi Syndicate. When I was S. E. I was getting Rs. 2000. I know Harvey. He was S. E. No. 1 Project. When I was S. E. it was my duty to send indents to the Secretary to Government to order goods through the High Commissioner. These indents were prepared by my clerks in my office under my supervision. The official channel was to send the indents after they were prepared in my office direct to the Secretary to Government. (Shown M 2). This consolidated statement was

received in my office in due course from the office of S. E. No. 1. (Shown O). This is a U. O. R. from me to Harvey and underneath is his reply. I produce a U. O. R. dated 9-9-22 from me to the Secretary to Government, Development Department. (Put in as Ext. U). I produce the office copy of the U. O. R. Dated from 11-9-22 together with the indent addressed to the Secretary to Government, Development Department. (U. O. R. put in as Ext. V and indent put in as V 1). On the 5th January 23 I sent a U. O. R. to Secretary to Government Development Department. This is the office copy. (Put in as Ext. V). I produce a copy of the cable sent by the Secretary Government Development Department to Director Gen. Stores India Office to make the alterations suggested in the indent. (Put in as Ext. Y). The date of the cable is 8-1-23. The alteration however could not be made. (Shown P 1) The pencil note on it is in my handwriting and initialled and dated by me. (Shown M 2). The pencil writing "7/8" x 19' " is in my handwriting. The other pencil figures are all in my handwriting. I made these insertions with regard to 7/8" bars on account of the letter Ext. P. 1. A note to that effect is made on M 2 by Iyenger my head clerk. The indent I subsequently prepared included the 7/8" x 19' bars as appears from V 1.

Abdul Hamid Abdul Khader Examined on Oath :—In 1922 I was the Executive Engineer No. II division. I am out of employment just now. There was no work for me and my service was dispensed with in October last by the D. D. As Executive Engineer No. II I was in charge of the whole of the Worli Scheme. Harvey was my superior. He used to come to Worli twice and I went to his office twice. As a matter of fact we practically used to see each other almost every day as the work was going on rapidly. Harvey's office was in the old Customs House Yard. My stores were in Worli. (Shown Ext. D. E. & E 1). I received Ext. D and in compliance with that I sent E 1 with E. (Shown Ext. F & F 1). Ext. F 1 is the revised statement and it was sent with Ext. F. Column 9 shows the quantity of steel available in our stores. The minus quantity shows the urgent requirements by us. We asked to purchase these urgent requirements locally. Ordinarily if Harvey was not at the site I used to decide about the urgency of the requirements. Column 11 & 12 show the bars which were to be indented from England for completion of 28 chawls. The calculations for these bars which were to be ordered out from England were made in my office. (Shown Ext. I). The design for the Worli chawls was altered about the first half of the year 1922. I wrote Ext. I to Harvey. (Shown Ext. I 1). I forwarded Ext. I 1 with the covering letter Ext. I. I 1 includes 5/8" x 19' bars. I cannot say what these bars were for.

Q.—In your chawls designs did you use columns and beams.

Q.—Question objected to. P. C. Objection over-ruled.

A.—Yes.

I do not remember what kinds of bars were used for columns and beams but they can be seen from the drawings. Besides other sizes, bars of the size 5/8" x 19' were ordered. We cut out of 19 feet which size was economical for indenting, sizes between 14 & 15 feet for the use of columns and beams.

Q.—Was the economical size for indenting 5/8" bars 19 feet in length.

A.—Yes.

I understand Foundation Piles. Ext. I 1 does not contain any order of Bars for Foundation Piles. This was an omission. It was discovered but I know that when I went to Harvey's office it was discussed between Harvey and myself that these bars had been omitted and had to be included in the statement. It is a long time nearly 5 years ago so that it is difficult to remember exactly all that took place. When Harvey asked me to supply the omission I said that it was a simple item, only one item and that it could easily be supplied in that office itself. My object was to save time and then we discussed about the quantity, for I was not sure of the number of chawls for which the material was to be altered. As we had 40 more chawls in contemplation at Worli and similar number in other places, at Haine's Road, it was decided to get these bars for more Chawls than was actually required at Worli at the time. The Haine's Road chawls were also Development Chawls. Upto then there was no Executive Engineer. The scheme was not yet launched. It was only contemplated after that I don't remember anything more.

Q.—Was any calculation made at that interview.

Question objected to P. C. Objection over-ruled.

A.—We were discussing and calculations were made.

Q.—Was anything written on paper.

A.—I don't remember that.

I don't remember if anything was done to find out if anything was in stock or store we were doing all these things but I don't remember exactly.

(Shown Ext. Q). The writing in pencil on the back is in my handwriting. I have seen this before but I cannot make out any-

thing. I was shown this before in the Office of Little & Co. The figure 7/8" x 19' are in my handwriting. This paper was found in my office file. (To Court). I do not remember at what place I wrote out these figures on this paper.) (To Velinker). It is signed by Storekeeper and in the ordinary course it would be in my office in the storekeeper's file. In August 1922 my pay must be about 1300. I acted subsequently on 2 occasions as S. E. vice Harvey once for 6 months and on the second occasion for 4½ months. My pay was 1500 when my services were dispensed with.

4. PRABHASHANKAR VASUDEO PALNITKAR S. A. EXAMINED:—Prior to August 1920 I was employed in the P. W. D. as Sub-Overseer. I was an overseer there from 1911. In 1920 my services were lent to the Development Department. I was taken up as Supervisor. I was in the office of the S. E. Salsette. Later on I became Supervisor in the office of S. E. No. 1. Harvey became the Superintending Engineer No. 1 in 1921. As a Supervisor my duty was to check places and estimates in the office of the S. E. I had other technical work to do also. As a supervisor I was the head of the S. E.'s Office, for technical work. In 1922 the Development Department was proceeding with the building of the Worli and Naigam Chawls. It was part of my duty to prepare statement for indents for steel required for building purposes. On 10/2/22 Ext. D. was sent on to the executive engineers Nos. I & II. (Shown Ext. E. & E1). Ext. E is the forwarding letter concerning Ext. E1. It is from Hamid forwarding the revised statement F1, relating to Worli Chawls. (Shown G, G1, to G4). Ext. G is the letter from Executive Engineer No. 1 forwarding G1 to G4. They relate to the Naigam and DeLisle Road Chawls. (Shown Ext. H) Ext. H was sent from our office to Executive Engineer No. 1 to revise his statements. (Shown Exts. I & II). Ext. I is Hamid's letter, forwarding revised statement II. (Shown K & K1) Ext. K is a letter from Ex. E. No. 1 forwarding revised statement K1. This relates to the Naigam chawl. (Shown Ext. L & L1) Ext. L is letter from Ex. E. No. 1 forwarding statement L1 relating to DeLisle Road Chawls. (Shown M.) This is my draft of the consolidated statement of requirements of Executive Engineers Nos. I & II. It is in my handwriting. I can't say from Ext. M whether it contains any order for Foundation Piles. (Shown O & P1) without the original draft being before me I can't say by whom the original draft was made. When the consolidated statement was ready in the office Harvey called me and gave me a slip of paper on which certain quantity of 7/8" bars was written. I was asked to put that in the consolidated statement. The bars were to be sent to various places such as Worli, Naigam etc., and the statement was sent to Sykes. I put the quantity which was written on the

slip of paper and given to me, in that statement. That statement is not M or Ml. (Shown statement dated 18-8-22) This statement is prepared by me. It contains the item of 7/8" x 19' bars. This particular entry is in red ink. The rest of the items are in black ink. It is the office rule to put in additions in red ink. This statement was to be sent to S. E. IV. This is a statement of bars to be purchased locally and mentions the places where they were to be distributed. (Put in as Ext. Z1) Ext. P is the forwarding letter with regard to Ext. Z1. Ext P is dated 18/8/22. I put the 7/8" x 19' bars items in this statement Ext. Z1. The date of the preparation of the statement Ext. M is 3/8/22. The date of Ext. P1 is 8/8/22. It was on the 8th day of August that Sykes was written to make an addition of 30,000 bars and 50,000 bars. As this slip of paper was given to me by Harvey to make the addition I gave it back to Harvey with the statement Ext. L1. I think that writing on that slip of paper was in Hamid's handwriting. I know Hamid's handwriting.

Q.—Then why do you say I think it was in Hamid's handwriting.

A.—I will say then it is in Hamid's handwriting.

I am on leave at present. I went on leave from November 8th 1926. Upto 8th November I was in Development Department I am still on leave and I have not got orders for reversion yet. (Shown paper in pencil). It is in my handwriting. There is a note made by me at the bottom of the paper. (Put in as Ext. Z2). The date is 10/8/22. In Z2 the item of 30000 bars of 7/8" x 19' does not appear. I have therefore made the note on 10/8 below to show that this item was subsequently put in.

5. ROBERT DUNCAN BELL EXAMINED ON OATH :—
For about 3 months in the middle of 1924 I acted as Secretary to Government Development Department and also as Dy. Director. I joined the D. Department in the same capacity, in December 1924. I produce the file regarding the sale of surplus bars in 1925. In 1924 certain rates were settled for the sale of these bars. At that time there was very little demand for steel bars of British Standard specification at the prices we quoted. I don't think continental steel is made to any particular specification. As far as I know there is a lack of guarantee about the continental steel in regard to the steam it will stand. I know Hamid. In or about June 1925 I had a discussion with him in regard to the disposal of the surplus. The Housing programme had been suspended and so that caused the surplus. Hamid told me very few of the bars had been sold at the prices we fixed. I have met Caldwell. The bars were in his custody. I suggested to Hamid that he should invite

tenders for the whole or parts. Tenders were invited and received. The highest tender for the whole lot was Rs. 85 per ton and the highest for any quantity was Rs. 111-4-0 for a lot of tons of 6 different sizes. There were some sales of small lots during the time Hamid was in charge i.e. to say the time he saw me and the tenders were invited. I remember one Symoor Lynn put in an offer. He made an offer for purchase at Rs. 100 a ton excluding the 7/8" bars and subject to a commission of 2 per cent. I remember Trivedi made an offer. He and his brother both came and saw me at one time or another. One of the brokers G. B. Trivedi was an M. L. C. I never met Parakh. Hamid told me that Parakh had made a verbal offer of Rs. 100 per ton for the whole lot less 1½ per cent commission. (He must be broker as marked for commission). That offer was accepted by the Director Sir Lawless Hepper. It went to the financial advisor. It was finally accepted on 14-10-25. Hamid had to put the transaction through. I understand Parakh did not come forward to complete this transaction. The offer was not in writing. Hamid had to bring him to the office to put things through. He did not turn up. Harvey returned from leave a few days after. Harvey informed me on 2/10 that Parakh has not come to the Office by the date on which it had been arranged he should appear and that a firm called Manekchand Jivraj and Co., had in the meantime submitted an offer at Rs. 102/8/-net per ton for the whole lot. The offer was about Rs. 4 better than Parakh's offer. Sir L. Hepper also approved of it. Harvey came to me more or less for information. He did not know what the state of affairs was. I directed my clerk to prepare a minute accepting the offer. That was on 21st I produce the minute (Velinker tenders the whole file Marked Z/18. I remember the offer of Alliance and Co. It is in another file. (Shown Ext. 116) That is the letter. It was received by me on 21st October according to this endorsement. The letter was dealt by me and it was not referred to Harvey. It is an offer for bars 12 feet and 36 feet long and 1½ inches and one bar of 12 x 1½ The total quantity of surplus goods was 2400 tons.

CROSS EXAMINED BY NARIMAN:—I say that the programme was suspended not curtailed. I used the official word. I believe there was an order or resolution about suspension before I joined in 1924. There must be a record of it. Stock as it became surplus was disposed of.

*Erach Sorabji Marker Examined on Oath:—*Partner in the firm of Gagrut Marker & Co. I became a partner of G. M. & Co. since its starting about 12 or 13 years ago. We were sanitary Engineers and Contractors. I know Parcelle. I know B. C. C. I bought

Parcelle's share in the B. C. C. I bought a moiety of his profits in that Co. for 1,70,000. An agreement was drawn up between us. Craigie Blunt & Caroe were our Solicitors. I produce the agreement. I paid the amount by instalments. I paid Rs. 29250 on 19-1-23, 10,000 on 3-2-23, 10,000 about 1-3-23, 10,000 about 6-4-23, 10,000 about 7-5-23, 10,000 about 8-6 and 10,000 about 14-7; That left a balance of 10000. Of this 1000 was paid on 23-7; 3,000 on 5-10, 6,000 on 20-10-23. That made total of 99250/- I paid 750 to the Solicitors in payment of half their costs including the stamp which alone came to 1500. I was to insure the life of Parcelle. I got it insured with the Sun Life Assurance Co. of Canada. I received from Parcelle certain sums of money out of his share on the agreement.

He paid on	4-3-24	Rs. 78,188/12/3
" "	" 9-10-24	" 59,660/-
" "	" 8-12-24	" 47,721/-
" "	" 4-7-25	" 30,000/-

In addition to these sums we paid 23000 on 9/12/24 to the Sun Life Ass. Co. The payment was made by him on my behalf at my request. The total of these payments in 2,38,770/7/9. I received these payments by cheques on Lloyd's Bank. I made payments by cheques in the Central Bank. I went to England on 21/6/24 and returned on 21/9/24. I know Gaya & Co. We were their sub contractors. On my return large sums were due by them to us. They failed to pay the amount. I threatened to take legal steps and I stopped supplying fittings for some time till we were paid or secured. Gaya gave me an assignment of his bill. (Shown Ext. 128) This is the first of the assignment for 60000/-. It is dated 12-12-24. This other is the later assignment dated 29-5-25 for 25000/- When I got his 1st assignment from him the works were not completed. They were in progress. We had to supply further goods and so further sums became due and so we took this other assignment. There is no truth in the suggestion that these assignments were given in order to secure bribes for officers of the D. D. out of this Rs. 1980 was paid on 12-1-25 by the Department under these assignments. On 6-2-25 Rs. 14955 were paid. On 31-3-25 Rs. 6293 were paid. On 20-8-25 Rs. 36770 were paid. Total is 59999/- There is a balance of 25000 due to us by Gaya & Co. There is no truth in the suggestion that any portion of any of these amounts was paid to any officer of the D. D.

CHARGE.

I. H. P. Dastur, Esquire, Bar-at-Law, charge you K. F. Nariman as follows :—

That you on or about the 21st August 1926 at Bombay defamed Mr. Thomas Harvey, Superintending Engineer, No. 1 Project, Development Department by making or publishing to the Back Bay Enquiry Committee the imputations hereinafter set forth concerning the said Mr. T. Harvey by means of a writing and spoken words intending to harm or knowing or having reason to believe that such imputations would harm the reputation of the said Mr. T. Harvey to wit :—

That before the Back Bay Enquiry Committee amongst other statements you made the following statements :

1. "I may tell the Government quite frankly and openly that there are ugly rumours in the city and the whole of the Presidency that higher staff and officers have been receiving secret commissions from manufacturers and this is the reason why in this instance the Department has incurred a loss of 3 lacs of rupees. That is the reason why stores are indented in large quantities than are necessary and stores that are not required are also ordered out.

2. In one instance an Executive Engineer had prepared an indent to be forwarded to manufacturers at Home for the large quantity of mild steel bars for concrete piles for the reclamation work and the size mentioned in the original indent by the Executive Engineer was 5/8". This figure was subsequently altered after the indent was prepared, but before it was despatched, by the Superintending Engineer into 7/8". The quantity required was about 1,200 tons costing nearly three lacs of rupees. The indent thus altered was sent by the Superintending Engineer to the Home Firm and the bars arrived of the size and dimensions of 7/8" which were not required for the works. They were deposited in Matunga Surplus Depot and a fresh indent had to be sent with correct specifications and fresh consignment arrived and the amount of nearly 3 lacs of the first consignment was purely wasted. When a question was raised about it in the Council in the course of a debate the Development Director admitted it but stated that the said alteration was due to a trifling error. No effort was made to explain how such "trifling error" could have occurred particularly when the indent was originally correctly prepared by the Engineer and deliberately altered by the superior and no explanation was forthcoming.

3. Five-eighths bars were required but 5 was changed into 7 by the Superintending Engineer.

4. I do not agree that a mistake was made. It was not made in the original preparation of the indent but in a properly prepared indent, figures are altered subsequently.

5. I say it is intentional. From the circumstances I can say it was not a mistake.

6. These surplus stores were ordered in order that certain manufacturers might make some earning out of this order. As far as I can see there is no other explanation otherwise these stores would not have been ordered to be used as scrap iron.

7. The altered indent was sent to the Home Manufacturers by the Superintending Engineer.

8. The indent was altered by the Superintending Engineer.

9. *Question by Mr. Billimoria* :—Do you suggest any ulterior motive?

Answer :—Yes.

And you thereby committed an offence under Section 500 Indian Penal Code and within my cognizance.

And I hereby direct you to be tried by me on the said charge.

(Sd.) H. P. DASTUR,

Ag : Chief Presidency Magistrate, Bombay.

IMPORTANT DISCUSSIONS AND INTERESTING EXCHANGES BETWEEN THE ACCUSED AND THE COUNSEL FOR PROSECUTION DURING CROSS EXAMINATION.

After the examination-in-chief there followed a very lengthy and searching cross-examination and re-examination of the prosecution witnesses which lasted for about thirty-four days and almost all the important matter referring to the case is included in Mr. Nariman's written statement which appears bodily in part II of this volume.

Under the circumstances we omit the cross and re-examinations as the repetitions will be tiresome to our readers and besides it will make this book, very unwieldy.

However we will not omit from this book the interesting passages at arms and arguments between the prosecution counsel and Mr. Nariman which will show our readers what a great task it was for Mr. Nariman to face obstructions from the opponents single-handed, against very heavy odds.

The following are a few of the important arguments and hot exchanges a volley of retorts between the parties during the cross-examinations :—

I WANT NO LENIENCY.

When Mr. Nariman again referred the witness to his (Nariman's) written statement, Mr. Velinkar raised an objection saying that he could not understand what Mr. Nariman was trying to do.

The Magistrate said that he had told Mr. Nariman so many times that if (he) Mr. Nariman would say openly that his allegations did not refer to Mr. Harvey (if that was what he was trying to prove), then there would be an end of the matter.

Mr. Nariman said that he did not wish to make such a statement and he did not understand why the Court was so anxious to extract such an admission from him. He said that he would bring it out in his own way in due course.

Magistrate:—It was my mistake that I was lenient to you from the beginning. If I had only taken your statement in the beginning I would have known exactly what your defence was going to be.

I STAND ON MY RIGHTS.

Mr. Nariman:—I object to the word "lenient". I want no leniency from any court whatever. I only wish to stand on my own rights.

Magistrate:—I am glad to hear that from you.

"IN FIELDS YET--JUNGLES TO COME."

MR. NARIMAN REPLIES TO OBJECTIONS.

"GOVT. WITHHOLDING DOCUMENTS" SAYS DEFENDENT.

Lively Passages-at-arms in Court.

Mr. Harvey stated that the sanction of the Secretary of State was obtained for the order placed with Messrs Salebhoy Tyabji.

Mr. Nariman asked for the production of the document;

Mr. Walker for the Government stated that he had been instructed by one of the Secretaries to the Government to say that unless the permission of the Secretary was previously obtained, the document under reference could not be exhibited in court. He pointed out that he was seeking shelter under Section 123 of the Evidence Act.

In reply to a question by Mr. Nariman, Mr. Walker stated that the permission was being obtained.

Mr. Nariman drew the attention of the court to the attitude of the Government. It was the same Government who had sanc-

tioned prosecution and which again was withholding certain important documents which were very important to the defence.

The Magistrate said he had nothing to do with the attitude of the Government.

Resuming witness said that he had nothing to do with the accounts. Qualifying his statement witness stated he did not keep the accounts but he looked into them every year.

The Magistrate remarked that it was always the subordinate staff who prepared accounts and the heads of departments signed them. The Magistrate cited his own case and said that his clerks prepared statements, fines etc. received by his office and he merely signed it.

Mr. Nariman : But in that case your Worship would not disown the responsibility of the statement over your signature. And your Worship would not dictate a judgment to your clerk and when the High Court called for any explanation in the matter, your Worship would not throw the responsibility on the clerk ?

A SNUB TO MR. HARVEY.

The Magistrate said that any way the higher officers had to depend upon their subordinates and so Mr. Harvey had to. "Surely", said the Magistrate "you do not expect the officers to sit down and count two anna and four anna pieces."

Mr. Harvey : "Hear hear."

Mr. Nariman : What is this, Mr. Harvey ? Do you think you are in a theatre ? (Loud Laughter.)

Mr. Velinkar : Who is theatrical, Sir ? Is not Mr. Nariman in a theatrical mood ?

Mr. Nariman : Your client had no business to utter "Hear hear" when his Worship said something.

The Magistrate : He ought not to have said that.

Mr. Nariman : Was there any supplier of the name of M. M. Baksh ?

Mr. Harvey : I do not know.

Mr. Nariman : Do you know that he submitted a bill for Rs. 16,000.

Mr. Harvey : I do not

Mr. Nariman : Was there an assistant Engineer named Sohoni and a Supervisor named Joshi ?

Mr. Harvey : Yes.

Mr. Nariman : Do you know that they were dismissed ?

Mr. Harvey : Joshi was dismissed. I do not know about Sohoni but his services were terminated.

Mr. Nariman : Will you find out whether there was a bill from a supplier named M. M. Baksh for Rs. 16,000 ?

Mr. Velinkar objected to the question and inquired as to how it was relevant.

Mr. Nariman, after Mr. Harvey was asked to leave the court temporarily, explained that in 1923 a bogus bill for a sum of Rs. 16,000 was submitted to the Audit Office in the name of one M. M. Baksh. It was almost passed but suspecting something, the Audit Office made inquiries in the matter and found that the bill was submitted for the work which was already paid for to one Vali Mahomed Hassan. The fraud was detected and Joshi and Sohoni the two subordinate officers were dismissed. Mr. Nariman wanted to know whether either Mr. Harvey or Mr. Hamid through whose hands the bill must have passed detected the bogus nature of the bill or not.

Mr. Velinkar did not understand how the question was relevant at all. He requested the court to see that Mr. Nariman who was "roving round in the jungles" limited his cross-examination within the four corners of the Evidence Act.

Mr. Nariman : I want all the Departments under your client to go into the jungles.

Mr. Velinkar : As a matter of fact, Sir, Mr. Nariman has been allowed too much latitude in cross-examination.

Mr. Nariman : On the contrary my constant complaint is that I have not been allowed to ask only just and legitimate questions. I do not want, however, to be given special treatment and no better than would be given to Pandu Tukaram or the meanest man in the City.

The Magistrate remarked that he was in a very awkward position.

His Worship, ultimately overruled Mr. Velinkar's objection and allowed Mr. Nariman to ask Mr. Harvey the question he wanted to.

DOCUMENT AND LEDGER ACCOUNTS OF
CONTRACTORS MISSING.

Witness expressed ignorance even at the business of Messrs. Salebhoy Tyabjee and stated that he did not know whether the firm were dealers in mild steel bars and were shipchandlers.

Mr. Nariman :—What was the extent of the value of the order placed with that firm?

Mr. Harvey :—I don't know. I did not place the order.

Mr. Nariman :—You do not know what rates were settled?

Mr. Harvey :—No.

Continuing witness said that he knew that the firm was summoned to produce all the orders they had received from the Development Department and other records in connection with the transaction. He did not remember whether the solicitors of the firm expressed their inability to produce the documents called for. Witness knew that Messrs. Thomas Cook and Sons, Bankers of the firm were asked to produce their ledger account books for 1922-23 and that the clerk of the bank had stated in the Court that the particular account book wanted was given away by an accident.

[MR. HARVEY'S APOLOGY.]

In reply to a question by Mr. Nariman, witness said that he knew of Balkisondas having made a statement to the effect that he was unable to produce the account books.

Referring to the missing documents Mr. Nariman inquired of Mr. Harvey whether that was the first time when his (Harvey's) documents were missing. On Mr. Harvey's replying that it was so, Mr. Nariman inquired whether he had not missed any documents in a case in which the Development Department had taken possession of the plot of a factory belonging to one Unwala some years back.

Mr. Harvey stated that he had allowed Mr. Unwala the inspection of all documents but he "knowing a little like you" that the documents were missing insisted on the production of the same in court when the suit for costs of the removal of the factory came up for hearing.

Mr. Nariman strongly protested against the personal remark made by Mr. Harvey and asked the latter whether he was prepared to withdraw and deplore it or not. Mr. Harvey said that he deplored it.

Mr. Nariman drew the attention of the court to the fact that it was not the first occasion on which such an insinuation had been made. He wanted to know whether Mr. Harvey was prepared to apologise to the Court for his outburst.

The Magistrate asked Mr. Harvey to apologise.

Mr. Velinkar stated that his client had already deplored the statement.

Mr. Harvey at this stage apologised.

After asking him to be more careful in future, Mr. Nariman read out the correspondence between the Land Acquisition Office of the Development Department and Mr. Unwala, in which allegations of a very grave nature were made against Mr. Harvey whose affidavit was attested.

They were put in as exhibits.

“TRYING TO RUIN THEIR POLITICAL OPPONENT.”

MR. NARIMAN'S CHARGE AGAINST GOVERNMENT.

“GENERAL MEMBER TRUSTING WŪŪŪ OFFICEES TOO MUCH.”

Mr. Nariman: There was some difference of opinion between your Department and the Audit office about paying the claim submitted by the Ferro-Concrete Co.

The court inquired of Mr. Nariman as to why he was pursuing the same point over again.

As Mr. Nariman wanted to explain the point, Mr. Harvey was asked to leave the court temporarily.

Mr. Nariman said that he had invited the solicitor for the Crown to produce the protest letter of the Deputy Financial Advisor regarding the claim of the Ferro Concrete Co.; but the letter was not produced. He would not have referred to the correspondence with the Audit Department, had that letter been produced. What he was trying to do was to prove conclusively that the payment of compensation to the Ferro-Concrete Co. was practically presenting a purse to them from public funds. Under the conditions of the contract, the Company could not have claimed any compensation because it was clear to every one that the work of constructing the four chawls on the rocky plots could not be commenced before the rocks were blasted out and the blasting operation could not be completed for at least two years. In spite of that, the compensation was recommended, and bogus bills, put forward by the contractors, were sanctioned. Exorbitant and fantastic sums were sanctioned and paid to contractors.

"TRUSTING TOO MUCH."

Mr. Nariman referred to the instance of the Ferro-Concrete Co. who had charged Rs. 15,000 for a set of centerings for which the Department of Mr. Harvey himself was charging only two to three thousand rupees. This, said Mr. Nariman, was the result of the General Member's trusting his White officers too much.

Before Mr. Nariman could proceed, Counsel for the complainant was on his legs and he appealed to the Court to stop Mr. Nariman from talking irrelevant things.

The Magistrate, however, considered Mr. Nariman's argument relevant inasmuch as he was trying to prove his "bonafide" belief that Mr. Harvey had sanctioned an amount of compensation to which the contractors were not entitled and that he had passed exorbitant and bogus bills.

Mr. Velinker protested against the court allowing Mr. Nariman to continue.

The Magistrate considered Mr. Nariman's question relevant and recalled Mr. Harvey.

Mr. Nariman told the Court that the General Member was not prepared to investigate in the working of the Department by starting an independent inquiry with the help of the important material in his possession. He had always been clamouring for such an inquiry and if the General Member had instituted the inquiry, Mr. Nariman was sure that the present prosecution would not have been sanctioned.

Mr. Velinkar: You are making a scapegoat of the court, Mr. Nariman.

"THE SCAPEGOAT."

Mr. Nariman: Not I. It is you and the Government who are trying to make a scapegoat of the Court. In fact, the General Member had actually stated in the Legislative Council that Government would sanction an amount to the extent of Rs. five lakhs for the prosecution. It is evident that the Government are trying to ruin their political opponent.

Mr. Nariman: (To Mr. Harvey): Have you got the supplementary claim of the Ferro-Concrete Co.?

Mr. Harvey: Yes.

Mr. Nariman: One of the claims was for centerings?

Mr. Harvey: Yes.

Mr. Nariman: The Company claimed Rs. 15,000 for a set of centerings?

Mr. Harvey: They claimed Rs. 20,000 and it included centerings. For flooring, columns, moulds etc.. For outer wallings and blocks.

Mr. Nariman: And you recommended Rs. 15,000?

Mr. Harvey: Yes.

Mr. Nariman: And what did the Deputy Financial Advisor remark on your recommendation?

Mr. Walker, Solicitor for the Crown, objected to the question on the ground that it referred to the official records which were not published.

Mr. Velinkar also objected.

"ATTEMPT TO HIDE UGLY FACTS."

Mr. Nariman said that it was another attempt to hide the ugly facts of the departments, and he contended that it was only for the official in whose custody the document might be to object to its production or to any question pertaining to it. He requested the Court to note on record the objection.

Mr. Walker, Solicitor for the Crown, said that no permission for any documents had been asked for.

The Magistrate upheld the objection.

When Mr. Nariman asked another question, Mr. Walker again objected.

Mr. Nariman, thereupon, said that the public prosecutor could not use his discretion, in the matter without definite instructions from Government.

Mr. Walker said that Mr. Nariman could even apply for permission for the production of the document at that time.

Mr. Nariman said that he was not prepared to do so particularly because the Government had more than once turned down his request. He did not want to entreat the Government whose attitude, he said, he knew very well.

Mr. Harvey, who then resumed his evidence said that the construction of the chawls at Worli and DeLisle Road were the same. The centerings at Worli and DeLisle Road were of one set for flooring, etc., and for different purposes different sets of centerings were required.

SELLING OF CENTERINGS.

Mr. Nariman : So Ferrow Co.'s claim was for one set of centerings ?

Mr. Harvey : No.

Mr. Nariman : You sold twelve centerings to Mr. Gaya for Rs. 37,500 ?

Mr. Harvey : Yes.

Mr. Nariman : Did you sell a set of floor centerings to Gammon & Co. ?

Mr. Harvey : Yes.

Mr. Nariman : For about Rs. 4,000

Mr. Harvey : For something like that.

Mr. Nariman : You recommended Rs. 8,000 for cement blocks.

Mr. Harvey : I do not remember.

On Mr. Nariman's saying that he (Mr. Harvey) sanctioned Rs. 8000 for cement blocks which would ordinarily not cost Rs. 1,000. Mr. Harvey said that he would look into the files.

Mr. Harvey then said that he recommended the claim on May 30, 1925 and it was paid in March, 1926.

Mr. Nariman :—You allowed them to return the material as well as paid the compensation ?

Mr. Harvey :—No. They had made sufficient centerings for 16 chawls, so the compensation was for general loss sustained by them.

Continuing witness said that the curtailment in the programme was notified to the contractors five or six months after the decision.

Mr. Nariman :—But did you get any centerings?

Mr. Harvey :—No.

Mr. Velinkar inquired how the question was relevant.

Mr. Nariman said that it was certainly surprising to find that the department did not get anything although they paid a lot of compensation.

Mr. Nariman :—And you paid Rs. 1,00,000 for supposed additions ?

Mr. Harvey was not able to say anything.

The Magistrate asked Mr. Nariman to explain his question and Mr. Harvey withdrew from the Court.

" A BOGUS CLAIM."

Mr. Nariman explaining said that for additions which were never made, a bogus claim of Rs. 1,00,000 was made and an assistant of Mr. Harvey had made a report against it saying that it was false and that no work was actually done. Mr. Harvey had, however, recommended the claim of Rs. 60,000 later on, in spite of his being told that no work was done at all.

Mr. Harvey was at this stage recalled.

Mr. Nariman :—Rajadyaksha, your assistant reported in cases of disputes?

Mr. Harvey :—Yes.

Mr. Nariman :—And he reported against this particular claim of Rs. 1,00,000?

Mr. Harvey :—He did but his report was absolutely false.

Mr. Nariman :—So every report made against the claim which you might choose to support is false and incorrect?

Mr. Harvey :—I do not say so.

Mr. Nariman :—The Assistant Engineer reduced the claim from Rs. 1,00,000 to Rs. 1,000?

Mr. Harvey :—He reduced it. I do not know to what amount.

Mr. Nariman :—And he said that some of the claims were bogus?

Mr. Harvey did not reply.

Next, when Mr. Nariman asked for the production of certain documents Mr. Harvey said that the records were mixed up and he did not know when and how they were mixed up.

" HONEST MEN OF DELHI "

Mr. Nariman :—Do you know Mr. Kala Sing?

Mr. Harvey :—Yes.

Mr. Nariman :—He was from Delhi?

Mr. Harvey :—I don't know. I know that men from Delhi are very honest and I would employ them if I have to.

Mr. Nariman :—I hope you won't have to.

TIFLING THE DEFENCE'**MR. NARIMAN'S COMPLAINT TO THE COURT.**

" I AM PREPARED TO TAKE THE CONSEQUENCE."

" ANOTHER DELHI MAN."

Mr. Nariman : Now, Mr. Harvey, have you heard the name of ' Uttam Singh' ?

Mr. Harvey : I don't remember the name.

Mr. Nariman : Another Delhi man, who was one of your Assistant Engineers ?

Mr. Harvey : I can't recollect the name.

Mr. Nariman : You may consult your clerk, if you like.

At this stage, witness was trying to consult his clerk in the court, when he was prevented from doing so by Mr. Velinker. The latter objected, saying that witness could not consult anybody.

Mr. Nariman : Counsel must know that witness is before the Court.

Mr. Velinker : I object.

Mr. Nariman : Very well, let Counsel object. Is there any means of reviving your memory by consulting your clerk, or " pattawalla " or anybody else ?

Mr. Nariman : Do you know, Mr. Harvey, that Balkishandas used to supply to some officers of the Department including Sir Lawless Hepper, the Director, daily bazaars (fruits, vegetable, fish, etc.). (Laughter.)

Mr. Velinker : I object. I don't object, because the bazaars were bad (Laughter.)

Mr. Nariman : It is too late for you to object to that because the bazaars have been already supplied.

Mr. Velinker : How is this question relevant ?

Court : How is it relevant, Mr. Nariman ?

Mr. Nariman : Well, I put it to you whether you were one of the lucky officers to receive the bazaars daily from Balkishandas ?

" I did not receive anything."

Mr. Harvey : I did not receive anything from anybody. I don't know about other officers. I received an orange occasionally.

Mr. Nariman : Never mind the orange.

" SUPPLY OF MOTOR CARS."

Mr. Nariman : Do you know whether Balkisondas Seth provided motor cars for some of the officers ?

Mr. Velinkar objected to the question.

The Court inquired how the question was relevant.

Mr. Nariman : In the same way as the Bazar supplies. Secret Commission may not be paid only in money. It may be paid also in several other ways.

The Magistrate said that if Mr. Nariman said that Mr. Harvey also was supplied with motor cars the question was relevant.

Mr. Nariman : Do you know if Balkisondas supplied motor cars to Mr. Sykes ?

Mr. Velinkar : I object.

The question was, however allowed by the Court.

Mr. Harvey : I know nothing about it. I never knew the man Balkisondas before the Back Bay Committee.

Mr. Nariman : Did you not hear of Balfour Company either ?

Mr. Harvey : No. . . .

Mr. Velinkar at this stage inquired whether Mr. Nariman had meant free Bazar supplies by saying that Bazar things were supplied.

Mr. Nariman : Of course ; otherwise where is the fun of the Bazar supplies ?

Mr. Velinkar : I wanted it to be made clear ; because I know a dear friend of mine supplies motor cars but charges for it.

Mr. Nariman : Perhaps he is not as generous as Balkisondas.

Mr. Nariman : Do you know one Mr. Owen ?

Mr. Harvey : Yes.

Mr. Nariman : Is he related to you ?

Mr. Harvey : No : he is only a friend.

Mr. Nariman : What was Mr. Owen ?

Mr. Harvey : He was an engineer to one of our contractors.

Mr. Nariman : Did you ever put up with Mr. Owen ?

Mr. Harvey : Yes, for a week-end in Bombay.

Mr. Nariman : Had you motor trips together.

Mr. Harvey : Yes ; occasionally.

SANITARY REQUIREMENTS FOR CHAWLS.

Mr. Nariman :—You require sanitary requisites for your chawls?.....

Mr. Harvey :—Yes. According to the Municipal requirements...

Mr. Nariman at this stage read section 350 of the P. W. D. code which required that all articles required for the works should be purchased from local suppliers if available and inquired of Mr. Harvey whether he had adhered to that section.

Mr. Harvey :—I did adhere.

Mr. Nariman :—So you always ordered out locally the articles which were satisfactory?

Mr. Harvey :—I did.

Although Mr. Harvey replied to the question, Mr. Velinkar objected to it.

The Magistrate asked Mr. Harvey to go out of Court and Mr. Nariman was asked to explain the relevancy of his question.

APPEAL TO COURT.

Mr. Nariman said that he was trying to prove that Mr. Harvey had ordered out unnecessary stores inasmuch as he had discarded the locally made requisites which were cheaper and were approved of by the Municipality and had placed orders with Gannon Dunkerley and Co., for Adams patent simply to benefit the Company and his friend Mr. Owen.

Coming to the numerous and frequent objections raised by the prosecution in the course of his cross-examination of the complainant, Mr. Nariman said: I appeal to the Court that the point of view of the Court should not be the point of view of the prosecution which, it is evident, is bent upon shielding the department, by hook or by crook, and to save the prestige of the Government. I can understand the attitude of the prosecution, whose only aim is to get the conviction and to whitewash the whole affair and I was quite prepared for it, but I did

not expect and was not prepared for a similar attitude from the Court.

The Magistrate: So do you suggest that the Court is obstructing the defence?

Mr. Nariman: I don't, but my appeal to the Court is that the consideration of justice alone and nothing else—neither the prestige of a local Government nor of shielding the department should weigh with the Court. Now, Sir, I have never heard of a case of defamation in which the accused person is not allowed to cross-examine the complainant on the question of his reputation and his character and my learned friend the prosecution counsel, who is considered the foremost counsel for criminal cases, will bear me out when I say this. The one main issue on which I am now concentrating my question is the character of the complainant and I am prepared to prove that this complainant had nothing to lose by the allegations made against by me.

Apart from the relevancy of the question, Sir, the Court has, to look to the state of my mind when I repeatedly made the allegations and refused to withdraw them. I am prepared to take the consequences of the attitude taken up by me and so far as the consequences are concerned, I do not want any mercy from anybody. This may be considered while the judgment in the case may be delivered, but I do certainly want to see that at this stage the defence is not stifled with, by rulings which would prevent him from bringing forth evidence which would conclusively prove that the character of the complainant in his official capacity is such as is not at all harmed by the charges I have levelled against him. I am concerned with the reputation of the department and the shady transactions in which it entered and if I am not allowed to adduce evidence regarding the transactions other than those circumscribed by the prosecution i. e., the mild steel bars, it would certainly amount to stifling the defence. I therefore appeal to the Court once again to look at the objection not from the point of view of the prosecution but to allow me as an accused person to cross-examine the complainant on all issues bearing near or remote relevance.

Mr. Velinkar, at this stage, referred to section 146 of the evidence Act and said that if they were to go by the law, irrelevant questions could not be allowed. They had to stick to the charges laid out against Mr. Nariman and not to revel into jungles in search of mare's nests and running after wild cats schemes as Mr. Nariman would have them to do.

RULED OUT

The Magistrate agreed with Mr. Velinkar and ruled out Mr. Nariman's question.

Mr. Nariman requested the Court to give him time to approach the High Court regarding this ruling because he said the subsequent cross examination would be on the line of the question that was ruled out and in his opinion it was no use going on putting questions and see that they were ruled out, thus wasting the time of the Court.

The Magistrate was prepared to adjourn the case to allow time to Mr. Nariman.

Mr. Velinkar, however, requested the Court to proceed with the case and to allow Mr. Nariman, to put the questions he wanted to put. If any of them was objectionable, the Court might rule it out, he said.

The Magistrate agreed and Mr. Harvey was recalled.

Mr. Nariman : You did not know what was the Municipal standard for sanitary requisites ?

Mr. Harvey : No.

Mr. Nariman : Do you know that they approve of and encourage local supplies for the last 60 years.

Mr. Harvey : I am very highly surprised. The local supplies are very much inferior and I should never have it again.

Mr. Nariman : If you are here at all ! So you charge the Municipality with passing inefficient and inferior materials ?

Mr. Harvey : I do.

Mr. Nariman : Would you be surprised to learn that the same articles are used in the most busy and crowded streets of the city, the Government House and the most aristocratic bungalows ?

Mr. Harvey : Very much.

Mr. Nariman : Do you know that the P. W. D. uses the same for their chawls ?

Mr. Harvey : No ; I don't.

Mr. Nariman : And the Port Trust also ?

Mr. Harvey : It may be. It all depends upon the articles.

Mr. Nariman : So you mean that some of the articles are good and some are bad ?

Mr. Harvey : I think so.

Mr. Nariman : So the articles used by Port Trust, Municipality etc., were good and only your small supply was bad ?

Mr. Harvey : My supply was certainly bad.

MR. NARIMAN ON HIS DEFENCE.

"MY ALLEGATIONS HAVE BEEN FULLY PROVED."

ALLEGED COMPLICITY OF OFFICIALS WITH
CONTRACTORS.

MILD STEEL BARS INDENT "NOT A BONA-FIDE MISTAKE."

A Voluminous Written Statement.



When Mr. Nariman cross-examined Mr. Gaikwad, a clerk in the Audit Office, who produced certain documents on behalf of the prosecution the witness gave a uniform answer that "he did not know" to many a questions asked by Mr. Nariman. Witness produced the final bill of the Ferro Concrete Construction Co., but when asked to produce the specification attached to it he said he did not know where it was.

Mr. Nariman called upon the prosecution to produce the specification.

Mr. Velinker replied that there was no such document in existence. If Mr. Nariman stated precisely what he required he would produce it.

"DELIBERATELY SUPPRESSING DOCUMENT."

Mr. Nariman submitted to the Court that he had summoned the Audit Officer himself to produce those documents, but he was not present in the Court. He alleged that the prosecution was deliberately suppressing that document as they knew fully well that its production would be detrimental to their interests.

Mr. Nariman then explained why he particularly wanted the document. The Ferro Concrete Co. he said, were given a contract for painting windows, etc. at Rs. 4 per 100 square feet. But in the final bill the rate charged by them was Rs. 4 per square foot which made a difference of nearly 14 or 15 thousand in the final bill. He alleged that was the reason why the prosecution was reluctant to produce the document. Mr. Nariman therefore insisted on the Audit Officer producing the document.

The Magistrate ruled that the document was quite relevant and requested Mr. Nariman to make a written application when the Court would direct the Audit Officer to produce all the bills of the F. C. Co.

Mr. VELINKER EXPLAINS.

Mr. Velinker got up on his legs and said that he was right in maintaining that there was no specification or measurements attached to the final bill of F. C. C. produced in the Court. There was however a specification attached to the pen-ultimate bill which was prepared as a final bill, but subsequently treated as a running bill and a fresh one made later. He produced the pen-ultimate bill and the specification attached to it and the whole went in as an exhibit.

"FRAUDS ON DEPARTMENT."

Mr. Nariman then called for another document from the witness.

Mr. Velinkar objected and said that Mr. Nariman was putting in all sorts of 'rubbish' documents which were quite irrelevant to the case.

The Magistrate assured Mr. Velinker that only relevant documents would go in as exhibits.

Mr. Nariman explained the relevancy of the document called for by him said that they would go a long way to show that the F. C. C. were being paid by Mr. Kalasingh about Rs. 40,000 in excess every month. This, he alleged, was done by passing all sorts of wrong measurements and rates. Further, Mr. Nariman submitted, Mr. Kalasingh and Mr. Ibrahim of the F. C. C. were working hand in hand. Mr. Colabewala was asked to make an enquiry into this and he deputed Rajadhyaksha to take proper measurements but he was threatened with violence by the other party. The whole matter was brought to the notice of Mr. Harvey but he absolutely refused to take any action though the frauds on the Department were quite transparent and might have been the subject for a prosecution. In spite of these frauds Mr. Nariman contended, the F. C. C. were allowed to continue the work instead of being dismissed. Mr. Nariman submitted the documents called for by him would disclose the attitude taken by Mr. Harvey in that matter.

OBJECTION OVERRULED.

The magistrate overruled Mr. Velinker's objection and allowed Mr. Nariman to put in the documents.

Here Mr. Velinker closed his prosecution case.

Mr. Nariman was then asked to enter upon his defence.

DEFENCE.

The Magistrate:—Have you any objection to answer any questions put by me ?

Mr. Nariman:—Absolutely not. I am quite prepared to answer any questions outside my statement. I have explained everything in my written statement.

STATEMENT OF THE ACCUSED.

Case No. 96/S of the Criminal Register for 1927.

I state as follows—

My name is Kharsedji.

My father's name is Framji Nariman.

My age is about 40 years.

I am by caste Zoroastrian.

My occupation is Legal Practitioner.

I am an inhabitant of Bombay.

Magistrate: What do you wish to say with reference to the evidence given and recorded against you ?

Nariman: I have no objection to answer any questions put to me by the court of matters not contained in my written statement. In order to enable the court to understand my defence I have fully set out my case in my written statement.

I made the statement which forms the subject matter of the first charge against me before the Back Bay Inquiry Committee under circumstances set out by me in my written statement.

Q:—Did you mean Harvey as one of the Higher staff and officers ?

A:—So far as my statement before the Back Bay Inquiry Committee as well as my statement before the council is concerned I had no particular officer in view. At the time I made my statement before the Back Bay Inquiry Committee I did not know that Harvey was concerned with this particular transaction and my object in making statement before the committee was to enable the committee to find out the person concerned as I made it clear in my evidence. I have dealt with this point very clearly in my written statement.

I made the statement which forms the subject matter of the 2nd charge under the circumstances fully set out in my written statement. At the time when I made the statement, I did not know that Harvey was the Superintending Engineer who altered the indent after it was prepared but before it was despatched.

The rest of the statements which form the subject matter of charges three to nine were made by me before the Committee in answer to questions put to me by the members of the Committee.

Q:—Do you suggest that 5 in the figure 5/8 was changed into 7 by the Superintending Engineer.

A:—I suggested it then.

Q:—Do you suggest it now?

A:—I now state that an addition was made by the Superintending Engineer by means of Ext. P/1.

I suggest that it was not a mistake but an intentional alteration. I do suggest that surplus stores were ordered in order that certain manufacturers might make some earning out of this order. I now suggest that the surplus stores were ordered for the benefit of Local Suppliers as well as Home Manufacturers. I do not wish to say anything else except what is set out by me in my written statement which I produce.

Q:—Do you wish to add anything?

A:—I have explained this in my statement on pages 246 and onwards.

Sd/—K. F. NARIMAN.

I certify that this examination was taken in my presence and hearing and that it contains a full and true account of the statement made by the accused.

Sd/—H. P. DASTUR,

Ag: Chief Presidency Magistrate,
Bombay.

Bombay 10/10/27.

AN EXTRAORDINARY DOCUMENT.

Mr. Nariman then submitted his written statement which was a voluminous one running to about 248 foolscap typewritten pages.

On seeing the volume of the document Mr. Velinker exclaimed: "What an extra-ordinary document! Are you going to admit it Your Worship?"

Mr. Nariman : Why should the learned Counsel fight shy of a written statement ?

Mr. Velinker : I submit that I want a copy before me so that while it is being read in the court, if there are any scandalous allegations I might ask the Court to expunge them and thus prevent their publication.

Mr. Nariman : There are bound to be allegations in a case of defamation like this, but your Worship has only to see whether they are relevant to the case or not. If they are relevant, then I submit they must be allowed to remain.

Mr. Nariman then began reading the statement in the Court.

IMPORTANT PROSECUTION EXHIBITS.

Now we shall print below certain important Exhibits, for the information of our readers, which, Mr. Nariman caused the Prosecution side to produce in Court, after great difficulties, in order to prove his allegations.

These exhibits are Dispatches, notes or Memorandums etc., from higher authorities, for the information of officers of the Department, which, to say the least, are not complimentary to these officers.

We have selected a few typical instances, as in this limited space it will not be possible to reproduce all of them.

—:o:—

Ex. 87.

INDIA OFFICE DESPATCH.

Purchase of Steel Bars for the Bombay Housing Scheme.

INDIA OFFICE,

15th March 1923.

SIR,

I have considered in Council the despatch of your Excellency's Government No. 2 (D. D.) dated 9-12-22 requesting my approval of your action in accepting the local tender for the supply of re-inforcing steel bars of European manufacture required in connection with the Bombay Housing Scheme.

2. I have ascertained that the High Commissioner for India could have supplied these stores promptly at a price considerably less than that paid. In the absence of details of the sizes of the bars and the proportion of small to large material the exact price cannot be calculated, but it is estimated that including freight and departmental charges the average rate would not have exceeded £.10-7-0 per ton against Rs. 206/—the price paid in India was Rs. 215. The saving would have been substantial had it been possible to place the order in England.

3. These stores had in any case to be obtained from outside India and although it is represented that the order was placed locally for reasons of urgency, it seems doubtful, in view of the fact that the materials could have been purchased by the High Commissioner and despatched promptly; whether any delay would have been involved had this course been followed. Your Excellency's Government, however, would agree that even if in order to avoid delay local purchase was necessary, a telegraphic reference to the High Commissioner would have been useful, as it might have enabled you to place the order locally on more advantageous terms.

4. I do not in the present case withhold sanction but I request that should it become necessary in similar circumstances to ask my sanction, I may be furnished with a clear explanation of the necessity of local purchase. I suggest also for consideration of your Excellency's Government that in all cases, even though for reasons of urgency, local purchase is unavoidable a telegraphic reference to the High Commissioner regarding price might usefully be made.

—:O:—

Ex. 104.

Purchase Materials required by
the Directorate.

GOVERNMENT OF BOMBAY.

Development Department Circular Memo No. S. B. 1923.

BOMBAY CASTLE, 7th December 1923.

CIRCULAR MEMORANDUM.

Officers under this Department are requested to note that materials which are not actually required for any sanctioned

works should not be purchased, in anticipation of future requirements.

By order of the Governor in Council,

(Sd.) H. C. SMITH,

Deputy Secretary to Government.

—:o:—

Besides, exhibit 165 is a file produced in Court which contains correspondence between the officers of the Department with endorsements, notes etc., which will throw a flood of light on the internal affairs and administration of this pet Department of the Government of Bombay.

(1) Letter dated 10th October 1922 from Audit Officer B. D. D. Schemes to S. E. IV (Mr. Sykes).

"Please, see bills submitted by the Executive Engineer, Mechanical District, The cost of tyres supplied by Dunlop Rubber Company is far below that supplied by Messrs. Vora & Co., as shown below :—

Dunlop Rubber Company's rates :—

	Size No.	Amount.
(a) Dunlop 2 solid tyres	... 160 × 850	= Rs. 450
(b) do do do	... 160 × 720	= Rs. 490/10

Vora & Company's rates :—

(a) Dunlop 2 solid tyres	... 160 × 850	... Rs. 665/13/7
(b) " " "	... 160 × 720	... Rs. 566/3/0

Again the latter Company has allowed discount of 20% in one case and 15% only in the other case. On the other hand rate of discount granted by the Dunlop Rubber Company is 25%. I shall be obliged if you will kindly look into the matter and let me know the result, for the big difference in the rates."

(2) A remark in a letter dated 11th November 1922 from Deputy Finance Advisor to Secretary, Development Department.

"No inquiries made from Dunlop Company though they had stock

(3) Note from Finance Department.

"The papers referred to in para 2 in S. E. IV's note have been submitted to the B. Branch Secretary in regard to the circular proposed to be issued in connection with local purchases of articles of European Manufacturers. Papers have been referred to the S. E. IV, who has been twice reminded to return them."

(4) U. O. R. dated 25th November 1922 from S. E. IV says :

"After reading this correspondence I cannot see what further information Audit Officer wants. Case proposed to be perfectly clear and straightforward. Please see correspondence of 24th November 1922 on which one can naturally speculate the result is pure waste of time. I therefore suggest...ask to quote authority to challenge this payment."

Sd. S. E. IV.

(5) Audit Officer's note of 6-2-23.

"The papers are sent herewith, with the remarks that S. E.'s explanation is not satisfactory and it does not explain the point at issue, but as S. E. has promised to send the indent to the High Commissioner for India, for his future requirements, it is for consideration whether the matter should now be dropped and the papers filed after a U. O. R. to the Deputy Financial Advisor."

(6) Deputy Secretary D. D.'s note dated 12-3-23.

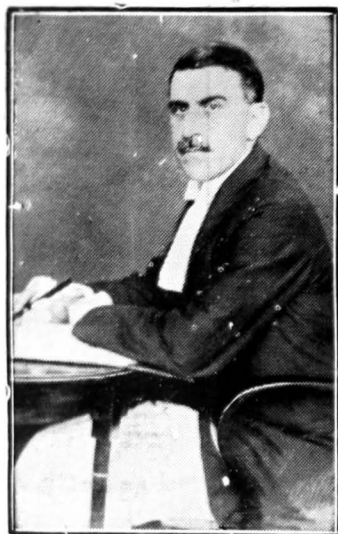
"The S. E. IV is requested to deal in future direct with manufacturing firms rather than with sub-agents."

(7) U. O. R. from S. E. IV (Sykes) to A. O.

"You have quoted no authority for your novel doctrine. I am therefore of opinion that my requirements need no sanction from H. C. and unless you are able to quote for your demand, I do not propose to apply for such sanction."

S. M. L. Been, Audit Officer's endorsement on the letter:—

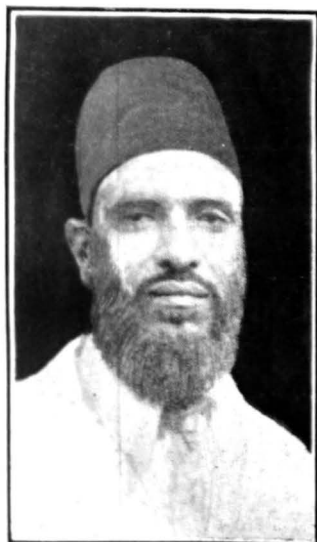
"As the position is becoming intolerable I would respectfully request the Government will kindly take some action."



Mr. H. P. H. Dastur Presidency
Magistrate, Third Court.



Mr. S. G. Venlinker Bar-at-law.

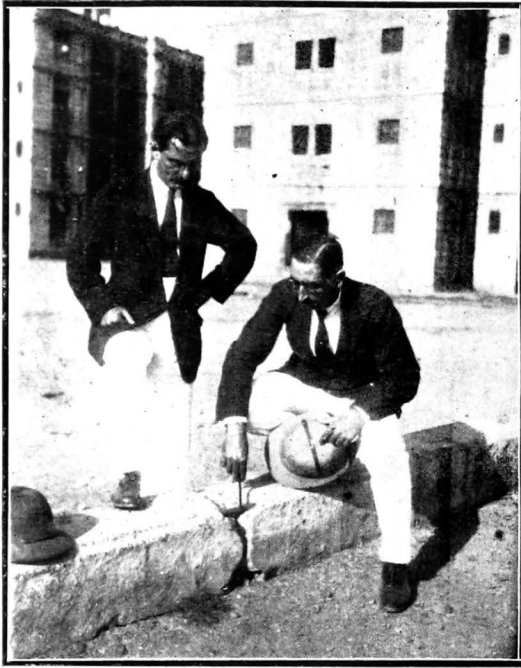


Mr. Abdul Hamid, Executive
Engineer, Development
Housing District.

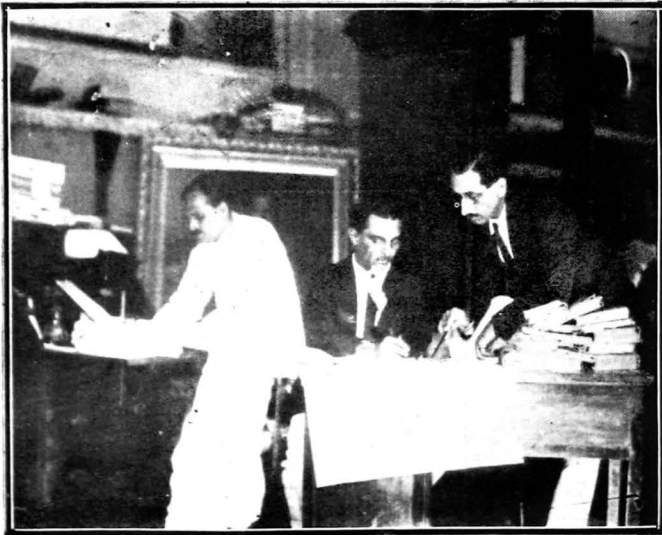


Mr. Caldwell Executive Engineer,
Materials District.

5/8" or 7/8" Bar?



Pile Inspection on Site,



Mr. Nariman at study.

PART II.

Written statement of Mr. K. F. Nariman.

(Nariman's activities in public affairs) chiefly B. D. D.

I, Khurshed F. Nariman, accused in the above case, state as follows:—

I am a graduate of Arts and Law, practising as a pleader in Bombay. I am an elected member of the Bombay Corporation, Improvement Trust Committee, and representing Bombay City South in the Legislative Council of the Government of Bombay.

Since several years past, practically since the initiation of the Development Directorate, I was one of its strong critics, criticising the scheme as extravagant and wasteful, and likely to result in enormous loss to the public which burden would ultimately have to be borne by the rate payers, not only of the city but of the whole presidency.

Even before I was elected as a Member of the Legislative Council, Bombay City South, I generally criticised this subject whenever it came before the Corporation or any other public body and made contributions in the Press, under the heading of Development Scandals, wherein I severely criticised the administration of the department, including the purchase of stores, giving of contracts, &c. To some of these criticisms Government at times replied through the Press.

Thereafter in 1923, I was elected a Member from the Bombay City South. I made Development Directorate a special subject, and through further opportunities afforded to me in the Council through the records, such as Financial Budgets, Directorate Reports and other documents, I closely scrutinised the whole administration of the Directorate, and criticised it both in and out of Council. I particularly considered it my duty, as representing the interests of the rate payers of the City, because this scheme had been started within the constituency I represented, and this enormous expenditure was to be incurred in and for the City of Bombay. I was also particularly interested, as a Member of the Corporation in the Housing Scheme, because all the chawls that were to be constructed by the Development Directorate were under the particular provision

of the Municipal Act, and were, after certain period to be transferred to the Bombay Municipality with enormous liabilities. Therefore, ultimately the burden was to fall on the rate payers of Bombay. Thus, as I considered it to be a matter of great public importance, from 1921, I devoted considerable time and attention to this subject, and shortly after my joining the Council, I began to make every effort to abolish the Development Directorate, because the Council had no financial control over its administration—it was made a reserve subject—though under the present constitution ordinarily its activities particularly of the Housing Scheme, should have come under the P. W. D. which is a transferred subject and under the financial control of the Legislative Council. I contended from the very start that as a result of this removal of financial control there was a great deal of laxity and irregularity in the administration, resulting in enormous waste of public funds.

Hence, my first effort was to abolish this special department, namely the Development Directorate which was created by special legislation and to have its activities transferred to the P. W. D. so that ultimately at least in financial matters, the expenditure on it could not be incurred without the sanction of the Council. Hence, my first resolution on the subject was to abolish the Development Directorate as a special reserve department and to transfer its activities to the P. W. D. Unfortunately, under the rules of the Council procedure, this resolution was not ballotted and hence I could not get an opportunity to move it. I may be permitted to state that about four years after, the Mears' Committee, that was appointed, as a result of similar proposal from various representative bodies and individuals and witnesses, has made similar recommendations, namely to abolish the special department and to transfer its activities to the P. W. D.

From the very beginning, I also put various questions regarding the details about the administration of the Development Directorate including the method of purchase of stores, giving of tenders, rates and other matters of detail, and tried to elicit as much information from the Government as was possible, but Government was very evasive and non-committal in supplying the required information. As it was known that I was taking particular interest in this department I received various information from various sources, some of which were from the circumstances I considered to be reliable and authentic, and after confirming this information by independent inquiries, I tried to elicit an explanation with regard to these matters from the Government, but I always found the department to be very cautious and very evasive, never giving direct information to the point. Ultimately, in October 1924, after I had collected some information and materials and believing in public interest that an

investigation into the affairs of the department was necessary and may result in saving of enormous waste of public funds—at least for the future—as still several crores of rupees were to be spent on these schemes, and as I failed in getting my resolution about the abolishing of the Directorate to be ballotted, I succeeded in getting a resolution moved in the Council.

Before this, I may briefly state, the information obtained in connection with the activities of the Development Directorate. As the charges against me are particularly with regard to the purchase of stores, I will here confine myself with regard to the information I had received on that subject only. The information that I had received and had from independent enquiries got confirmed, was that with regard to the purchase of stores, that usually stores of all kinds were ordered far in excess of the actual requirements, with the result that large amount of public funds were wasted and very often with regard to the order the full quantity ordered was not supplied by several dealers, but, sometimes only 50 per cent of the actual quantity ordered was supplied, and that there was a sort of arrangement between the officers responsible for placing these orders for the supplies, and in pursuance of that understanding these excessive orders were placed. I will only, for the present, confine myself to the Housing District, though the information was also with regard to the Reclamation Scheme. Hence in order to start enquiries, I managed, through the records that were supplied to the members of the Council, and after consulting some independent friends on technical points, to find out various requirements for chawl construction. I had first got from these records the actual programme for construction of chawls for various years and particularly for the first year. i. e., 1921-22. I also from enquiries ascertained the actual lay out plans for chawl construction for the first year and the plots of land available for that construction and the actual number of chawls ultimately decided to be constructed for the year. Having gathered that information, I then kept a watchful eye on various different materials for that year that were ordered out for that programme, and comparing the quantity actually required for the programme chalked out for that year, i. e. 1921. I found that the materials ordered were far in excess of the requirements. Not only with regard to mild steel bars but with regard to all other materials, such as cement, etc. I found that other irregularities, i. e., that although under the P. W. D. rules materials that were not manufactured in India were to be ordered out ordinarily through the High Commissioner in England, still I found that a very large order of 2000 tons of mild steel bars was placed with Geo. Service & Co. when the actual requirements for that year was about 400 to 500 tons according to the programme and on further scrutinising the indent placed with Geo. Service for

the first year with the technical help given by Engineer friends I was further able to ascertain that the order was most erratic—that various diameters of bars were ordered that would suffice for different number of chawls, that the bars were not uniformly ordered, supplying the total need for a particular number of chawls. vide Ex. 56, Geo. Service's Indent, 1921-22, and Mr. Sykes' cross examination, page 196—according to him in Ex. 56, 7/8" bars are sufficient for 102 chawls, $\frac{3}{4}$ " for 60 chawls and 5/8" x 20' for 21½ chawls. I also ascertained that for the first year several of the chawls included in the programme were to be constructed by contract and the materials including mild steel bars were to be supplied by the contractors, so that the actual necessity of the department was hardly 300 tons, instead of which one order alone was locally placed for 2000 tons. I also could not understand why the order was placed locally, though usually such large orders according to the P. W. D. Code, should be placed with the High Commissioner. On making further enquiries, I ascertained that Geo. Service & Co., with whom the said order was placed, were connected with Messrs. Richardson & Cruddas, it being a branch firm of the said Richardson & Cruddas, who were also suppliers of large quantities of materials to the Delhi Imperial Works. This led me to further enquiries which led to the discovery that the several officers who were working together at the Delhi Imperial Works, were again grouped together in the Development Directorate and what made matters more suspicious was that the very officer who was in charge of the Material District as an Executive Engineer, i.e., Mr. Sykes, came and occupied the same position and function here as in charge of the same Material District as Superintending Engineer. The officer who was in charge of construction there, i.e., Mr. Harvey, the complainant also came to be in charge of construction works here, although as a Superintending Engineer and the most favourite assistant of Mr. Harvey, Mr. Abdul Hamid as Executive Engineer, also came from the same place. Mr. Hamid brought his favourite, Mr. Gazdar, from Hyderabad to be his assistant here, and Mr. Harvey brought his favourite, Mr. Krishnaswamy Aiyer, to be his assistant here, and it was so arranged that they were kept in the same district to renew their previous association. I also learnt that several other assistants and subordinate staff as well as various contractors and suppliers, who had financial dealings with the same officers in Delhi, started new firms in Bombay and began to deal with the same officers in their new capacity as officers of the Development Directorate. Another officer Mr. Lewis, who was the Chief Engineer of the Reclamation was also a chief Engineer there. This grouping of officers, particularly coming in a body—all employed simultaneously in the same capacity—did not appeal to me as by mere accident, but it appeared that they had all assembled by some pre-arrangement.

particularly the fact, all of them occupying the same position and discharging the same functions here as they did there.

I beg to attach a list to give Your Worship an idea of this grouping of officers in Development Directorate:—

1. Mr. Lewis, Chief Engineer, Delhi, also Chief Engineer Reclamation.
2. „ Sykes, Executive Engineer, Material District, Delhi; Superintending Engineer, Material District, Development Department.
3. „ Harvey, Executive Engineer, Constructions, Delhi; Superintending Engineer, Constructions, Development Department.
4. „ Hamid, Assistant Engineer, Constructions, Delhi; Executive Engineer and Acting Superintending Engineer, Development Department.
5. „ Kanayalal, Assistant Engineer under Mr. Sykes at Delhi; Assistant Engineer under Mr. Sykes in Development Department.
6. „ Gazder, Assistant Engineer, under Mr. Hamid at Hyderabad; Assistant Engineer, and Acting Executive Engineer under Mr. Hamid in Development Department.
7. „ Krishnaswamy, Assistant Engineer, P. W. D. Madras when Mr. Harvey was in P. W. D. Madras, also Executive Engineer under Mr. Harvey in development Department.

I have not referred to several others with similar previous associations, because they refer to the Reclamation Branch. All the officers mentioned above, except Mr. Lewis, were in the Housing District, closely associated with Mr. Harvey. Besides these, there were a number of other subordinates not mentioned here. I will submit hereafter a similar corresponding list showing a group of contractors and suppliers so as to reduce the whole affair to a sort of a happy family arrangement.

George Service Indent (Ex. 56) in 1921.

Coupled with this, when the first indent for mild steel bars happened to be placed with Geo. Service by the same officers who were in charge also of the Material works, and who had general dealings with the very important branch of the same firm—Richardson and Cruddas and the further fact that the order placed with Geo. Service was far in excess of the requirements for that year, I thought that it was a matter for enquiry as to why orders were

placed locally instead of being placed with the High Commissioner as required by the P. W. D. Code, why far in excess of the requirements and thirdly, why was the same firm with whom same officers had dealing in connection with the Delhi Imperial works. In order to ascertain further, whether there was any great urgency in this supply, and whether the order was placed with Geo. Service because they had this large quantity in stock, I caused further enquiries to be made and ascertained that they had not this quantity in stock, but the same was to be ordered out from England by them. Thus the excuse for saving time could not also be given for placing this order with them as urgent as a cable to the High Commissioner would have given the supply in about the same time as through the local firm. Further enquiries led to show that the rate originally fixed with Geo. Service was much higher than the prevailing rate in the market. If an order were placed in England with the High Commissioner, the supply would have arrived in practically the same time and at rates about Rs. 160 a ton. Besides, the rate which was originally tendered and accepted namely Rs. 212, was subsequently enhanced to Rs. 218 on the ground of exchange which was also unusual, because at the time of tendered rate, exchange is taken into consideration, and after fixing the rate in the tender, it is very irregular to alter the rate; as several other tenders are rejected because of this tendered rate being considered to be lower, and according to my information, other tenders from well known firms at lower rates were rejected—the prosecution do not definitely state that Geo. Service's was lowest nor have they produced other tenders. Other facilities were also given to that firm, namely that according to the usual terms in the contract, before taking delivery of the materials a very close inspection is taken of these materials and if they do not come up to the required standard or test, these materials are rejected at suppliers risk and they have to remove them at their cost. This condition is very vigorously imposed in all public works and enormous quantities of materials at times have to be taken back by the suppliers at great cost and fresh materials of the required standard supplied. This condition was also done away with so far as this firm of Geo. Service was concerned and they were allowed to supply whatever materials on their own manufacturers' test certificates.

With regard to other materials for the same period similarly enormous larger quantities were supplied than actually required and similarly at much higher rates. I had also received some information that a certain officer in the firm of Richardson and Cruddas, namely Mr. Owen, was on friendly terms with certain officers of the Development Directorate. Upon this information I then tried to ascertain from various sources as to the procedure that was to be followed with regard to the placing of these orders. Having ascer-

tained these facts, as it was the first large order with regard to the Housing District, and as I myself was not in the Council at the time and had to work through the help of other friends in the Council, I could not move in the matter but waited to see if there were any further developments in the same matter as I believed that it being the first order, it was possible that this erratic excessive order may have been through mistake or inexperience, or that there must be some explanation about it which may not be within my knowledge. Besides, though I had general information about the nature of the transaction, still I had not sufficient details to fix the responsibility on particular officers. However, I kept close watch on their activities and very closely followed the Council proceedings and if possible, also attempted to elicit information on the subject through some friends who then were in the Council.

Besides this, on enquiry it was also ascertained that although such enormous excessive quantity was ordered out through Geo. Service, far in excess of the actual requirements, still several fairly large orders were placed besides that with various other local firms for mild steel bars, and I could not understand why such enormously excessive quantity of bars were required and what was the necessity of placing orders locally over and above the large order placed with Geo. Service, of those very diameter bars which were far in excess of the requirements even according to Geo. Service's indent. Further enquiries also elicited that these local orders for extra bars were placed without tenders with favourite firms at much higher rates and at times with firms not regularly dealing in the articles, and in certain cases, it could not be ascertained satisfactorily that the orders were fully complied with i. e., the quantity ordered was not supplied in full although the bills for the full amounts were paid. Another peculiarity was, that orders were not placed with regular dealers but with firms not ordinarily dealing in this material.

Mr. Salebhoy Tayebji's Indent No. II—1922-23.

As stated above, I did not move in the matter so far as the first indent was concerned for the reasons stated above, but closely watched similar indents for the next financial year, the lay out plans—the plots available and the number of chawls that were proposed to be constructed during that year in the various districts. After ascertaining that, I waited to see the quantities that were to be ordered for the next financial year, 1922-23. Again with the help of friends, I got the quantity that would be required for the programme that was chalked out for that year. In or about August/September 1922, I received information that in this indent too, large quantities of mild steel bars were ordered, but not as in the first indent, but according to the information then received by me, an Executive Engineer had prepared a proper list of the requirements, in that list

alteration was made by a Superintending Engineer, the result of which alteration was that very large quantity of particular sized bars that were not required, to the extent of about 3 lakhs of rupees were again ordered. With regard to the rates and other matters again similar to the previous indent, rates given here were much higher than those prevailing in the market, there being a difference of about 30 to 40 rupees per ton, and that this time the order was placed locally with Messrs. Salebhoy Tyebjee and Sons, a name which again aroused certain amount of suspicion in my mind on account of a certain incident that had happened with the Municipal Commissioner in connection with that firm. I also felt that on account of the excess of previous year there must have been a large stock remaining, and hence local order on the ground of urgency could not have been necessary at all. Thus on two occasions successively, I found that quantities far in excess were ordered, and on this occasion, a duly prepared list by the Executive Engineer, ordering out correct quantities was interfered with by the Superior, created further suspicion, but as I was not still in the Council I had to depend upon friends in the Council to get such further information as could be elicited. As stated above, I kept a close watch on the Council proceedings, particularly with regard to Development Directorate matters, and what further roused my suspicion was the suppression of the information in the Council on the subject of purchase of materials. I ascertained through a friend and the reply to the questions put by a member of the Council, Mr. Trivedi,—information was supplied in February which was intended to be placed before the Council and the public—a deliberate attempt was made to keep back from the public and the Council the whole order for mild steel bars, namely 2000 Tons placed with Geo. Service. I closely scrutinised that reply, and I could find that practically each and every reply was inaccurate and the inaccuracy was only due to the fact that the quantity supplied, the rates, etc. by Geo. Service & Co. were not taken into account at all whilst giving this reply. The explanation now sought to be given of that apparent inconsistency is not at all convincing. The question as the Court will see in Ex. 149, is very plain—information desired is the total quantity of 7/8" bars ordered up to date, i. e., June/July 1923. The rates at which they were supplied certainly included the largest order of 2000 tons bars placed with Geo. Service & Co. in 1921. There is nothing in the question to warrant the conclusion now attempted to be drawn that the question wanted information of only recent supplies and not of the total supplies, but not only that but further incorrect statement in that reply was with regard to the second indent of 1922/23 wherein, in reply to a question whether the record shows any wrong sized bars ordered, the reply was in the negative, when, as a matter of fact, according to positive information received by me that reply

too was not correct. This attitude of suppressing information from public, particularly when questioned by responsible members of the Council and intended to be given through the Council to the general public naturally created suspicion not only in my mind but in the minds of all, who from the knowledge in their possession knew the inaccuracies of these replies.

This being a second instance in succession of surplus steel being ordered under exactly similar suspicious circumstances, coupled with the fact that all other materials were also similarly ordered much in excess of requirements, naturally aroused further suspicion and I persisted in investigation and received reliable information from one closely connected with the firm at the time of the said transaction, that the main firm of Salebhoy Tayebjee had opened a branch called the Supply Agency or Department; the principal business was to try and secure orders, particularly from the Development Directorate and other Government departments, and this department was managed by a particular gentleman connected with the firm who was paid certain percentage on orders secured; that the said department being a branch of the particular firm rendered annual accounts to the main firm of Salebhoy Tayebjee; and whilst rendering such accounts for the year ending 1922-23, when the said order for mild steel bars was executed, a large amount was shown to have been debited and spent for commission for securing the said order, and that amount was taken into consideration whilst rendering account to the principal firm and entries were made in the books to that effect. It was on account of this definite information from one closely connected with that particular department of that firm, that I was anxious to secure the books of accounts relating to this particular transaction, and I was very much disappointed when I found that the firm, under a false pretext and excuse of having destroyed such important records, refused to produce the said books. I submit that the explanation for this non-production is false and the obvious reason is that the production would lead to disclosures of incriminating entries. It is incredible that an Indian firm doing business for several years on a very large scale, should destroy the books of account of recent years, relating to transactions of lacs of rupees.

One further circumstance in connection with Salebhoy Tayebjee's books that lends support to the inference that they are deliberately suppressed to prevent disclosure—and the explanation for this non-production is not correct—is the fact elicited in the course of further enquiries that the year following this transaction, this firm did not produce their books of accounts before the Income Tax authorities though called upon to do so in connection with the investigation under the Income Tax Act, and I am further informed that it sub-

mitted only a prepared statement of accounts showing profit and loss for the year, and in that statement on the expenditure side, they showed an item of Rs. 25,000 as being spent on payment of commission. But this expenditure was not allowed to them as they would not produce their books to substantiate that item, and rather than produce their books before the authorities even under protection, they paid whatever amount was assessed against them without inspection of their books. This conduct, I submit coupled with other circumstances in the case, is extremely suspicious and the defence is entitled to ask the Court to draw an adverse inference for the non-production of these books of accounts.

The production of the said books could have also helped in settling the question of rates, as from the records there is no doubt that they were permitted much higher rates than prevailing in the market, and by placing this order locally with them, the department and public had to sustain a loss of over Rs. 40,000/-

I refer Your Worship to Ex. 87, the Secretary of State's despatch, which expresses disapproval for this local order and gives the rate if the order were placed with the High Commissioner including freight and other departmental charges at £. 10/17 Sh. which at the rate of exchange then prevailing, comes to about Rs. 160/- per ton as against Rs. 197/8 and Rs. 236/- per ton allowed to Salebhoy Tayebjee; Exs. 125, and 126 and 148 contain several applications and sanctions for local purchase of mild steel bars wherein the rates mentioned are even higher than the prevailing market rates and Salebhoy Tayebjee were allowed even higher than these rates. Ex. 68, their tender, shows that for certain diameters they were paid at the rate which in the course of the purchase of thousands of tons from numerous dealers was not allowed even by the Development Department to any other supplier and the records show that the rate given to them was the highest though the order placed with them was for a very large quantity, and hence one would expect a proportionate reduction in rates. Similarly in Ex. Z19 the department discusses the rate for steel before fixing minimum rates for sale of surplus. This was practically the first large order for steel they received, as, their business was not in this line and they started a new branch of business of supplying agency with the starting of the Development Department. According to the admission of their solicitors, that branch is closed practically with the closing of the Development Department.

According to the evidence of the complainant as well as of Mr. Sykes, the order with Salebhoy Tayebjee was placed because the mild steel bars were needed urgently by 31st December 1922 (vide Ex. P1. letter by complainant.) But if Your Worship will refer to Ex. I1, K1, and L1, statements prepared by Executive Engineers before placing

this order, they show a balance of nearly 1300 tons of bars of various diameters in stock and Ex. O shows a further 300 tons, so that these 1600 tons could have sufficed for several months and the High Commissioner's supply was to begin from January 1923. Thus these records show that there was no urgency at all and therefore no necessity for placing this large order with Salebhoy Tayebjee.

Again, although this order was placed with them on the ground of urgency and though all their deliveries were late and a penalty of Rs. 28,000 became due from them under the terms of the contract, still only Rs. 6,000 were deducted and the balance of Rs. 22,000 was given up.

Although the complainant tried to dissociate himself from this order by stating he had nothing to do with it, still it ultimately turned out in Mr. Sykes' evidence, pages 196/97 it is clear that the whole responsibility for the order rested with him and Mr. Sykes had only to place the order according to instructions received from Mr. Harvey; he could decide quantity, size, quality, and could have a large order placed locally by simply stating he wanted them very urgently. Mr. Sykes says, page 196, "I had no responsibility with the ultimate decision. So far as I am concerned, the responsibility for these materials would rest with Harvey." Again at page 197. "If Harvey said some of the bars were required very urgently, I would forward an application for local purchase." He further says, he had no right to interfere or question Mr. Harvey's decisions on these points. Thus, for both these large orders of Geo. Service as well as of Salebhoy Tayebji, though the complainant denied responsibility, still I submit, on the evidence it transpires that he is directly responsible. After that, I was anxious to go into the Council that I might get further particulars and facilities to continue my enquiries and investigation, particularly with regard to the Development Department and its internal administration. Accordingly in 1923 I was elected a member of the Legislative Council for Bombay City South, and since then, as I stated above, I made it a special point to devote particular attention to the activities of the Development Directorate.

After my election, I continued to receive more information regarding purchase of stores, contracts, etc. So, after I joined the Council, I put in a question as regards the indent for 1922-23 for mild steel bars when according to my information wrong sized bars far in excess of requirements, were ordered of the value of about Rs. 3 lakhs, i. e. Ex. "A." The replies given were unsatisfactory and in the main, inconsistent with the previous replies given to another member, in Ex. 149, Mr. Trivedi, because in Ex. "A" it was admitted that wrong sized bars were ordered by mistake, but in the previous reply that was entirely denied. As I was unable to get

the department abolished as the Resolution on that subject was not ballotted, the next move was a resolution in the Council calling for an independent non-official enquiry. I was particularly anxious for a non-official enquiry and investigation because from the attitude of the Government, particularly in suppressing facts before the Council, I had no confidence in an official, one sided investigation, because my experience showed that such investigations always resulted in reports whitewashing the whole affairs. Accordingly this resolution was moved in October 1924. Ex. No. 2. In the course of the debate I generally insinuated about malpractices and irregularities existing in the department; I did not lay any specific charges because I thought that these specific charges would better be placed before a committee that I anticipated would be appointed. Another objection to my disclosing all the facts in the open Council at that stage, was that I was apprehensive that steps might be taken to destroy the evidence that may be existing particularly with merchants with regard to these transactions. The resolution moved by me is as follows :—

“ This Council recommends to the Government :

- (a) that a committee consisting of 12 non-official and elected members be appointed to inquire into the whole administrations and working of the Development Directorate, to suggest ways and means of effecting retrenchments and to report on the advisability or otherwise of continuing the scheme taken in hand.
- (b) that the Development Directorate be requested to co-operate with the said Committee and afford all facilities and help in conducting the said inquiry and in making the said report.
- (c) that an independent officer or expert be appointed to help the said committee.

I made an earnest appeal to the Government to permit an inquiry as called for as the following extract from my speech, Ex. No. 3, Bombay Legislative Council Debates, October 24th 1924, will show :—

“ Will the Honourable the General Member or the Government benches deny the right of investors or representatives of investors who have invested 30 crores of rupees to make enquiries about the working of the department or to suggest improvements for retrenchments or to find out if there are any ways whereby any savings could be effected, apart from the merits of the Development Department? Supposing the Honourable the General Member is prepared to satisfy the House that the Development Department is going to work at

a considerable profit, is going to be a very profitable concern even commercially (of which I know several members on this side of the House entertain serious doubts), admitted that the whole scheme is going to be a profitable one, still how can they deny the right of enquiry, not the right of dictation, not the right of interference with the internal management and the right of even controlling the finances, but the mere right to enquire as to what is going on, if I may be permitted to say so, behind the screens, as to what is being done with 30 crores of public money which has been subscribed or which is to be subscribed."

I also referred in the same debate to the commission of 2% given to Messrs. Meik and Buchanan and described it as a scandal enough to call for a public enquiry, because they were described as special consulting engineers to the Reclamation branch and the power of recommending the purchases was given to them, and they were allowed 2% commission on the purchases made on their own recommendations.

I could not go into greater details then, because the time given to the mover of a resolution, under Rule 6, is only 30 minutes and I was constantly reminded by the President that my time was up, pages 853 and 854 of the Report. Hence I had to confine myself only to a few general remarks. I concluded my speech by saying Ex. No. 7, page 856 of the same Report :—

"I am throwing this challenge on behalf of the public. I want an enquiry. If you deny the enquiry, you compel us to suspect you and if you want the suspicion to be removed, it is to the interest of the department not to shirk this enquiry. My honourable friend, the General Member, tells us that he is prepared to give any information if we would go to him. I submit if he is prepared to give any information to us individually, where is the objection to give that information to a group of gentlemen asking for that information and making suggestions, and if he is not prepared to accept this suggestion, the inference drawn will be adverse to the department and it will confirm public suspicion."

I have quoted only two passages from my speech of October 1924 to show that even at that time, on the strength of information in my possession, I suspected underhand and shady dealings, as my reference in Ex. No. 3. "to enquire as to what is going on if I may be permitted to say so, *behind the screens*, what is being done with 30 crores of public money", clearly shows and further, the open challenge in Ex. No. 7, for an inquiry could not have been thrown without possessing some materials to substantiate the charge.

These instances clearly show that long before I made the allegations complained of, in the March Sessions of 1925, I had in my possession certain materials on which an inquiry was demanded, and the questions and answers, Ex. "A" re 1922 indent, were also in the same Sessions of the Council.

A reference is also made by another member in the said debate, Ex. No. 8, about the incident of mild steel bars referred to in the questions and answers, and the only reply of the Director in explanation to that reference, was that "This was a trifling mistake of which a great deal has been made. There is no loss to the Government, because the use of a larger section of steel enabled the engineers to reduce the quantity of cement in the concrete used in making the piles." Ex. 9.

The point about this explanation is that although in the course of a debate on the subject, a specific reference was made about mild steel bars and a question was put before that clearly insinuating that mild steel bars of a wrong size were deliberately ordered in excess of the requirements and a higher officer had altered the indent properly prepared by a subordinate, still the head of the department in the course of a long debate on the subject, although this incident was specially referred to by one of the members, did not choose to give any explanation as to how such a mistake had occurred. The only explanation as given in Ex. No. 9 was "This is a trifling mistake of which a great deal has been made." That was the official version about such a mistake.

I may also refer Your Worship to my reply at the close of the debate, Ex. 11, page 882, Council Debate, October 1924 :—

"I want a committee to go into the whole administration of the Development Department, such as the several public scandals that have been existing about the contracts, the establishment, the tenders, the purchase of stores, etc., I desire that all these matters should be enquired into by the representative of this House."

By accepting the Resolution, what is most important, the appearance of shirking a public inquiry will be removed."

This resolution of mine, was strongly opposed by the Government and was taken to a division and was carried. After that for several months, I as well as other members interested in the subject anxiously awaited the appointment of the committee as proposed in the said resolution, but the committee was not appointed, but myself and two or three other members received an invitation from the Government to join an Advisory Committee that was then sitting, whose admitted functions were merely to advise the Government with regard to the progress of the schemes, as to how far it

should be continued or whether it should be curtailed. The said committee had no power to investigate, as was demanded, by my resolution. I replied offering to join the said committee provided its powers were extended and that it was also given the authority to investigate into the past working of the department and that its designation was also to be changed from merely advisory into an Advisory and Investigation Committee. This proposal was not accepted by the Government, and I as well as other members refused to join, as we felt that joining merely an Advisory Committee would not serve our object—in having an investigation into the working of the department. The Government, however, neither enlarged the powers of that Committee nor appointed another non-official committee as required by the resolution, thus creating an impression of shirking an enquiry.

Hence the next opportunity for the members to discuss the subject was in the February/March 1925 Sessions of the Legislative Council held in Bombay, which was the Budget Sessions, and according to the practice and procedure, I moved a large cut of Rs. 62 lakhs from the total demand for 1 crore 57 lakhs for the Development Directorate grant. The object of moving this cut was to raise a protest against the attitude of the Government in not carrying out or giving effect to the resolution of the Council, and also moved a vote of censure against the department for its mal-administration. I made that clear in the course of my debate—this cut was intended as a protest against the Government for the non-acceptance of the resolution of the Council and as a vote of censure against the department. I also made it clear that Government tried to cloud the issue by mixing the two issues, namely the advisability or otherwise of proceeding further with the scheme and investigation into the inner administration and working of the department. As I did not want these issues to be mixed or clouded,—and my demand had all along been for an investigation into the working of the whole department—I made it clear in the following words, Ex. No. 16 page 544, Council debate March 1925:—

“I want to draw the attention of the House to the fact that even at the time when my resolution was discussed and even during the last two or three days when demands for the Development Directorate are being discussed, the real demand “from the popular side has been evaded. The popular demand is not whether the Development Directorate is a profitable concern, whether it will end in a loss or profit, but the popular demand is to know the inner working of the Development Directorate. Without any reserve and with all the responsibility that I can command, I openly make a charge that there has been

serious mal-administration of public funds, and there has been a serious wasting of public funds. There have been instances which I could go to the length of calling frauds, and I make this charge on behalf of the public and on behalf of the investors of Bombay who have invested Rs. 30 crores in this work. On the occasion when I moved my resolution, the Director of Development stated that he did not wish to burke a public enquiry and that he did not wish to shirk the enquiry. I said that if Government now shirk that enquiry, the suspicion in the mind of the public will be confirmed. I say that the Government have shirked the enquiry, and the suspicions of the public have been confirmed, and I am quite justified in laying openly this charge against the Development Department before this House."

Ex. No. 17, page 545 of the same report :—

"I do not want to mix up the two issues. I do not want an enquiry as to whether the Development scheme is going to be a profitable concern or not. That is the way in which the issue which I have placed before the House is sought to be clouded. I want to know what is being done with the public funds ; I want to know whether those funds are honestly and legitimetely applied, or whether they are misapplied. As the time at my disposal is limited, I want to point out only a few instances."

Ex. No. 18, page 546 of the same report :—

"As I said, if I had sufficient time at my disposal, I would have given instances after instances which would have convinced this House that not only is there a misapplication of funds but misapplication of a nature which, under ordinary circumstances, in the course of a public enquiry would have resulted in proceeding in a court of law. When I moved my last resolution, I stated the particular instance of the indent which was sent by an Executive Engineer for steel bars of particular dimensions. I stated that that indent was altered by another engineer who changed the demensions of the bars. The indent went to the manufacturers and steel bars of the value of Rs. 2,50,000 or Rs. 3 lakhs were sent up, but they were quite useless for the purposes of the Development Department. The result was that a second indent for bars of the required dimensions had to be sent, and those bars were eventually obtained. I still say that those bars of the value of Rs. 2,50,000 are lying with the Department undisposed of. On the last occasion the Director of Development stated that it was

not a loss to the Government, but they are still lying rusting in the Matunga Depot, and I think they could not be disposed of. I should like to ask the Director of Development whether he can challenge this statement; I am quite prepared to go to the Depot, and prove my case. I know that up to a recent date advertisements had been appearing in the press for the disposal of those bars, but they could not be disposed of. This is a mistake which has been admitted by the Director of Development in his own reply in the course of the debate. He admitted that there was a mistake, but it was a 'trifling mistake' of which a great deal has been made. But really, can this be called a trifling mistake—a deliberate alteration of the dimensions of the bars by a responsible officer which has resulted in a loss of Rs. 2,50,000 to the department, as the bars are lying rusting in the Matunga Depot? And yet, the Director of Development, with all his responsibility, has told this House that this is a trifling mistake of which a great deal has been made. I should like to have some further explanations as to how such a 'trifling mistake' could have occurred; not a mistake in the original indent, but the original indent containing certain figures altered by another officer, for bars of dimensions which were not required for the Development Department. How did that trifling mistake occur? Why was this deliberate alteration made in the dimensions of the bars when the indent was already prepared by another officer? The indent, with the initials of the officer who made the alteration is lying in the records of the Development Department. That is why I challenge an enquiry. The only reply that we have received is that it is a trifling mistake—a trifling mistake costing Rs. 3 lakhs. I may tell the Government quite frankly and openly that there are ugly rumours in the City and in the whole of the presidency that the higher staff of officers have been receiving secret commissions from the manufacturers, and that is the reason why in this instance the department has incurred a loss of Rs. 3 lakhs."

In the same debate, I repeated more specifically about the indent of mild steel bars and severely criticised the explanation given by the Director in a previous debate when he tried to explain away by saying that it was a trifling mistake and clearly stated that it really cannot be called a trifling mistake—a deliberate alteration of the diameters of the bars by a responsible officer which has resulted in a loss of Rs. 2,50,000 to the department as the bars are lying rusting in the Matunga Depot and not required

for the Development Department. How that trifling mistake occurred, why was this deliberate alteration made in the diameters of the bars, when the indent was already prepared by another officer, a loss of Rs. 3 lakhs, it was in the course of this criticism that remarks about rumours of secret commission were made.

I wish to draw the Court's attention to Ex. No. 18, because the allegations about rumours of secret commission are contained in that part of my speech: I have reproduced the whole passage to enable the Court to judge from the context the circumstances under which the said remarks were made: it was in course of criticism of a reply from the Government, as I refused to accept the correctness of that reply and further criticised the attitude of the Government in not granting the inquiry demanded nor giving any satisfactory detailed explanation as to how such a mistake could have occurred. This criticism of the Government reply stands justified today because in 1927 the complainant who was responsible for giving that reply, admits in the witness box that the reply given by the Government in October 1924 in several main particulars, was not correct, and therefore I was perfectly justified in 1925 in doubting the correctness of their replies and expressing certain opinion thereon, as will be seen from Ex. No. 19, page 547 of the Council Report, March 1925:—

“The Director of Development has to come out with advertisements in the press, and ultimately these surplus stores will be sold at a considerable loss. I could prove this by facts and figures if an investigation of the kind that I call for is granted.”

About this time, as it transpires now, surplus steel of the value of about Rs. 5 lakhs was lying at the depot, as stated in Ex. 19 in March 1925, and six months after this it was sold to Mr. Maneekchand Jivraj at a considerable loss to the Department.

I am only pointing out a few instances showing the justification and correctness of several allegations made during my Council debates on the subject, in order to show that I was not making any reckless allegations but took care to see as much as circumstances would permit, that they were substantially correct and justified.

The first part of Ex. 20. at page 547 of the same report:—

“There are numerous instances, and I do not wish to weary the House with them. I only wish to say that in asking for an inquiry, I had particular information at my disposal. I tried to get at the Development Department in various ways. I first started a campaign in the public press, calling for an enquiry in regard to the scandals, but I failed to get the necessary information. My next step was to try

to get information by means of questions in this House, but the replies given by Government were unsatisfactory, evasive and non-committal. My next step was to move a resolution calling for an enquiry of this nature. The resolution was moved, was passed by this House, but not accepted by the Government. Of course, I am not going to give it up, and my next step is the resolution which I am going to move, asking for the transfer of the whole department to the Public Works Department, so as to bring it more under the control and supervision of this honourable House."

I submit it clearly shows that even at the time I made these allegations in the Council, I had knowledge of the several instances I adduced in evidence in court but I could not refer to all of them on account of the limited time at my disposal; hence I had to confine to general remarks about tenders, purchase of stores, contracts, etc.

Thereafter, I also referred to the several scandals existing with regard to the giving of the chawl contracts and other administrative matters including the large salaries of officers and of the Director of Development. In order to show that I bore no personal malice towards any officer, I made it clear in the course of the debate, Ex. No. 20, page 548:—

"Now coming to the administration of the department, I shall first take up the establishments. I would request the honourable members to look at pages 155 and 156 of the Blue Book, where they will get the figures of the establishment. After providing for so much establishment, do the Development Directorate seriously maintain that they have retrenched according to the demands of this House? The very first appointment under establishments is that of the Director of Development. In this connection I do not wish, Sir, to refer to personalities. The Director of Development may be a very amiable gentleman, and he may be a very desirable gentleman. We are only considering his official capacity and salary. I must say that I have nothing to say against him personally. There are some other officers on the opposite benches who might emulate his genial example. We are considering only his salary, which is Rs. 6,000 a month, or Rs. 72,000 a year. We have been crying against it from the very day that the Development Directorate started. I ask again, is that salary justifiable? The Honourable the General Member states that we have been gradually reducing our work considerably. I dare say that the work of the Director of

Development has been curtailed in proportion, but there appears to be no curtailing of his salary. I am sure, even up to the last day when there may be only a few feet of the wall left to be finished he will continue to draw this salary of Rs. 6,000 a month till then. I ask honourable members on both sides of this House, whether it is fair to the other honourable gentlemen on the opposite benches, and to the other officers in the service. Is it fair to them? Compare the salaries paid to the executive engineers and the superintending engineers and the assistant engineers in the public Works Department, with those which are paid in this Department, and you will find that it is almost cent per cent more than what we pay to the Public Works officers. After the Director of Development, come the Deputy Director, the Deputy Secretary, the Assistant Secretary, the Chief Engineer, the Deputy Chief Engineer, the Executive Engineer, and the Assistant Engineer. I must say, Sir, that after all, we ought to be thankful to the Director of Development for, like his honourable colleague the Commissioner in Sind, he does not ask for a steam launch for the inspection of his work. We ought to be thankful for that generosity on his part. But we would have been more thankful if considering our financial position, he had himself come forward and told this House "I really do not think I deserve this salary of Rs. 6,000 a month, and to set an example to my own subordinates, and in order that I may compete with them for retrenchment, I shall be prepared to accept a lesser salary." As it is, with what face can he go before his subordinate officers and tell them "I think your salaries are too high and they ought to be reduced; all the same I shall continue to draw my Rs. 6,000 a month"? Unless he makes a substantial reduction in his own salary, he cannot ask his subordinates to accept less. Therefore, we have to continue paying high salaries to these officers of the department."

This clearly shows my attitude towards the department and its officers. That I was only concerned with their administration and had no malice even against the head of the department who was the only officer who was opposed to us on behalf of the department in the council debate. Again I particularly referred to the mild steel bars incident, and called upon them (the Government or the Department) to explain as to how this "trifling mistake" occurred, as I did not believe it was a bona-fide mistake; even then the Government did not choose to give any detailed explanation to the Council or to me, as it is sought to be given now in the course of these proceedings. The only reference made in the reply with re-

gard to mild steel bars, was a speech of Sir Lawless Hepper who stated giving his case, Ex. No. 21, page 571 of the Council Report :—

“The first case is the old one of the steel reinforcement for the foundations of the Worli chawls. This has already been discussed in detail on a former occasion and I should have thought that my honourable friend was fully aware of the position. He says that, owing to a mistake of one of the Directorate officers, instead of ordering from England a large quantity of steel bars of $\frac{5}{8}$ th of an inch diameter the bars were ordered of $\frac{7}{8}$ th of an inch diameter, and that, as a result of that mistake, a further lot of $\frac{5}{8}$ th of an inch diameter steel bars had to be ordered and the $\frac{7}{8}$ th of an inch diameter material is now lying surplus and rusting.”

Thus, the real explanation called for is again evaded although a specific charge was made and a challenge was also given a second time, whereby it was anticipated and expected that a detailed explanation would be forthcoming to show how such a mistake could have occurred, particularly when the mistake was admitted. No admission of letter written by complainant ordering out these bars was made. Even then during the course of the debate, I made it clear that I was very anxious to have an independent enquiry, and in my reply I again stated, Ex. No. 22, page 576 of the Report :

“I have got information and materials, but if Government are not prepared to give me an opportunity to prove them, they must take the verdict of the public which is certainly against them and which they deserve.”

I again complained in my reply, Ex. No. 23, page 577 of the same report :—

“The charges are specific, made in my own person, openly, and without any anonymity about them. How have the charges been met? They have not explained how that little, trifling error occurred. What is the explanation that we want—how the figure in an indent which was already prepared by another officer happened to be changed and altered by another officer. The facts are admitted that the figure was altered perhaps by some method or other, but the loss which would undoubtedly occur may have been averted. On account of the cleverness of some (other gentleman) it is possible that the loss is averted, but the fact remains that an indent figure was deliberately altered, but still the bars did arrive and they were of the size which was not required. On account of this serious mistake they did alter their

plan. These are facts. No matter the loss. The mistake occurred and the question is, was it a real mistake or was it anything else?"

Correspondence with Government Ex. 27.

Thus, in my reply I gave them a further opportunity to render whatever explanation they might have with regard to that matter and again clearly insinuated that I did not believe it was a mistake but was intentional. The General Member had the last say and he gave a reply to the debate but never alluded or attempted to give any explanation about this incident as demanded, although he made vague references about other allegations in my speech. This was in March 1925 and the Court will see the circumstances under which the allegations that have been made, namely "ugly rumours in the city and the whole of the presidency, that higher staff of officers were receiving secret commission" were made in the Council. As detailed explanation was not given, it was not possible to know the part played by various officers in connection with this incident. In October 1924 when moving for an enquiry committee I had made it clear that shirking such an enquiry was to create public suspicion against the department when it was to the interest of the department that investigation should be made so that if the suspicions were ill-founded they could be removed. Since that enquiry was not granted, whilst repeating the charges in order to make the same arguments stronger and in order to force the hands of the Government to grant an enquiry I repeated what was public opinion to a large extent and the ugly rumours in the whole presidency, as I had gathered from the elected representatives of various districts that attended the Council and the object of that quotation was to make the Government to see the advantage of granting an enquiry to remove such rumours. Even after this challenge and demand, the Government did not think it fit to appoint a non-official enquiry committee as demanded but on the other hand started correspondence Ex. No. 27, attached hereto, with me wherein they proposed to appoint an official of judicial attainment to enquire into those allegations and in the same letter suggested that Government are prepared to extent to me in the pursuit of the enquiry the same facilities as are given to Government servants who may be incriminated, namely permission to be present when evidence is recorded, cross-examine witnesses, and to see documents which are admitted as exhibits by the enquiring officer. That position, after consultation, I refused to accept because I could not understand why Government proposed to reduce me to the position, by giving me facilities, of a public servant who may be incriminated when all along I had been demanding an investigation. I beg to refer to the said correspondence, Ex. No. 27, in which I

nave made my position absolutely clear, and I submit that I have made very reasonable and moderate counter proposal, viz. that three or four members of the Council selected by the Government be associated with that officer appointed by Government and that officer may be the Chairman, and further I should be given the right to call for all documents and records, material and relevant to the inquiry and that the inquiry should be started at once as delay was prejudicial. However, the Government would not accept this counter proposal and hence that matter also dropped. The difficulties that the defence has experienced in connection with the production of the relevant and material documents even in spite of the process from the Court has clearly vindicated and justified my apprehension then entertained of documents if the discretion were left entirely with the department concerned.

Another important point about this correspondence that I beg to submit, is that certain allegations forming the subject matter of the present charge that are taken from my Council speech of March 1925, are only partially quoted by the Government in their first letter omitting such other portions connected with these remarks as to distort the real meaning and the real gist of the complaint in these remarks. However, as the Government would not accept the counter proposals, I continued my agitation and my demand for a public non-official enquiry both in the Council and outside, till ultimately, the Government issued a press note informing that the Government of India had decided to appoint a committee with regard to the Back Bay Reclamation; although the terms of reference of that committee included the investigation into the allegations complained of, still it was very unsatisfactory because all along my allegations were generally against the department as a whole including the Reclamation and Housing schemes and I have never made separate allegations against these two branches of the department. I therefore immediately took steps through the Municipal Corporation to appeal to the Government of India to extend the terms of reference so as to include the activities of the Housing scheme also and a resolution was accordingly passed and transmitted to the Government of India, but the Government of India could not comply with the said requisition, Exhibits Nos. 43 and 44, Resolution and Reply.

The Committee invited certain members to give evidence and I was one of them, but the most important point about the Committee so far as this case is concerned, is the evidence of Mr. Mackie, Secretary to Government, Development Directorate, Ex. No. 28, who was the first witness examined on behalf of the Government and who represented views of Government. He produced certain documents including the copy of the correspondence that passed between me and the Government with regard to these allega-

tions and copy of debates in the Council. I therefore submit that in the very first letter of the Government, the Government had repeated a part of my speech in March 1925 wherein the allegations about the higher officials receiving secret commission was also quoted, but it was not made clear to the committee the circumstances which occasioned the said remarks in the speech of March 1925, because the previous history leading up to it was not mentioned, namely the resolution moved by me in October 1924, and though passed by the Council, still not given effect to by the Government and such other incidents leading up to the debate of March 1925 were omitted, and only a part of my speech was quoted in that letter distorting its real meaning and creating a wrong idea. I submit that it was the Government who first introduced this subject about the allegations by producing the correspondence, Ex. 27, through its Secretary, Mr. Mackie, and copies of Council debates. Therefore, the publication of these alleged defamatory allegations to the Committee was, I submit, first made by Mr. Mackie, the Secretary to the Government, and whatever effect it was to produce in the minds of the members of the Committee with regard to the reputation of the officers concerned, was already produced before my written statement was submitted or oral evidence was taken with regard to these allegations. It therefore cannot be suggested that I made these imputations with intention to harm or knowing or having reasons to believe that they would harm.

Another point which I wish to submit with regard to Mr. Mackie's evidence before the committee, is that he clearly gave the public or at least those members who desired to give evidence before the Committee to understand that the Government would have no objection to the publication of any documents or any discussion that took place before the committee, as Ex. No. 28 shows :—

“Chairman: You spoke about the privileged nature of the papers. Of course the documents which are out into the possession of the members of the committee are definitely privileged and could not under any circumstances be communicated to any outsider, but every document that is read or referred to in this room will naturally be printed in the press and no privilege can attach to it?”

“A. Yes, Sir.

“Q. However privileged a document is, when the document is a matter of discussion in this room, whatever takes place is or can be published in the press?”

“A. Yes, Sir, I quite understand it.

‘Q. The discussion I take it, of any extracts or anything that is discussed, anything that you say or anything that is read in this room may be published?’

“A. I fully understand it.”

I beg to refer to that portion of the evidence whereby Mr. Bell stated that Mr. Mackie represented the Government views. I submit the position was that the members of the public could come forward and frankly state their minds before the Committee without reserve and that the Government would have no objection to any publication on that behalf. If the Government anticipated or any of its officers anticipated any damage to the character or reputation either to the department or to an individual officer on account of any publication of part or discussion of the report of the proceedings, at this stage when Mr. Mackie was questioned, the position could have been cleared by stating that part of the evidence should be taken in camera or such other arrangement should have been made or the Government could have stated that the Government would have objection to publicity of that part of the proceedings, but since no such objection was taken the only impression was that the Government would have no objection to the publicity of any statement relevant to the inquiry regardless of the consequences.

When considering the question of good faith, the Court will also consider that so far as I was concerned, I had sent my statement, as desired, in the form of a letter to the Members of the Committee alone, and after my oral evidence commenced, the copy of it was distributed to the press by the Secretary of the Committee. I would refer your Worship to Ex. No. 39 (Ex. C. pages 400 and 401) —

“Sir F. Hopkinson : Have you given a copy of the statement to the Press ?

“A : I understand it was given just now. I did not think it right to give before I was examined.”

In an inquiry of this description, wherein the Government itself by introducing and producing the correspondence specifically relating to such allegations indicated a desire to have these matters investigated, such statements as are now complained of and objected to, for making which Government has given sanction to prosecute, should have been expected and anticipated, particularly when the members of the Committee themselves refused to go into the matter unless specific charges were made: if liberty and protection to such statements were not granted, then I submit that the reference to the Committee on that point would have no sense as no inquiries on the subject referred to could be started unless some party made allegations to that effect. Under these circumstances,

I further submit, that an imputation made before the Committee could not be construed as required by Sec. 499, Indian Penal Code, to have been made or published with the intention of harming or knowing or having reason to believe that such imputations will harm the reputation of such person: the *prima facie* intention would be to have an investigation to find out the truth or otherwise, and the result of that investigation may turn out to as much clear that reputation as to harm it, and that was my bona-fide intention, was made clear in the following passage in the written Statement (Ex. C.) itself :—

“But even at this late stage I can place before the Committee all the materials that I have been able to collect, not with a view or desire to cast any aspersions against any individual of the department, but primarily with a view to find out the truth, and if sufficient materials are disclosed, to take such action as the Committee think proper. All along my appeal to Government has always been for an investigation of certain allegations to find out the truth... The Committee will permit me to place all materials before it in order to enable it to judge for itself whether I was justified or not in demanding a public investigation.”

There was no threat or even an idea of any prosecution at the time I made this statement before the Committee, and it faithfully represents my intention and frame of mind, and long before the Committee, *i.e.* in October 1924, in the course of the debate, I had stated :

“ If you want the suspicion to be removed, it is to the interest of the department not to shirk this inquiry.”

I further submit, that the allegations complained of were not made by me for the first time before the Committee, but that they formed part of a public report of Council proceedings when they were widely published in the Press and in the report of proceedings published by the Government and distributed to various institutions and these Council debates were also produced before the Committee by Mr. Mackie. If my object or intention was to harm the reputation of an officer or officers, that object was already served when these allegations were already published to them before I submitted my statement or gave oral evidence; there could have been no object in merely repeating what was already brought to their notice by Mr. Mackie himself. Ex. 30, letter addressed by the Committee to me inviting me to submit my statement, clearly shows that they knew these imputations before I was called, because in that letter they make a reference to my Council speech in March 1925 and request me to give particulars on which that speech was based. I therefore submit that

it cannot be suggested that my repeating or re quoting statements already known to the Committee and the public can be with the intention or knowledge of doing harm to the reputation of a particular person, but the real intention and object could only be, as stated in written statement, to start an investigation to find out the truth so that if the suspicions are unfounded, the department may be cleared, or if well-founded and proved, the officers concerned may be properly dealt with. As this prosecution is based and lodged on the Penal Code and as the gist of the offence under that Code is the making or publishing an imputation with a particular intention or knowledge I submit the above circumstances to the Court to be taken into consideration at the time of deciding that point, that under the circumstances stated above, the said publication could not have been with that particular intention or knowledge required by the Section.

For these reasons I submit, Mr. Mackie's evidence before the Committee and the Chairman's remarks thereon, and Ex. 30 and my statement before the Committee, are rather important, because, I submit, these statements and assurances induced witnesses to make statements without reserve, and it was breach of faith on the part of the Government to have sanctioned proceedings with regard to the evidence given by a member before the Committee in pursuance of that assurance, conveyed through their Secretary.

Further, the Committee, on receipt of this information through the correspondence and Council reports produced by Mr. Mackie evidently came in possession of all the facts, particularly with regard to my allegations made in the speech of March 1925 and they accordingly wrote and requested me—I was the only witness to whom such a letter was addressed—specifically to give all the detailed information as was conveyed to them in that correspondence, Ex. 30. I beg to draw Your Worship's particular attention to the request made by the Committee in the said letter, Ex. 30, "Supply the names of the officers of the Development Directorate who received secret commission with dates and short particulars of the contracts and the names of the manufacturers giving such commissions, the amount so given, and any other details in your possession. What the Committee wants is the information on which you based your speech of March 1925 in the Legislative Council and any further information of a like nature which you might have obtained since that date." Thus, the scope given to me as a witness before the Committee was very wide and covered all the subjects included in my March speech, and the letter coming as it did from a duly constituted and authorised committee, appointed by the Government of India, naturally encouraged me to state without reserve both orally and in my written statement what information and material I had in my possession. Still, the Court

will note that in spite of this specific demand from me by the Committee, I have not gone to the length to which I would have been justified both in my written statement as well as in the oral evidence, but, as before I confined myself to the department and its officers generally without mentioning specific names with regard to the allegations, except in the case of Mr. Thomas, where my information was definite and specific.

One circumstance further which encouraged me more and guided my attitude with regard to the nature of the evidence to be given before the Committee was the attitude of the Committee towards those witnesses who were indirectly referring to mal-administration or dishonesty in the department; certain members repeatedly requested those witnesses to speak out boldly their mind without fear, and if they desired an investigation to be made, the only way to have an investigation was openly and boldly to lay specific charges. I might refer the Court to the evidence of Mr. Hussainbhai Lalji, Ex. 31, one of the members of the Council, who was examined only a day previous to my evidence and whose evidence was printed in the press and read by me on the very morning on which I was called to give evidence before the Committee, Ex. 31. :—

“Mr. Billimoria : This is a public enquiry. Why should names be kept back. If people who have information cannot put forward before the committee and simply make allegations and accusations against the Government, why should they not come boldly and give out the information?

“A: You will find out that name from the files. He is not a man of Bombay and he is again not a big contractor. I am not ordered to give that man's name, and I cannot do so as I have already told you. I do not blame anybody because the committee is there to attribute to whosoever deserving.

“Mr. Billimoria : Do you expect this committee to go through a mass of papers, tons and tons of papers and files. There might be some questions on which we require definite and clear information and if nobody were to come forward boldly to give all that out how are we to make out ?

“A : Sir, I have given you everything, the rates etc. and I see no justification in accepting the extraordinary rates.

“Sir F. Hopkinson : Well, if you don't give us any specific instances and names, I conclude that you have based your estimates on hearsay gossip.

“A : I think Sir, I have not made myself quite clear, but I do feel that I have given you sufficient data to make enquiries about.”

That this was the view of the Committee appears from the fact that the Chairman acquiesced in these remarks and did not rule them out.

Besides other witnesses, Sir D. Petit also referred to dishonesty prevailing in the department, and when being asked for any specific instances, he referred to me and stated in reply to a question, Ex. C. Page 294 :—

“ Q : Can you give us any facts ?

“ A : The remarks that were made by Mr. Nariman in Council.”

Another circumstance with regard to the evidence that I wish to submit before the Court, is that some time before I was called to give evidence before the Committee, Sir L. Hepper was examined on behalf of the department and the committee being in possession of the information, produced by the Secretary, questioned Sir L. Hepper in explanation about the said allegations made by me and Sir L. Hepper repudiated the allegation and described them as false, Ex. 29 (page 57 of Ex. C). That was also a sort of challenge to me when I was to be examined to state my case before the Committee, to leave it to the committee to come to the conclusion whether my allegations were false or whether Sir. L. Hepper's statement was inaccurate.

Still, as stated above, though under the circumstances I would have been justified in laying specific charges against individual officers by mentioning their names, still I refrained from that course and maintained the same attitude that I had all along maintained in the Council debate. In this agitation in the Council debate and outside criticism, I confine my remarks against the department and its officers in general. Whenever I was in a position to make specific allegations against an officer, I had stated the name of the officer, in connection with that allegation, and I would refer the Court to the report, Ex. C at page 386, lines 10 to 25, my written statement wherein I had laid a serious charge against one officer specifically mentioning his name, namely Mr. Thomas, wherein I charged that officer by name, of having tampered with a tender after it was put in, and allowing certain figures to be entered with a view to benefit his favourite contractor, Balkisendas Seth. This paragraph is only a few lines above the paragraph complained of and this clearly shows that whenever I intended and was in a position to make a specific allegation against an individual officer, I specifically mentioned his name as in the case of Mr. Thomas, and that when I was not sure about the names of officers concerned, I naturally wanted an enquiry to find out who the officer or officers concerned were in the said transaction. In the whole of my oral evidence, complainant's name is not mentioned by me. I

have also made my object and motive clear in my written statement, "No desire to cast aspersions but my only object is to find out the truth." I only made general allegations against higher staff of officers and in my oral statement, when being questioned as to whether I knew who the officers concerned were, my reply was that I did not know the names of the officers and it was for the Committee to find that out by referring to the Department, Ex. C, page 403 :—

"Sir F. Hopkinson : I had read your document and perhaps all it implies that a mistake was made by *somebody* in ordering 7/8" instead of 5/8" bars; what would you say?"

This shows that even members of Committee after reading my statement and documents could not fix it on anybody but said "somebody" made mistake, a result of indefinite statement made by me. At page 204 of Ex. C, Ex. 40, lines 34 and 35 :—

"Q : You say that this was altered. By whom was it altered?
By the Superintending Engineer ?

"A : That is for the Department to answer."

At page 404 of Ex. C, lines 51-52 :—

"Q : By whom was it altered ?

"A : By the Superintending Engineer."

At page 404 of Ex. C, lines 56-57 :—

"Q : And you are not in a position to give the name of the gentleman ?

"A : I have mentioned the name of the Superintending Engineer."

Obviously, from the context, it is clear that by use of the word name, I meant the designation of Superintending Engineer; this could have no reference to mention of Mr. Harvey in connection with same. If I had the name and wanted to specify, I could have done so in reply to the direct question by giving the name of Mr. Harvey; but I did not know it at the time. I only knew it was a Superintending Engineer and there were four in the District and five including Acting. With reference to another allegation, I have mentioned the name of Mr. Thomas because I knew it positively.

I have made my position still clear at page 407 of Ex. C, lines 41 to 46, Ex. 41 :—

"Q : I am dealing with charges of corruption. You have gone further than you did last year. You have given no names?"

"A : I have given instance in my Council debates; in March 1925 I have given instances. Names I have not mentioned to-day; I have said "Superintending Engineer" and if I was

allowed to be associated with Department and get information officially, I would have given all particulars.

In the whole of my oral evidence, complainant's name has not been mentioned at all, and in the written statement only once his name has been mentioned in connection with his salary, not even full description as Superintending Engineer No. 1, Housing District.

However, in order to have a charge of defamation sustained some-how, the complainant has entirely twisted and distorted the position in his complaint, and in order to make the allegations appear more specific and applicable to himself, he has tried to connect two independent paragraphs wherein the name of the complainant is mentioned in connection with an entirely different matter, *i. e.* dealing with salaries, Ex. 37, page 388 of Ex. C. That is quite a different subject, separately dealt in a separate paragraph and disconnected with the paragraph dealing with the allegations wherein I have mentioned, as a matter of complaint before the committee, that some of the officers, who were receiving much lower salary in other places were dumped on to the Development Directorate with very high salaries and in that connection I mentioned certain names, including Sir Lawless Hepper and Mr. Harvey and others including Messrs. Sykes, Lewis, Low, Mitchell, O'korke, Roberts and Gardner. That paragraph is now for the purpose of this case, sought to be connected with another disjointed and disconnected paragraph containing allegations against the high officers and staff in order to sustain a charge of specific allegation. I must frankly confess that at the time I made these imputations in the Council as well as outside in the course of criticism and before the Committee, although I knew that the officer concerned with this was a Superintending Engineer, I did not as a matter of fact, know more specifically who was concerned and did not know enough details of the transaction and which officer was actually concerned in connection with the said alteration at all, as there were four Superintending Engineers in this District, and this information that it was Mr. Harvey concerned in this was first conveyed to me about two days after my evidence when he himself made a statement before the Committee, wherein he admitted his connection with the said transaction.

As stated clearly before, my allegations were general against the department and against higher officers concerned and the object of my asking for an enquiry both in the Council as well as before the Committee, was to find out specifically the officer or officers concerned with this incident in order to fix the responsibility upon them. That is the position which will be found clear in my written statement, Ex. 35, pages 385, lines 27 to 34 of Ex. C, and I have stated my object in placing these facts before the

Committee was not with a view to cast aspersions against any individual but with a view to find out the truth and I maintain the same position which I have all along taken up for the last several years, with the exception of Mr. Thomas, whose incident was directly brought to my notice by the parties concerned. With regard to the rest, I had not sufficient details to know the part played by individual officers in connection with the various incidents that form the subject matter and referred to by me in the debates in the Council and statements before the Committee.

The mere perusal of the paragraph in the written statement forming the subject matter of the complaint, will convince Your Worship that at the time the statement was made, the complainant could not have been in my mind. Mild Steel bars are one of the materials connected with both Reclamation as well as Housing scheme; this is admitted by the complainant as well as other witnesses, both before the Committee as well as in Court, that piles were also used for sea-wall. As stated above, with regard to the purchase of stores, there were similar scandals in both the schemes. *i. e.* according to the information received by me surplus and wrong sized bars were ordered in both the schemes, and the purchasing agency for both the departments was the same, *viz.* Material District. It appears that while first introducing this subject, I had in my mind the instance of such surplus and wrong sized bars ordered by a certain officer for the Reclamation. Accordingly, Your Worship will find in the written statement, I have stated, "In one instance an Executive Engineer had prepared an indent to be forwarded to manufacturers at Home for a large quantity of mild steel bars for concrete piles for the Reclamation."

Your Worship will also find from the correspondence between me and the Committee, that I at first was unable to attend on account of illness at an earlier date appointed by the Committee, and hence my examination was kept practically for the last day for non-official witnesses, two days after which the Committee sittings in Bombay were dissolved. I was very anxious to submit my written statement before their departure, and after my illness, had to draw up a fairly long statement containing numerous instances in a comparatively short time; hence, it appears that I mixed up an explanation about one incident of mild steel bars in connection with the Housing scheme with another instance of mild steel bars in connection with the Reclamation, but the fact remains that in my statement to the Committee, I had distinctly stated mild steel bars for concrete piles for the Reclamation, and as the complainant admits he had nothing to do with the Reclamation, the incident on his own admission could not apply to the complainant, and hence the complainant not being in my mind at all at the time, I could not

have made or published the statement with the intention of harming the complainant and or with the knowledge that the said statement would harm his reputation. The wording of the section "**of such person**" shows that a definite person must be in the mind of the defamer at the time imputation was made or published.

Before even a notice was issued by Your Worship's Learned predecessor, Mr. Rangnekar, this point of identity of person defamed struck him and I beg to attach a copy of the note taken by a learned pleader at the time:—

"Q : Is there only one Superintending Engineer ?

"A : No. Mr. Harvey was once named by the Accused.

"Q : The only statement I find is that he has taken Rs. 900.

"A : He has named him in connection with the fact that he was drawing a salary of Rs. 900.

"Mr. Baker : The only Superintending Engineer named is Mr. Harvey. The accused says I have named him. If the accused says he did not mean Mr. Harvey then it would be necessary to put the whole thing in a negative form to show that he was meant.

"Q : There is a paragraph about a question in Council. Is not that privileged ?

"Mr. Baker : I don't complain about questions and answers in Council. I only rely upon them."

The statement made by the learned Solicitor, I submit, is incorrect and misleading. A reference to Ex. C, Report of the Committee, will show that about a dozen officers are mentioned in connection with the salaries and establishment, and Mr. Sykes, the other Superintending Engineer, is also mentioned and it is not true as stated by Mr. Baker, that the only Superintending Engineer named is Mr. Harvey. This only shows a *keen desire and anxiety at any cost to start a prosecution.*

If a general enquiry had been directed in accordance with the allegations generally against the high officers of the whole department, I could have also adduced evidence of a general nature affecting the department as a whole, but as the complainant by filing this complaint and alleging specifically that these allegations referred to him definitely in spite of the repeated statements by me that I had not specifically mentioned any officer and my object in bringing to the notice of the Committee some transactions that appeared to me fraudulent and shady, was to enable the Committee, after enquiry, to find out the officer or officers primarily concerned with these transactions so that responsibility may be fixed on proper heads. The action of the com-

plainant has, in a way, limited the enquiry to himself and his department and the defence was obliged to adduce evidence of such instances and transactions alone in which the complainant and his department were directly or indirectly connected. If a general enquiry against the whole department including the Housing Scheme and Reclamations that I have been demanding in the Council as well as in the correspondence with the Government, in order to justify the general allegations, had been conceded, then the material adduced before that enquiry would have been much wider and attention would not have been concentrated on the activities of the complainant and his department alone as happened in this particular case. Whereas the allegations referred to the whole department, the enquiry is limited more or less, to one particular transaction out of numerous such transactions and to one particular officer and his department. Thus the scope is considerably reduced and my position is made more difficult, because lesser facilities and lesser opportunities to justify and prove the general allegations are granted to me.

I have mentioned this matter only with a view to explain my position and also to refute the statement contained in the Government sanction viz., that such a sanction and starting of these proceedings in the Police Court would give me an opportunity to prove these allegations.

Coming more specifically to the charges framed against me, I propose to divide the said charges into two parts, more or less statement of facts and expression of opinion, in order to facilitate the explanations with regard to them.

With regard to the allegations about deliberate alteration in the indent, and resulting in loss to Government, with the object that certain manufacturers may make some earning out of this, contained in items 2 to 9 of charges framed against me, come in category 1, statement of facts; and to deal separately with item No. 1 of the charge, namely ugly rumours in the city and the presidency that higher staff of officers receiving secret commission etc. as an expression of opinion or inference on the facts stated above.

But before I come to deal with these specific charges, I wish to emphatically repudiate the allegations of malice referred to in the complaint. As admitted by the prosecution, complainant's evidence page 6, there is no question of personal ill-will or malice against the complainant or any other officer. As a matter of fact, at the time I made these statements in the Council as well as before the Committee, I did not know Mr. Harvey at all, and had never seen him. I was only actuated with the single desire of safeguarding public funds, preventing extravagance and waste and as far as possible, lessen the burden on the tax-payers which would ultimately result in conse-

quence of the enormous losses that would be entailed on account of the failures, mal-administration and frauds in these schemes. From the very beginning, I had maintained that all the losses sustained were not merely due to an error of judgment or miscalculations of figures or estimates or otherwise, and as the public and official attention was centred on that issue alone, I maintained and tried to explain that considerable amount of losses could have been saved and could still be saved in the future if more attention were also paid to the serious complaints of mal-administration and waste, partly due to irregularities, favouritism leading to corrupt practices, and similar other reasons which could be avoided. Whenever an issue was raised, as stated above, I always made it clear that my criticism was not only directed to the ill-concerned nature of the schemes or the preparation of estimates of the original cost, but also to the internal mismanagement, which according to my opinion would also be a particular cause to the enormous losses, and it was mainly with the object of preventing waste in the public funds and safeguarding the interest of the rate payers, as I was bound to protect as their elected representative in the Council and the Corporation that I was constrained to make these statements, both in the Council as well as at other places and the Committee. In one of the debates, as previously stated, I, as a matter of fact, made that position clear, and the officer concerned, particularly the Director even indulged in personally insulting remarks. The case for the prosecution as far as the allegation of malice is concerned, rests only upon one circumstance, viz. that I persisted in repeating these allegations although I was informed fully of the true facts by the General Member in the Council in reply to my question in October 1924, Ex. "A". The complainant at page 27 says, "I say there is no good faith on the part of Mr. Nariman because the statement was made in spite of explanation of Cowasji Jehangir, and in Ex. 47, line 52 at page 455 of Ex. C, same statement is made by the complainant.

I first beg to submit that in the said replies nor on any other occasion in the course of several debates, the Government ever made an attempt to give any kind of detailed explanation with regard to this incident as they have for the first time done through the Counsel for the prosecution in this case. The Court will study the questions and replies and all that is stated is one officer—Executive Engineer omitted to include certain bars for piles and the Superintending Engineer supplemented that omission by putting in those bars but whilst doing so he made another mistake in putting in wrong sized bars, i. e. 7/8 instead of 5/8. That was the gist of the explanation so far as the replies were concerned. Thereafter in the course of the debates, I repeatedly challenged, specifically stating, that I did not believe that it was a

mere mistake and repeatedly called upon them to explain as to how such extraordinary mistakes could occur, namely first that the Executive Engineer, a responsible officer, omitted bars required for such an important item of construction, nearly the first item of construction in chawl building, that is, piles, when all the other diameters were included. Those who had elementary knowledge of the procedure could not readily believe that such an omission could take place because the Executive Engineer only prepared a list of requirements from the plans that were ready for each item of construction of work, and further how the omission was not discovered before the statement was sent to the Material District, but was suddenly discovered after that statement had gone and orders were placed and further even after the extraordinary discovery of the omission by the Superintending Engineer how could he make further very extraordinary mistake in ordering out wrong sized bars, although he himself had decided and had actually used for construction of piles for several months, the particular size—5/8 bars. The Council was entitled to an explanation of these matters and in spite of repeated challenges in the Council debate, referred to above, and in spite of definite statement that I refused to believe the theory of bona-fide mistake, the Government did not think it right to clear the position by giving a detailed explanation although several opportunities were given to them to give such explanation, but what is more important is that the only circumstance on which the prosecution desired the Court to draw an inference of malice against the defence, does not as a matter of fact exist. It is admitted by the prosecution itself and by the complainant in the witness box, that the explanation conveyed in the replies, Ex. A, and the statements made therein by the General Member were as a matter of fact not correct and were inaccurate, he even used the word "false" with regard to material particulars. As that is the state of affairs on the prosecution's own admission, the explanation was not correct, and my submission to the Court is that their whole case, so far as the question of malice is concerned, fall to the ground, and on their own admission, I was perfectly justified in not relying upon the explanation and re-opening the question before the duly constituted committee, that was for the first time appointed to enquire into the question. I submit that was the first occasion given to the public to place their case before a supposed independent tribunal, and it is absurd to suggest, that I, who had been taking much interest in the matter from the very beginning, even when called upon by a specific letter by that Committee, should have remained quiet and refrained from putting my case before the Committee, when I had openly challenged the statements made by the Government on the subject and refused to accept them as absolutely true. But besides the admission of the

complainant himself that the said explanation given in Ex. A, was not correct, and that he himself was responsible, under certain circumstances, which conveyed that inaccurate information, I submit, that there is other evidence, as adduced in the records of the case in support of my attitude, that I was perfectly justified in not accepting the explanation submitted by the Government, and I was perfectly justified in spite of that explanation by Government, in repeating that statement and demanding an enquiry. I beg to point out that the system followed by Government with regard to the replies is not such as would inspire public confidence or trust in these replies. Whenever any allegations were made against the department or any complaint of irregularities and explanations sought to be elicited by means of these questions, the Government relied only upon the explanations submitted by the officer or the Department concerned. Thus those explanations on which the replies were based were given by parties interested in the matter without any independent inquiry, which I submit was a very unsatisfactory method of giving explanations and replies. It is but natural that the officers directly concerned and referred to in these questions would frame their explanations and replies in such a manner as to cast least responsibility and blame upon themselves.

Besides, as is shown by the records of the proceedings before the Committee, and particularly the evidence of Sir L. Hepper produced and put in as Exts. 48 to 52, pages 61 to 70 of Ex. C, it is clear that particularly at this stage, it was the policy of Government, as shown in the admissions of Sir L. Hepper, not to divulge certain facts of Development Directorate. Sir L. Hepper tried to justify that position on the ground of expediency and policy, but my submission is that whatever the grounds or excuse there may have been, the result of such policy is bound to create suspicion and distrust in the Government statement, particularly with regard to this department and as is clearly established in the course of this case, even with regard to this indent incident, I will submit and hope to establish to the satisfaction of the Court that five various explanations and replies were sought to be given on five different occasions— one quite inconsistent with the other and all along the tendency and the persistent efforts of the officers were to suppress the facts or circumstances which would directly throw or cast the responsibility or blame on the officers concerned. I will submit before the Court the various inconsistent and different explanations that were given with regard to this mild steel bars incident. First and foremost, I beg to refer to the questions and replies given to Mr. G. B. Trivedi, who was a member of the Council in June-July 1921 to February 1923, Ex. 149. I have already dealt with the other part of the replies showing how a deliberate attempt was made to keep out of the replies the order given and the supplies made by Messrs.

Geo. Service & Co. for over Rs. 4 lakhs but more glaring than this, is the reply to a question whether official record shows any wrong sized bars were ordered, the reply to which was in the negative. These questions were submitted in June-July 1923, and although there were two Sessions of the Council sitting after that, the replies were not given in that Council but they were sent in February 1924, i. e. about 7 or 8 months after the questions were submitted. The reply to that question was to the effect that official records did not show that wrong sized bars were ordered, which is palpably and on the very face of it, as the records of the case will convince Your Worship, absolutely false, and it becomes more aggravating when it is prepared by the very officer who had sent cable to England attempting to correct the error of wrong sized bars and had carried out correspondence with regard to the wrong sized bars ordered, was himself the author of this reply in the negative; only shortly after that cable was sent and correspondence was carried out. And what is more important and glaring is that in the very month when this reply was given to a member of the Council that official records did not show that wrong sized bars were ordered, the Government itself—the Development Directorate—had in that very month issued a resolution on the memorandum submitted by the complainant himself, Ex. 54, wherein it was admitted that too many 7/8" bars were ordered by mistake, the Government accepted the suggestions contained in that memorandum and issued a resolution in February 1924, Ex. 57, suggesting that certain use should be made of these wrong sized bars. It is difficult to understand when the same department of Government had issued a resolution on account of wrong sized bars, how was it possible to give a reply to a member of the Council, by the head of that very department, quite inconsistent with that resolution issued in the same month.

Then coming to the next occasion in October 1924, Ex. A. the position is entirely altered, and it is therein admitted that wrong sized bars were ordered but by mistake, and a wrong explanation sought to be given as to how such a mistake occurred, and the circumstance under which the replies say bars were ordered; thus, between February 1924 and October 1924, in the course of a few months two inconsistent replies with regard to the same incident of the same department are furnished to two different members of the Legislative Council. Further, in the course of the debates in the Councils, both in October 1924 and March 1925, the same position was sought to be maintained though there is material difference between the explanations given in Ex. "A" and explanation submitted before the Back Bay Committee. In Ex. "A", it was the office supervisor of the Superintending Engineer's office, who apparently on the verbal instructions of the Superintending Engineer, entered the wrong sized bars to the Exe-

cutive Engineer's indent. Whereas coming before the Back Bay Committee, the statement is changed in as much as "the actual subordinate staff who made the mistake is not certain" and it is stated that the mistake might either be a draughtsman's or supervisor's, and it was not possible to know which member of the staff committed the mistake, though as stated above, in October 1924 in reply, the responsibility was sought to be fixed on the supervisor alone. This uncertainty was, I submit, deliberately introduced before the Back Bay Committee with a view to avoid the supervisor being called as it must have been apprehended that if a particular person was named, the committee or some member of it may call for that individual and the statement may be falsified. The complainant himself was present when this varied explanation was given in the joint evidence of Sir L. Hepper and the complainant, and was supplementing the replies given by Sir L. Hepper, still he did not think it right to correct the wrong statements before the Back Bay Committee, and he is now trying to explain this conduct by suggesting that he is not responsible for the statements by Sir L. Hepper and he did not think it right to interfere when he was making statements; but what is more important is that all along either in reply to the Council or the explanation before the Committee, the real state of affairs so far as this indent incident is concerned, has deliberately been suppressed so as to remove the actual responsibility from the complainant to the subordinates. Now it transpires, the actual facts are that there was no addition either by the Supervisor or the draughtsman or anybody else made to the Executive Engineer's indent, but the addition was made by a letter written and signed by the complainant himself, Ex. P. where-in he directed 80,000 extra 7/8" bars to be ordered, in addition to the bars already mentioned in the original indent.

I will refer Your Worship to the following exhibits and references, to show the different explanations about this incident of mild steel bars:—

- (a) Mr. G. B. Trivedi's questions and replies, Ex. 149, June/July 1923, and February 1924, "record does not show any wrong sized bars ordered."
- (b) Questions and answers to Mr. Nariman, October 1924 Ex. "A", "wrong sized bars ordered by mistake 5/8" required 7/8" ordered by mistake; Supervisor's and Executive Engineer's mistake; addition made to Executive Engineer's indent."
- (c) Council debates October 1924 and March 1925, same position maintained.
- (c) Sir L. Hepper's statement before the Back Bay Committee in the presence and given jointly with the complainant Ex.

C. Record of Committee proceedings, blue book, page 454, lines 21-22 "By some mistake either of draftsman or supervisor 7/8" was tendered instead of 5/8"; it has not been possible to prove who made mistake" different from statement in October 1924, when it was fixed supervisor made mistake. Here draftsman also introduced for the first time and uncertainty of person who made mistake.

- (d) Complainant's statement before the Committee, Ex. C, page 469, lines 29 to 32, "Office Supervisor added to the indent under direction of Executive Engineer."

Again at page 470, complainant's statement, line 22, "The Superintending Engineer did not make the addition; it was done by the supervisor of his office."

Page 470, lines 46 to 50, same statement. Whether Executive Engineer or myself intimated the incorrect diameter of steel to the supervisor or the supervisor through an error entered, I am unable to ascertain as nothing now appears on the record."

Draftsman is dropped, Superintending Engineer, who entered incorrect size uncertain, but the addition was made to Executive Engineer's indent.

- (e) Complainant before the Court, for the first time disclosed Ex P₁, wherein addition was not made to Executive Engineer's indent at all either by draftsman or supervisor, but addition made by a letter signed and sent by complainant himself, although before the Committee a definite incorrect statement is made that Superintending Engineer did not made the addition. Theory of wrong sized bars 7/8" instead of 5/8" order maintained.

Same is the theory maintained in the opening address of Counsel and evidence-in-chief.

Ex. 54, January 1924, Memorandum of complainant to department, same theory, too many 7/8" bars ordered by mistake.

- (f) The whole statement and theory suddenly changed on 12th April, 4th day of cross-examination; theory of mistake and wrong sized bars "that 5/8" were required but 7/8" ordered by mistake" entirely given up. The new case is that "7/8" were correctly required and properly ordered" from 12th April 1927 till the close of the prosecution case.

- (g) Ex. 140, letter from complainant to Mr. Hamid, March 1927, after Examination-in-chief and before cross-examination had commenced "Cannot find an answer as to why so many 5/8 inch. x 19 feet. bars were ordered in your first list unless they were ordered for piles."

The above summary with references, briefly shows the constantly changing story of the prosecution with regard to the main and principal issue involved in this case. No mention is made about Mr. Hamid's note in the previous record or Mr. Palnitkar's draft, both the documents supposed to be now missing; no mention is made about complainant's letter, Ex. P₁, till the filing of the complaint. Thus, various attempts to throw the blame for incorrect size on various persons—first supervisor, then supervisor or draftsman, then the person uncertain, either Superintending Engineer, Executive Engineer or Supervisor, then again Executive Engineer gave the size by means of a note not found—in fact, everyone is sought to be implicated except himself, as ultimately brought in court is that the addition, both of the size and number, was made by complainant himself by means of the letter, Ex. P₁, addressed to the Superintending Engineer No. IV. That fact is most sedulously kept back and misleading statement made to Committee that Superintending Engineer did not make the addition, or that it is not known who made the addition, there being no record, and ultimately the whole theory is changed.

I submit that this conduct on the part of the complainant, namely in suppressing those facts of an actual letter being written and sent by himself is extremely suspicious and calls for an explanation. I submit that all along a deliberate attempt was made to shift the responsibility on the heads of the subordinates—first on supervisor, then on the Executive Engineer—and there is no explanation why before the Council in the questions as well as in the debates and before the Committee this important fact with regard to this matter, namely the indent being altered by a letter from the complainant himself, is deliberately suppressed and a false and misleading statement circulated, that the mistake was made by the supervisor or draftsman or Executive Engineer and not by a letter. When questioned and asked to explain, the complainant stated that he did not think it a matter of great importance. The first time the letter is specifically mentioned is in the complaint. There too it is very vague and ambiguously stated. Even in the complaint, the complainant repeats the statement that the addition was made by supervisor and not by him, that being the sixth different explanation on this subject. Then again, the explanation given by the complainant to the department in Ex. 54, his memorandum submitted by the complainant to the Government with regard to the same incident, is in January 1924, wherein he distinctly states that too many 7/8" bars were ordered by mistake, and he suggests a use that should be made of these bars, but the most important point with regard to these explanations is that on or about the 12th April in the course of

cross-examination the complainant entirely reversed the whole theory of mistake—a theory which has been sustained all through since October 1924, altered on the 12th April 1927, and he suddenly puts forward an entirely different case, altering the whole theory of the prosecution so far as the question of the alteration of the indent is concerned and he tries to maintain that no wrong sized bars were ordered, and that all explanations given and statements made to that effect by himself and Government previously were false and that 7/8" bars were actually in use and that they were correctly ordered. However, unfortunately for the prosecution in this last theory also there is a document from the complainant himself that completely gives a lie direct. Ex. 140, the letter written by the complainant to Mr. Abdul Hamid, wherein it is distinctly stated that the 5/8" bars mentioned in the indent cannot be explained on any other theory except that they were for piles. Still after that, he deliberately comes and repudiates statements on oath in the witness box, directly contradicting his own statements in his letter to Mr. Hamid, Ex. 140, attempting to maintain that 7/8" bars were in use for piles, although in his letter he distinctly states that 5/8" were in use. My submission to the Court, is that this theory, at this very late stage was designedly altered because the complainant came to know, as admitted by Mr. Hamid, that the theory hitherto put forward by him in the case for the prosecution, on which the whole case for the prosecution was based namely that 5/8" were in use for piles, that these bars were omitted from the indent by Mr. Hamid and therefore a supplementary indent was necessary for piles. He came to know it at very late stage of the prosecution that the defence were in possession of records and facts and figures which would directly demolish the theory of omission of 5/8" bars for piles from the indent, because from the plans, Ex. Z, for various items of chawl construction, prepared and signed by the complainant himself, it could be conclusively proved, as it was actually done in the course of Mr. Hamid's cross-examination, by barely calculating the figures and looking at the items in the plans that 5/8" bars that were for piles, were as a matter of fact not omitted but complete requirements were included for all items,—Statement, Ex. 135, and hence it was found necessary to change the whole theory at that late stage. I submit that in view of the circumstances briefly stated above, namely the admission made by Sir L. Hepper, the Government suppressing certain facts, various inconsistent replies and explanations given by Government with regard to this very incident of mild steel bars indent, the conduct of the complainant in suppressing the document, namely the letter, directly connecting him with the incident, and making misleading and false statements, trying to throw blame upon his subordinates, i. e. Supervisor, or Draftsman, and further the transparent attempts which are now exposed, even,

to alter the statement and theories at this late stage of the prosecution in the course of cross-examination, clearly show an attempt even to deceive the Court by palpably false statements, proved to be false on his own letter, my submission is that I was perfectly justified in not accepting the explanation given by the Government with regard to this incident which explanation now, as a matter of fact, on the records and the evidence of the prosecution witness Mr. Hamid himself, has proved to be false, and therefore it would be futile for the prosecution to argue that malice should be presumed against the defence, merely on the ground of persistency in repeating the statements in spite of true explanations and therefore, I submit, so far as the case for malice is concerned, the case for the prosecution falls to the ground.

I further submit that I have conclusively proved and substantiated by Mr. Hamid's evidence, supported by plans, Ex. Z, and statement, Ex. 135, that the allegations made by me in the Council and repeated before the Back Bay Committee on privileged occasion, the allegations refer about the alteration of the indent, ordering out of surplus bars and the loss caused to the department. I therefore submit that the inference under the circumstances, that it was not a bona-fide mistake but done with the intention that some manufacturer might make some earning, was perfectly legitimate opinion and justified under the circumstances mentioned above, I submit, that the complainant's statement on these points should not be believed, first because he has repeatedly changed his statements,—and at one stage entirely changed the whole case, practically admitting that what he had stated in respect of these matters both to the Government as well as in his complaint, and oral evidence on oath, is inaccurate. That is his own admission and I submit that on that admission, the case for the prosecution should stop, because Your Worship was pleased to issue summonses against me, calling upon me to meet the particular case for defence as contained in the information filed by the complainant on oath, and as soon as the prosecution admits a substantial part of the statements contained in that information forming the basis of prosecution, are not correct, and that at a very late stage he wishes the theory for the prosecution to be entirely changed, asking the Court not to rely upon what he has stated in his complaint or his evidence, is tantamount to an application by the prosecution for the withdrawal of the complaint as first filed, and the proper procedure would be, particularly in case of Defamation, which calls for a specific complaint by the party aggrieved, to file a fresh complaint, basing his charges on the new theory, and a new story as subsequently set up. On this point I have submitted a separate application for consideration by the Court.

As stated above, it is clear that this change in the theory was intentional for the simple reason that the complainant was apprised of the fact that the theory as set up by him in his complaint was no longer sustainable. I submit that the defence is entitled to adhere to the case as put forward by the complainant in his first complaint, and it would not be fair to call upon the defence at a later stage to meet an entirely different case, and the case as put forward by the complainant in his complaint as well as in his evidence-in-chief and part of the cross-examination, I submit, entirely falls to the ground on the evidence of their own important witness, Mr. Abdul Hamid. Without going into the details of his evidence, I only submit that Mr. A. Hamid's evidence, pages 152 to 160, has entirely disproved the case for prosecution, so far as the items—charges 2 to 9 are concerned. I therefore submit that Mr. Hamid's evidence on these points should be believed in preference to the complainant because his evidence is corroborated and supported by the documents, and records, particularly the plans produced by the complainant, Ex. Z, and the plans prepared and signed by himself. The Court must have noticed that Mr. Abdul Hamid was reluctantly forced to these admissions by the production of these plans and he has only stated not what his personal knowledge is, but he has only interpreted the plans and other documents as shown to him, by barely making calculations of the figures and various sizes of bars and diameters for various items as shown in these plans. I therefore, submit that the conduct of the complainant with respect to this matter was also very suspicious. When in the course of his cross-examination, the complainant was questioned about the plans, he gave evasive replies, and even went to the length of stating that he cannot state even by looking at the plans as to what were the sizes required for piles and whether they were omitted or not; all along he made an effort not to produce the plans and these plans would not have been produced but for the fact that defence were able to get exact copies of these plans from other sources bearing the signature of the complainant, and it was only when these copies were tendered in the course of Mr. Hamid's cross-examination, that the prosecution was compelled to produce the original copies from their possession. Even then, the most important plan, namely for piles, which according to Mr. Hamid was in existence and according to all ordinary procedure must be in existence,—because it is impossible to carry out any construction without plans—is still not produced for the simple reason that if the same were produced it would completely demolish the new case for the prosecution and clearly show on the very face of it that 5/8" bars were in use for piles and the statement that 7/8" were in use would be proved to be entirely false. This plan would also show that Mr. Hamid did not omit

from his indent bars for piles. I therefore submit that the case for the defence, so far the statements of facts are concerned, is substantially and directly proved by records of the prosecution as well as by the principal witness for the prosecution, and these statements, as now appear, are substantially correct, and it is also proved that the previous explanations with regard to this, were incorrect, and I was perfectly justified in repeating them before the Committee with a view to start an inquiry.

Though I must admit that according to the information received by me there is a slight inaccuracy in details with regard to these allegations, namely that my information and the statement based on that information was that the figure in the indent prepared by an Executive Engineer was altered by a Superintending Engineer from 7/8" into 5/8", and the replies given by Government in Ex. "A" as well as in the misleading explanations given in the Council, I was persuaded to continue in that slight inaccuracy because the Government or the department, in spite of repeated opportunities never corrected the inaccuracy, although questions were asked with a view to gain correct information, that there was no alteration as suggested in the question, but the fact that a separate letter was sent after the indents were sent to the Material District was never disclosed. I submit that the information was deliberately kept back because it would directly connect the complainant with this incident, and instead of that, another wrong impression was sought to be created, that there was no alteration in the indent, but an addition was made to the same indent by a subordinate; and I submit, that the Government, in spite of the facts in their possession has been more guilty of giving an inaccurate statement than myself, who was in a position of great disadvantage; because of this policy of Government to suppress facts, and not inform the Council of the correct state of affairs. I therefore submit that the facts as adduced in the evidence, prove even more than my allegations, namely that so far as my allegations are concerned, it was made to appear that particular sized bars were included in the indent, and that size was scrapped and the wrong size was ordered; that would be from the official and public point of view a less serious charge than the other, namely that he allowed the diameters mentioned in the indent to remain and in addition to that ordered surplus bars of entirely different diameter. In the latter case, the loss to the department would be greater, because it is not in substitution of one size bars which were supposed to have been scrapped, but that there was an addition to the correct bars that were already indented. The imputations in the main in both the cases, is the same, viz. the intentional ordering of the wrong sized bars that were not required; it makes no difference to the imputation as to what method is employed in carrying out that object, whether by altering a figure in the indent, as first alleged by me, or

by adding to the indent as subsequently alleged by the complainant and Government—the fact, as now transpires, is practicably the same, that instead of a figure being altered in the indent itself, the figure in the indent are altered by a letter written by complainant, Ex. P₁, *i. e.* by a supplementary indent. I therefore submit that this slight inaccuracy make no difference so far as the main charge and allegation are concerned, and complainant himself admits, page 34, on P₁. Mr. Sykes ordering additional bars, in the cross-examination that he caused the figures to be altered by means of Ex. P₁. Thus on his own admission, the allegation is proved to be substantially correct. At page 56, complainant's evidence, "This addition is made 'as per your letter' (*i. e.* Ex. P₁). I caused the consolidated statement to be increased. I caused Salebhoy Tyebjee's and High Commissioner's indent to be increased.

I further submit that the case for the defence has been considerably strengthened by the additional suspicious circumstances which is also substantiated by the defence and for which too, there is no satisfactory explanation by the prosecution. My statements were that deliberately wrong sized and superfluous bars were ordered. The above statements have, I submit, proved the case so far as wrong size is concerned. Similarly, it is fairly well established that superfluous bars of the approximate value alleged by me, *viz.* Rs. 3 lacs, were also, it is established, ordered. Even if complainant's statements in the original case were correct, that Mr. Hamid had omitted bars for piles for Worli chawls, according to their own admission and according to calculations from plans and ordinary requirements for piles for chawls, the total number of bars required for 28 chawls for Worli, mentioned in the indent I₁ and consolidated statement, M₁, would be at the most about 12,000 bars including about five per cent extra for emergencies and the subsequent letter P₁, which is admitted as supplementing an item omitted in I₁ and M₁, and the period mentioned in it is the same as I₁ and M₁, should have ordered out only 12,000 bars to cover the omission for piles for Worli; instead of that such an enormous quantity as 80,000 bars have been ordered and their cost, according to the rates given, would be about Rs. 3 lakhs, thus substantiating my allegations even with regard to the details.

Just as with regard to the wrong size, so with regard to this enormous excess, I submit, that after this detection, dishonest efforts are being made to explain them away by false and misleading explanations.

First I will submit that the statement that 48,000 out of these were required for Dharavi and the Flats, is purely an after-thought invented with a view to explain away the enormous excess.

I submit the following circumstances to show that Dharavi or Flats could not have been intended when this indent was sent.

(a) In the various explanations submitted to the Council including the principal one in October 1924, Ex. A, Dharavi and Flats were never mentioned, nor at any time in the course of the debates, though it was repeatedly alleged that bars far in excess of actual requirements were ordered, and the reply, though given in October 1924, states "it is not possible to state at this stage as to what bars will remain surplus", though according to complainant some time before this, in January 1924, Dharavi programme was given up—page 39, complainant's evidence, "I did not definitely know till December 1923 or January 1924 that we were not going to get land at Dharavi"—and he has produced a letter from Improvement Trust to that effect, Ex. 66, dated 1st April 1924. If they were intended for Dharavi, the reply, in October 1924, Ex. A. would have been that they were intended for Dharavi, but as that programme is given up, so many surplus bars are left.

(b) Exhibits 54 and 57 are the two important documents that clearly prove that Dharavi and Flats could not have been thought of at the time of indent. Ex. 54 is dated January 1924, a memorandum submitted by complainant himself to the Government in connection with these bars, wherein in submitting his explanation, he admits that "too many 7/8" bars are ordered by mistake", and he suggests their use for the future, and Ex. 57, dated February 1924, is the Government Resolution on that memorandum accepting that suggestion. If these bars were for Dharavi or Flats, in January 1924, they could not have been described as "too many ordered by mistakes" because at that time these schemes were still in contemplation, as per Ex. 66, and other use could not have been suggested for them; but in January 1924 if it was known that Dharavi and Flats were to be cancelled, then the explanation would have been that they were ordered for these schemes but as they are not likely to mature, a surplus is left and that they should be used in that particular manner. Complainant being unable to give any explanation about this document, tries to get out of it by saying it was a "silly statement." I submit the statement is true but described as silly because it does not suit his present purpose.

(c) So many bars could not have been ordered for Dharavi or Flats in 1924, because in this year these schemes were not launched at all and there was no prospect of launching them for two or three years more and even the land was not acquired. Complainant states at page 42, "Dharavi was in programme of March 1924." Under P. W. D. Code and Audit and other Administrative rules, no expenditure could be incurred without previous sanction, and unless scheme is ready, complainant admits, that no provision

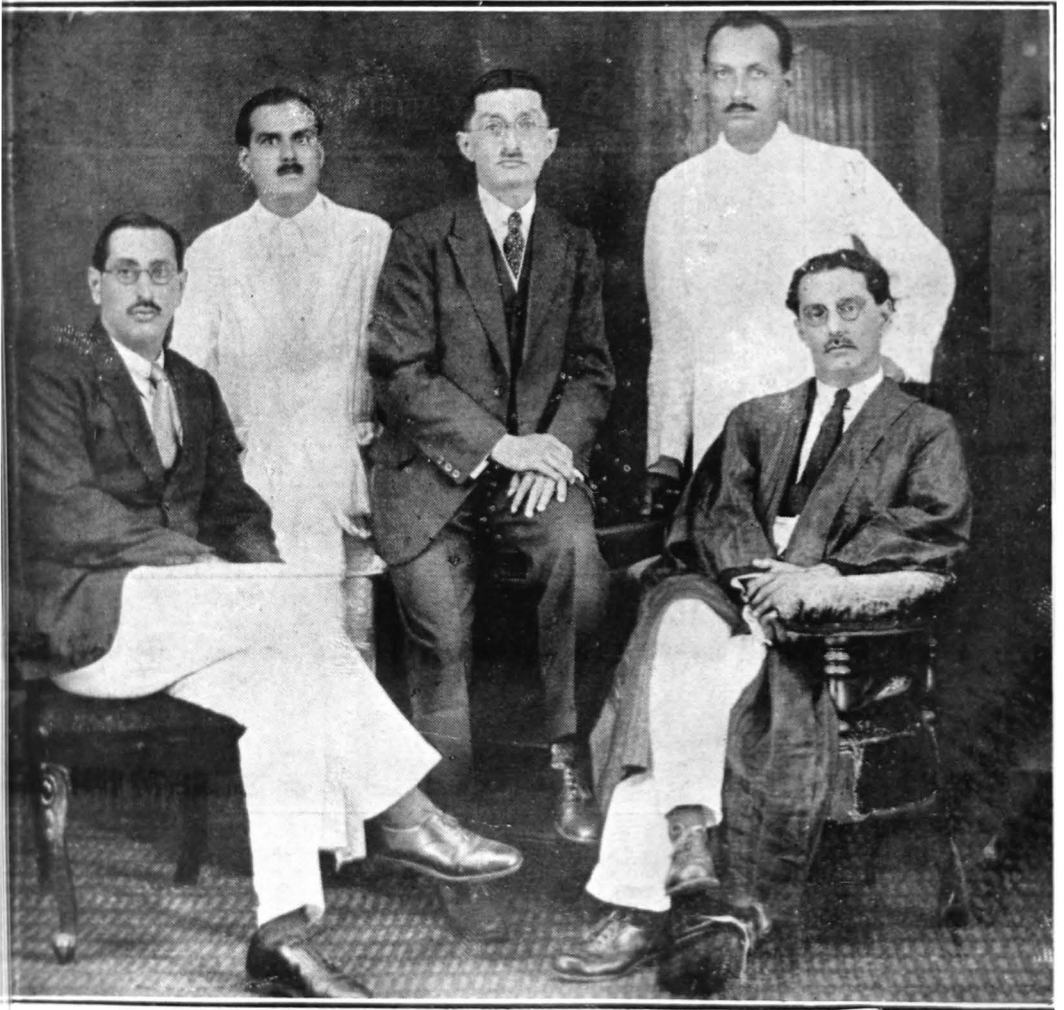
is made in the Budget for any expenditure on these schemes. Section 258, P. W. D. Code states, "No work shall be commenced unless a proper detailed design and estimate is sanctioned and orders for its commencement issued by competent authority." Section 261 states, "No work to commence on land which has not been duly handed over by responsible authority." Ex. 104 states, "Not to buy beyond actual requirements for sanctioned work."

Mr. Hamid had nothing to do with these schemes and these bars could not be added as a supplement to his indent, nor in the letter addressed to Mr. Hamid, Ex. D, is he asked to make any provision for these bars for Dharavi or Flats. Ex. 130, report made by complainant himself, states that these plots would not be ready till the end of 1925 and it is absurd to suggest that in 1922 bars were ordered for piles, though land would not be ready for the foundation till the end of 1925, nearly three and half years in advance. Though bars were supposed to be ordered for Dharavi and Flats, still complainant on page 39, says "Not a single pile was manufactured for Dharavi or Flats after these bars arrived." Complainant also states these bars deteriorate by being kept long; these bars could be had at any time, at the most in three or four months' time, and piles, according to Mr. Hamid, take only two or three months to mature and there could be no conceivable reason to order these out more than three years in advance.

(d) The period mentioned in the letter, Ex. P₁, clearly shows that they were intended for the same programme as covered in I₁, K₁, L₁ and M₁. These were the programmes for 1922 and 1923 for Worli, DeLisle Road and Naigaum only—"30,000 bars 7/8" upto December 1922, and 50,000 bars between 31st December 1922 and 1st October 1923"—the same period as mentioned in the consolidated statement M₁. If they were intended for Dharavi or Flats they could not have been required by October 1923, because these plots were to be ready by the end of 1925. Besides, 30,000 by December 1922, are also an enormous excess for Worli, as Mr. Abdul Hamid has stated that it would have been impossible to use them by that time. Thus, this period conclusively shows that Dharavi or Flats could not have been thought of then.

(e) Besides the period, the wording of the letter, Ex. P₁, is also very clear and shows that Dharavi or Flats could not have been intended. The letter says "I shall require for piles at Worli", and the letter is written to supplement an indent for Worli shortly after that indent was sent. This is tried to be explained away rather clumsily, that it means piles to be manufactured at Worli for Dharavi, another absurd proposition from the engineering point of view. Piles weigh about 1½ tons and there is always the risk of breakage in conveyance; besides about three miles distance

Mr. Nariman and his Co-Workers.



Mr. S. M. Surveyor

B. E. Civil

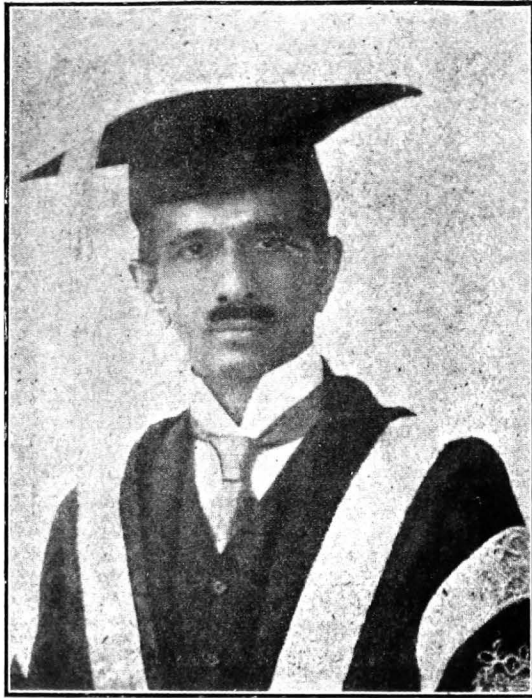
Mr. Kaikobad Nariman

Mr. K. F. Nariman

B. A. LL. B.

Mr. A. H. Kulkarni

Mr. Framroz Kamdin



Sir Chimanlal Setalwad.



Sir Cawasji Jehangir (Jun.)

would entail an enormous extra cost. By 1925, when Dharavi construction would commence, the Worli construction would be completed some time before, requiring no more pile construction for Worli and that area would have to be cleared for occupation. The simplest thing would be to remove the plants etc. at Dharavi and construct piles when they are required.

But this explanation about "Piles at Worli" is an after thought and dishonest, is made more clear from the complaint itself where the position is made more clear and could leave no doubt at all. Paragraph 5 of the complaint states "A letter was thereafter addressed to that officer dated 8th August 1922, a copy of which is hereto annexed and marked B. showing the additional number of mild steel bars which were required *for the foundation of piles of the Worli chawls.*" When confronted with this paragraph coupled with the wording of the letter "for piles at Worli", complainant still maintained a hopeless position and that "foundation of piles for the Worli chawls" means Dharavi and Flats. He further admitted that even to his solicitors, whilst instructing to draft the complaint, he never mentioned that 48,000 of these bars were required for Dharavi or Flats.

Thus in the complaint not only no mention is made of Dharavi or Flats but clear mention is made that all bars were for foundation of piles at Worli.

(f) Then again, with a view to create confusion, he introduced the word "equivalent" and stated that equivalent meant $2\frac{1}{2}$ times the actual. This arbitrary figure of $2\frac{1}{2}$ times is introduced simply to explain away 30,000 bars by the end of December 1922 for Worli, as the actual requirement comes up to about 12,000 ($2\frac{1}{2}$ times that figure would bring the required total of about 32,000), but in his letter, Ex. D. to the Executive Engineers he has asked them to provide for complete construction, which means actuals and not equivalent, and in order to maintain this position, he even goes to the length of saying that L_1 , K_1 , and L_1 , are all wrong and the consolidated statement M_1 , based on these, is wrong and wrong figures are also provided in High Commissioner's indent, Ex. V₁, and Salebhoy Tyebjee's indent, Ex. 60, because they make provision for actuals and not equivalents, and though these lists were revised by him three times for petty corrections, it did not strike him to correct this radical mistake resulting in a universal blunder with regard to all these important documents.

But Mr. Hamid gives up this theory of equivalent by definitely stating, both in cross-examination and re-examination, that he was asked to prepare lists for actuals and not for equivalents and he did prepare them for actuals according to instructions and it was never the practice to prepare for equivalents, page 163. At page 161,

Mr. Hamid says there was no possibility of using these bars (*i. e.* 30,000) by that period, *i. e.* October 1923. At page 163, Mr. Hamid says "Ex. 104 correctly represents the rules and procedure followed and indents were prepared according to actual requirements." Exs. 135 and 137, statements—proved to be correct through Mr. Hamid—clearly prove that even without these 80,000 bars, the chawl programme for the period could have been completed and left some excess. These statements are prepared from the records produced by the prosecution.

(g) According to Mr. Hamid, page 162, 30,000 bars would suffice for 140 chawls for single piles. Complainant says 7/8" single piles were used. That means 80,000 bars would be sufficient for about 372 chawls for piles and even including Dharavi and Flats, even taking into account the whole period, there never was in contemplation so many chawls requiring piles.

According to complainant's statement, at page 469, Ex. C. lines 60 to 63, the total number of chawls requiring piles in the whole scheme, was 163 Worli, 25 Flats, and 90 Dharavi. Out of these, 42 chawls at Worli were subsequently eliminated. But this programme, according to Ex. 55, was to be spread out in 8 years, and so far as this particular period 1922 to end of October 1923 is concerned, according to I., there were only 28 chawls for Worli for this particular year, and similarly the 90 and 25 chawls for Dharavi and Flats, would not have been all in one year, but would have been spread, according to Ex. 55, to three or four years, beginning from 1923 to 1924, and materials would have been ordered out according to the requirements of that particular year.

But even if according to complainant's contention that so far as these bars are concerned, an unusual procedure was followed and bars for all the chawls for Dharavi and Flats were ordered at once at the same time three or four years in advance, still the total number of chawls would be 28 for Worli, 90 Dharavi and 25 Flats, *i. e.* 148 chawls in all, whereas 80,000 bars,—and according to complainant's own statement 7/8" bars had single pile system and Mr. Hamid's calculation—would suffice for 372 chawls. (Mr. Hamid says at page 162 that 30,000 bars would suffice for 140 chawls single piles). Thus, even granting complainant's absurd contention to be correct about Dharavi and Flats, even then there was an excess number of bars for 224 chawls.

(h) The explanation attempted to be given by the complainant in re-examination for the 80,000 bars trying to show that Mr. Hamid must have worked up the figures with deadly accuracy, is entirely false and misleading as admitted by Mr. Hamid in his cross-examination. He deliberately attempted to mislead the Court by making false calculations and including bars admittedly, as his own plans

show, required for other purposes of beams and columns and these were attempted to be passed for as if for piles, hoping that laymen would not detect this irregularity. Ex. 135, prepared from the plans, Ex. Z, clearly shows the falsity of that explanation and Mr. Hamid has stated that it is not correct.

(i) Similarly, complainant made a dishonest effort to mislead the Court and the Committee with regard to enormous surplus bars for sale as shown in Ex. 67. This surplus was attempted to be explained away as if due to sudden curtailment of the original programme of 625 chawls to 207 chawls and as if this surplus had nothing to do with the excess orders. It would have been fairer for the prosecution to have stated the whole truth to the Court, viz. that this original programme for 625 chawls was spread over a period of 8 years and that for each year there was a particular number of chawls and the arrangement was to chalk out a programme of construction for each financial year, fixing the number of chawls proposed to be constructed for that period and all the materials including mild steel bars were ordered annually only sufficient for the requirement of that particular annual programme *i. e.* according to Section 258 of P. W. D. Code and Ex. 104, Government circular, orders were to be placed only for the actual sanctioned requirement and Mr. Hamid, at page 163, admits that Ex. 104 represents the correct procedure and indents were prepared according to actual requirements. According to the programme for that year, an annual budget provision was made which could not be exceeded, and at page 166, Mr. Hamid again states that "he never ordered out materials to be stocked in excess of actual requirements" and at page 167, that "if the procedure to order out goods required according to the programme was adhered to, there would not have been any surplus. There was a large surplus of all materials and if the rule mentioned in Ex. 104 was adhered to, there would not have been any surplus." Thus, it is clear that curtailment of the chawl programme had nothing to do with the surplus, because according to the procedure described above, materials would be ordered only for chawls actually to be constructed for a particular year, and on the completion of that programme further stock would not be ordered if it is decided to curtail the programme. Complainant's misleading statement creates a wrong impression as if all the stock was ordered out in advance for the total number of 625 chawls which were to be constructed simultaneously, and suddenly it was decided to curtail and reduce the number to 207, hence leaving a surplus of the materials for the remaining number of chawls. That, I submit, was not a correct representation and this misleading impression is sought to be created only to explain away the enormous surplus of mild steel bars and other materials. A close scrutiny of Ex. 67, the list of surplus bars for sale, will at once convince the Court that the surplus could not be

due to the sudden curtailment; if the requirements for all 625 chawls were ordered in advance, then on curtailment, there would be a proportionate surplus of all dimensions of bars that are required for various constructions. But in Ex. 67, Your Worship will find that out of a total tonnage of about 2,400 tons, the largest quantity is of 7/8" x 19', of 644 tons, and next to it is of 5/8" of 583 tons, the rest eight different sizes ranging to 30, 60, 90, 100 to 200 tons each. Thus, the largest number of surplus bars is 7/8" x 19', viz. 33,710 and this large surplus was left after making use of these bars as suggested in Ex. 57, for which they were originally not intended to be used. Thus, it is clear that this surplus must have been due to excess orders and not merely to the curtailment of chawls; the fact of such an enormous surplus of over Rs. 5 lacs—in March 1925 in Council, I had given the surplus of about Rs. 6 lacs - in spite of the fact that materials were only to be ordered for the actual requirements according to annual programme, is a strong circumstance supporting my contention that for certain reasons materials were ordered far in excess of the requirements and there was similar surplus of other materials, making a total loss of several lacs of rupees.

Thus from the several points and circumstances stated above, I submit that I have adduced sufficient materials and circumstances justifying the statement before the Council and Committee that wrong sized bars far in excess of the actual requirements were deliberately ordered, causing loss to the Department of about Rs. 3 lakhs, and further that the said statements were made in perfect good faith and that I was justified in view of constantly changing explanations of the Government, not to accept their version given in Ex. A and have the question re-opened before the Committee.

The point contained in paragraph 7 of the complaint remains to be disposed of. In Paragraph 7, complainant states "that although the subject of the inquiry before the Committee was the Back Bay Reclamation, and Mr. Nariman in order to defame him, incorporated in his written statement, matters which related to the Housing and Materials Division, of which complainant was the Superintending Engineer, in spite of the fact that from the reply given in the Council, he must have known that these materials and stores were purchased for the chawls at Worli; the complainant had nothing to do at that time with the Back Bay Reclamation."

With reference to this paragraph, I first and foremost, beg to submit, as already stated above, that at that time I did not know the officer actually concerned or responsible for this transaction. The only fact I knew, was that a very large quantity of mild steel bars of a wrong size and in excess, was intentionally ordered by a Superintending Engineer, and if the complainant had

not made his statement two days after my evidence before the Committee, I would not have known it even now as to which Superintending Engineer was concerned, as I understand, there were at least half a dozen. Therefore, it is entirely incorrect to state that I introduced this subject in order to defame the complainant.

Secondly, I knew that very large quantities of mild steel bars were also used and required for the foundation piles of the Reclamation Sea Wall, and there too wrong sized bars far in excess of requirement were ordered. During the course of construction of the Wall, I had visited and seen the bars used. According to my information,—and that turns out to be the fact—that there was only one Material Division or District whose function and business was to supply all kinds of stores including mild steel bars to the whole Development Department, including Reclamation and Housing Schemes, and mild steel bars were one of the materials common to both. As I had always dealt with the subject of Development Directorate as a whole and never separated two departments of Housing and Reclamation, it was difficult on this occasion to sort out and separate transactions that were connected to both.

At page 26, complainant first tries to make out that mild steel bars had nothing to do with the Reclamation, but when reminded of the statement made by him before the Committee at page 454, Ex. 46:—

“ Sir F. Hopkinson : If any of these bars have been used in the Reclamation work, I think we can properly listen to your explanation ?

“ Mr. Harvey : I think some of these bars have been passed to the Reclamation.

“ Sir F. Hopkinson : Only one will do.”

Note the reply of Mr. Harvey, “ of *these* bars ” *i. e.* the bars in question have been passed to Reclamation.

It was necessary to make it relevant before the Committee hence the statement that some were used then ; whereas in the Court, it is necessary to say the contrary to strengthen his legal case, hence a different statement here that the order for these bars had nothing to do with the Reclamation.

This is one instance, to show how statements are changed to suit their present purpose. Upon this admission of complainant himself, the Committee held that this matter was relevant and agreed to inquire into it.

It will also be noted that I had got a Resolution passed in the Corporation, Ex. 43, applying to the Government of India, to enlarge the scope of the Enquiry, and the reply to that Resolution,

Ex. 44, had not arrived when I gave my evidence, and in anticipation of that reply, I had referred to certain matters pertaining to the Housing Scheme. Subsequently, when the reply of the Government of India was in the negative, the Committee eliminated and deleted this matter which they thought did not come within the scope of the Enquiry.

Thus, Your Worship will find several paragraphs in Ex. C of my original written statement, Ex. 42, deleted, and the space left blank. The committee, on the admission of the complainant that some of these bars had passed to the Reclamation, considered this subject as properly coming within the scope of the enquiry and have not deleted this paragraph accordingly, but has retained it on the record, thus holding it to be relevant. I will refer Your Worship to pages 386 to 387 of Ex. C, where paragraphs immediately above and below the paragraphs in question, have been deleted and blank spaces with astericks shown.

At page 379, before the commencement of my written statement, the following note is made by the Committee :—

“Certain passages from this statement have been omitted on the ground that they relate to matters outside the Committee’s terms of reference. The omission has been marked by astericks.” (Ex. 45).

The fact of the committee’s not omitting the passage in question but retaining it, clearly shows that it considered this matter, on the statement of complainant, to be within the terms of reference.

Complainant also again states in his written statement, at page 470, lines 15 and 16 :

“The indent had nothing to do with the Reclamation. It was prepared for the Housing Scheme. Very few concrete piles were used for the Reclamation Scheme.”

And hence in my written statement to the Committee I have referred to these bars for Reclamation. It is evident that on these statements of the complainant himself, the Committee considered and ruled that this matter came within the terms of reference because some concrete piles were also made for Reclamation and some of these mild steel bars were used there.

Then again, with reference to this point, I would draw Your Worship’s attention to Mr. Mackie’s evidence, pages 2 and 3 of Ex. C and Ex. 28, who produced copy of correspondence between me and Government, Ex. 27; throughout the discussion in the Council on the subject, Exs. 1 to 26, I have referred to the Directorate as a whole including Housing Scheme and Reclamation, and the allegations and instances referred to all the officers of the whole

Department. In resolution as well as the motion for cut in the Budget, I referred to the whole Development Department and the complainant himself has admitted that position at page 26 :—

“So far as discussions in the Councils are concerned, they referred to Directorate as a whole. The statement about the officers receiving commission presumably refers to the officers of the whole department. The correspondence, Ex. 27, was with regard to the whole Department, Sir L. Hepper when he repudiated the charges, (Ex. 29) referred to the allegations made about the whole department. The letter addressed to you (Ex. 30) referred to the allegations made in the speech of March 1925.”

Thus the complainant himself admits that all throughout, the discussion was never separated for two separate branches of Reclamation and Housing Scheme, but referred to the whole department and I particularly draw Your Worship's attention to the terms of the letter, Ex. 30, addressed to me by the Committee inviting me to submit my statement requesting me to give the particulars on which I based my speech on 3rd March 1925, particularly details about secret commission. If Your Worship will refer to this part of the speech, of which details are asked for by the Committee, (Ex. 18, page 546, March debate) it refers to the criticism of the reply given by the Government about that particular part of the speech directly introducing the subject of mild steel bars incident and the Committee's request was again based on documents and records produced by Government, and therefore the Government itself directly introduced this subject. I was fully justified in assuming, when the Committee directly requested information on the subject of questions and answers on this indent of mild steel bars, that this subject must be within the terms of its reference. Besides, Sir Lawless Hepper's repudiation of the allegations, Ex. 29, refers to all my allegations concerning both the Reclamation as well as Housing Scheme, and it would not be fair to me to allow my opponent to refer to the whole subject, and in my reply to the repudiation, ask me to confine only to that part of allegations referring to the Reclamation.

The fact that the Committee considered this subject to be relevant, is also apparent from the fact that out of several serious allegations against the officers, some directly and exclusively referring to Reclamation alone, such as allegations against Mr. Thomas, the Committee in the course of oral evidence, picked out this incident alone about mild steel bars for a detailed cross-examination and investigation, and it appears that the complainant knew and anticipated this investigation on this particular point, as he was present on this occasion alone at the Committee's proceedings.

They did not touch about other matters even against complainant directly such as chawl construction contracts &c., and it is difficult to understand why of all the allegations, Sir F. Hopkinson concentrated his attention on this one incident alone and made a persistent effort either to make me withdraw the statement or create sufficient material for a case. The whole trend of cross-examination on this point, appears as if done with a set purpose and not a single question was asked about Mr. Thomas although his name was specifically mentioned and more serious charge of tampering with a tender to benefit his favourite contractor Balkishen Seth, was made.

Thus, from the above circumstances, I submit that in view of the fact that the Committee considered this matter as coming within the terms of reference and specifically requesting me to give information on that particular subject, I was perfectly justified in referring to it on the assumption that it came within its purview and the complainant's allegation that it was introduced simply with a view to defame him has no foundation.

Thus, so far as I could recollect and gather, I have dealt with the various important points arising in the case for the prosecution, firstly explaining the importance of the subject from the public point of view explaining my position in relation to this important subject, my close association and various attempts to get true information about the inner working of the Directorate, my efforts both in and out of the Council, interpellations and resolution in the Council and the apathetic and hostile attitude of Government towards the legitimate demand of the public, the debate of October 1924 and March 1925, the appointment of Committee and the circumstances under which I made my oral and written statements. Thus, I have tried to explain the point particularly arising in the case, such as question of my good faith, the allegations about facts made by me being substantially correct and hence my justification in making them, further relevant of this matter and the fact that on the rulings and attitude and invitation of the Committee I was justified in believing that it was within the terms of reference. Further, I have attempted to show the motive for altering the case for the prosecution and the fact that both wrong sized and excess number of bars were ordered intentionally as alleged by me and I have also submitted the circumstances and reasons which led me to the conclusion and opinion that it was not a bona-fide mistake but intentional with ulterior object, and I will now submit what I consider to be important consideration and the real reasons that led me to an adverse inference and opinion, such as constituted in item No. 1 of the charges. I have also dealt with the point of identity of person defamed and the fact that I could not have repeated this quotation with the intention and knowledge of defaming the complainant.

I have also dealt with the important question of the identity of the person defamed and have made an effort to convince Your Worship, under the circumstances, in repeating certain allegations and remarks already in the possession of the members of the Committee, I could not have made and published the remarks with the intention and knowledge of defaming the complainant and I made clear before the Committee that I did not at the time know the officer concerned except the fact that he was a Superintending Engineer and the complainant's connection was only made known to me when he himself admitted it in his evidence two days after. I have also stated as to what made me so suspicious and how events happened increasing that suspicion, viz. suppression of facts and deliberately wrong impression given by Government, shirking of Government to start an independent non-official inquiry and different and inconsistent explanation given at different times in respect of this very incident. These are some of the circumstances that gradually and naturally made my mind suspicious and proportionately increased my desire and efforts to have an independent inquiry.

But in spite of all this material, I must frankly admit that if the department were guilty of only this one act of irregularity and shady transaction in connection with this incident about 1922 indent alone and its general record with regard to the other details of administration was clear, in spite of so many suspicious and inexplicable circumstances attaching to this transaction, I would still have hesitated to jump to the adverse conclusion and refrained from attributing motives; I might still have been persuaded, though in spite of so many adverse circumstances, that it might possibly be a mistake as alleged and even if not a mistake, would not have persisted in my efforts. But to confess frankly, this particular suspicious frame of mind was created not on account of this one incident of mild steel bars indent for 1922 alone, but it was the result of a series of similar shady and suspicious acts and transactions in all branches of its various and multiple activities showing a universal system and a sort of unholy association between various officers concerned. The Court will appreciate the fact that in spite of the closest watch and persistent investigation, all such secret and shady transactions could not be brought to light; but even a few that were divulged was enough to make me feel that unless some vigorous steps were taken to stop this enormous waste due to mal-feasance and mal-practice, favouritism and frauds, the ultimate burden on rate payers would be enormously increased and there would be no remedy in future. Whether in the distribution of contracts or purchase of stores, payments of Bills or keeping of official records, in each and every important detail of administration, there was some flaw and

irregularity or fraud; wholesome sections of the P. W. D. Code were flagrantly violated; protests from Finance or Audit Departments were not heeded; large payments were made to contractor friends under various pretexts though not legally due; use of foreign materials against the provision of the Code at higher cost was made simply to favour friends; orders were placed haphazard without any reference to the requirements, without tenders and without observing other rules and formalities of the Code; large surplus stock and ugly rumours with regard to the sale of such surplus; the Court can imagine the cumulative effect of such and many other similar matters constantly coming to the knowledge of an individual in the course of persistent inquiries of four or five years, and on the top of all that, the keen provocation and indignation felt at the adamant and unreasonable attitude of Government either to suppress facts or mislead public; with a view to bring these matters, collected after spending enormous labour and money, to light, to punish the officials concerned and to stop and prevent further waste of public funds, I got a resolution passed merely with a view to have a non-official enquiry making my position clear that there was no dictation or interference with the internal management but merely to find out if the crores of rupees of public funds were honestly applied or dishonestly misapplied; Government even refused such a reasonable request of the Legislative Council and the Development Department affairs had become a public scandal and when we went to gather votes for elections, we were openly told by the rate-payers, particularly the traders and dealers who knew a good deal about these shady transactions, that if the Bombay members cannot stop this open day-light loot of public funds, it was no use their retaining seats in the Council. Such a scandalous and alarming state of affairs is complacently described by the complainant when he admits in his evidence, at page 63, "I heard rumours of the officers of the Department but I took no notice of it. I took it as Bazar Gup." Thus, the fact of such rumours existing, is admitted by complainant himself and Mr. Sykes, the only difference being that the complainant took no notice of them and I did. Mr. Sykes, with equal complacence, says, page 63 "I heard a good deal of trouble about lot of materials which were not accounted for. It was a rumour; it was not my business. The Materials quite likely include mild steel bars. It did not concern me because materials not accounted for were not in my division but it was in another division." Thus shifting the responsibility from one head to another, Superintending Engineer No. IV says it is not his duty to inquire; Superintending Engineer No. I says it was not his concern, and when matters were brought to the notice of higher authorities by purely constitutional methods of reports or petitions

or Council debates or resolution, same callous indifference to public demand is shown by Government. Evidently the only anxiety of Government and its officials and also of some members of the Committee, was to preserve the prestige of a Government department and its officers at any cost and enormous wastage of public funds and the ultimate burden on the rate-payers did not concern them at all. The limit of toleration is reached when a citizen elected to represent and watch the interests of the rate-payers, in discharge of his duty as such representative, only repeats these rumours admitted by the officers themselves, in response to a specific request and confidential inquiry before a duly constituted Enquiry Committee, after an assurance of protection conveyed by a Secretary to Government on behalf of the Government and the Chairman of the Committee and the same Government that has introduced this subject and provoked an inquiry by producing the records in connection with the incident and giving their side of the version, sanctions the prosecution of a witness who under such special circumstances, appears before the Committee, places the other side of the case before the tribunal making his position clear in the following words, page 385, Ex. C :—

“ But even at this late stage, I can place before the Committee all the materials that I have been able to collect not with a view or desire to cast aspersions against any individuals of the Department, but primarily with a view to enable an independent investigation to find out the truth, and if sufficient materials are disclosed, to take such action as the Committee thinks proper. All along my appeal to the Government has always been investigation of certain allegations to find out the truth...”

And I never dreamt that an honest appeal to find out the truth would result in a sanction of a prosecution. I could not have made my position and object clearer; I did not want any penalties to be inflicted, disciplinary or otherwise, or any action to be taken barely on these allegations, but I certainly had a right to demand an investigation and to take action only if sufficient materials were found as a result of that investigation. I too, in turn, would have willingly submitted to any penalty if after due investigation and inquiry these statements were proved to be false or without foundation.

In view of the open declaration of the Committee that no investigation would be made unless witnesses came forward and boldly spoke out their minds and made specific allegations definitely, any witness who keenly desired an investigation for so many years, would naturally be inclined to speak out what he felt so that there may be no excuse on the part of the Committee to brush aside this matter on the pretext of its being vague, and after all what was my

crime or fault? Was I not justified in the circumstances disclosed in this case and the cumulative effect created in my mind on account of series of such suspicious and shady acts in almost every branch of the Department, to adhere to my honest opinion that, under the circumstances, I did not believe in the theory of bona-fide mistake put forward by the prosecution, and I maintain that it must be intentional, and no act can be alleged to be done intentionally except with some object or motive. I believe that this prosecution is not bona-fide, but launched at the instance of my inveterate opponent, Sir Lawless Hepper, with a view to silence and gag a persistent critic of the Department so as to avoid further exposures.

Further, in connection with this part of the case, I beg to submit that the attitude of a particular member of the Committee, namely Sir Frederick Hopkinson, was not at all fair and equitable, and he appeared to be more an advocate for the department than a judge appointed to decide impartially. His behaviour towards non-official witnesses, who attempted to make statements against the administration of the department, was curt and uncivil, and on more than one occasion, non-official witnesses including myself had to raise a protest against his objectionable remarks. Your Worship will also note the oral evidence in connection with this Indent that from the very beginning, the particular member of the Committee was determined either to make me relinquish my position and thus to clear and white-wash the department, or to make me commit to certain statements with a view to prepare grounds for future action. I had made several allegations against various officers, some more specific and serious, still that particular member concentrated the whole attention on this particular allegation alone, and complainant was the only officer present on the occasion. From the very beginning, he started with a threatening attitude by remarking to me "that you cannot get out of the position in which you have been placed," to which I retorted that I never wished to get out of it, but on the contrary would like to go beyond it if permitted. Further, it appears that he knew certain facts and explanations about this incident even before the official witnesses that were examined had submitted their statements, because some days before the official witnesses were examined the second time when another witness, Mr. Lalji, also referred to this incident of mild steel bars, he gave an hypothetical explanation on behalf of the department, that it may have been a mistake of the draftsman, page 365 of Ex. C. Ex. 31. It is difficult to understand how a particular member of the Committee could have anticipated an explanation on behalf of the department which was exactly the same as is given by the department some days later, wherein Sir Lawless Hepper tried to explain away this incident by a similar statement that either

through the mistake of the supervisor or draftsman. This leads to a reasonable inference that before I was examined and before this matter was taken up by the Committee that particular member must have been in communication with certain officer of the department and got certain facts from the department in order to be prepared to cross-examine, and also be ready to advocate the cause of the department. That could also explain his very partial attitude towards the department and his persistent efforts to compel a witness to give up his view and to adopt a view which would be more congenial and to the benefit of the department. This view is further supported by the fact that out of several incidents mentioned in my statement, this one alone was selected for a searching cross-examination, and complainant was present on that day alone. My submission is as the member of the committee, his business was simply to take the statements of facts or allegations as submitted by the witnesses and not to try and play the part of an advocate for the department. I mention this because most of the items of the charges against me items 2 to 9 have been provoked, and as it were, I was rather constrained to give the replies which are now made the subject matter of the charges on account of the particular attitude adopted and questions that were deliberately put by the member, Sir F. Hopkinson. It is not fair that only the replies should be extracted from the proceedings, in order to form the subject matter of the charge, without taking into account the pertinent questions that elicited these replies. In view of the position that I had already taken up, and in view of the statements that I had already made, I could have only given the replies which I did give to the questions that were put to me by the member, and if the particular member of the Committee had not taken up such an attitude and put these particular questions, it would not have been necessary for me to go into these details, and give the particular replies that I was compelled to give. For instance, when a definite question is asked to me as "what do you propose or suggest to be the motive for this conduct", I was in a way invited by the committee definitely to give opinion, and when in reply to such a question I do express an opinion honestly from my point of view, that reply alone is extracted from the whole proceedings and sought to be made the subject matter of the charge.

I will refer Your Worship to oral examination at pages 403 to 405 of Ex. C, Exs. C 3 and 40. After repeating about six times the same question in different forms whereby he was attempting to get a reply from me that it was a mistake, he further questioned, "You do not say it was intentional?" Having maintained persistently that it was not a mistake, the only reply I could consistently give was that it was intentional.

“Q: But there cannot be any dishonest motive; it might be a slight error of judgment?”

Again a positive question “Do you suggest any ulterior motive?” and another “This is perhaps due to a clerical error?”

Thus, the Court will see the trend of cross-examination with a set purpose to elicit certain replies favourable to the department, and consistently with the position taken up by me, I could have given the only replies that I actually did give.

In order to show justification for the adverse opinion and inference and good-faith, I have adduced before the Court several instances of what I considered to be grave irregularities, favouritism, wrongful payments and what appear to be fraudulent and shady transactions connected with the complainant directly or his department. I could have added numerous other similar instances connected with the Material Division or the Reclamation, but I could not do so as the complainant not being connected directly with these transactions, the Court ruled them out. These instances, I submit, strengthen the defence case of justification inasmuch as on account of series of such acts, it became impossible for me to believe in the theory of innocent bona-fide mistake with regard to the indent incident. I will divide these instances into two parts, one with regard to the purchase and sale of stores, and the other with regard to the giving of contracts.

First, with regard to stores, the two largest local indents for mild steel bars, Geo. Service's in 1921 and Salebhoy Tyebjee's in 1922, have already been dealt with separately before I will only point out in brief some circumstances connected with both, showing that they could not have been accidental but that a sort of method or system existed with regard to these orders.

Both orders, Geo. Service's and Salebhoy Tyebjee's were for bars far in excess of the requirements. In Geo. Service's order, particular diameters and sizes of bars such as 7/8" and 3/4" are far in excess and would serve for over a hundred chawls, whereas bars of other sizes are far much lesser number of chawls (Mr. Sykes' evidence, page 196, “7/8” would be for 102 chawls, 3/4” for lesser and one particular diameter for 21½ chawls”). Geo. Service's order is most erratic and the figure 2000 tons is arrived at without any method of calculation. Salebhoy Tyebjee's order also contains particular size, 7/8”, same size far in excess of actual requirements. In Geo. Service's, excess is included in the original indent; in Salebhoy Tyebjee's, it is added by a subsequent letter. In both cases, attempts are made by the complainant to dissociate himself from the transactions. In Geo. Service's, he first said that he knew nothing about, order must have been given long before his

joining and tried to make Mr. Mehta and Major Johnstone responsible. No documents connected with the order would be produced. Copy of Advertisement got from the Press, directly shows even advertisement, Ex. 60, given 15 days after he joined, hence order must have been placed at least a month after. He tried to get out by saying, page 55, "To the best of my recollection, I had nothing to do with Geo. Service's order. Mehta must have sent direct to S. E. IV." This is directly contradicted by Mr. Sykes, who stated that Mr. Mehta, as Executive Engineer, could not communicate direct with him and orders must come from Superintending Engineer, No. I, and at page 195, "The ultimate decision of size, tonnage and quantity rested with S. E. I. This order for 2000 tons to Geo. Service went through me but the requirements came to me from Project Division. At this time Harvey was in charge of Project Division. This requirement came from Harvey to the best of my recollection. Usually such requirements came in the form of consolidated statement with a covering letter signed by Harvey... All instructions and letters from S. E. I. would be filed." Thus, it is clear, in spite of complainant's denials, that this order went from the complainant and there were documents connected with it filed, but are not produced because they would show the complainant's connection.

Exactly similar piece of conduct is exhibited by the complainant with regard to Salebhoy Tyebjee's order the following year. Instead of Mr. Mehta and Major Johnstone, as in the first case, here he tries to throw the blame on Executive Engineer Hamid and supervisor. Mr. Hamid gave a wrong size on slip, not produced, and supervisor added on that slip by a draft, also not produced, to the indent. Then it became supervisor or draftsman. Then again the man who made the addition became uncertain, supervisor, Executive Engineer or Superintending Engineer; never disclosed till the last moment the real fact about letter, Ex. P. 1, directly connecting him with the addition. In both cases, correct information was suppressed from the Council, first with regard to Geo. Service, Mr. Trivedi's questions and replies, February 1923, Ex. 149, both the indents deliberately kept out. It says no wrong size bars were ordered (i. e. with regard to Salebhoy Tyebjee) and the replies are so based as to exclude altogether Geo. Service's indent. In both cases, orders were placed with local firms in direct violation of P.W.D. Code, purchase of stores rules, on the ground of urgency. Ex. 87 is a reprimand from higher authorities for this irregularity, and after that such large local orders ceased. In both cases, according to Mr. Sykes, the complainant responsible for these local orders (Mr. Sykes' evidence, page 197) "If Harvey said he wanted bars very urgently, then I would forward an application for sanction to order from local purchasers. . . . One

of the grounds for placing orders for the bars locally would be urgency. . . . It would be quite reasonable to suggest that in this instance all this quantity was ordered locally and not some locally and the rest from the High Commissioner as S.E.I. stated that they were urgently needed. . . .” At page 195, he states. “The ultimate decision for size, tonnage and quantity rested with Harvey . . .”

So according to Mr. Sykes, Mr. Harvey alone was responsible for all the particulars with regard to the purchase of stores including mild steel bars; he decided size, quantity, and tonnage and whether the order should be placed locally or with the High Commissioner. In both cases, excuse for placing orders was urgency, when as a matter of fact, no such urgency existed. This is directly contrary to what the Counsel said in his opening address and he himself stated in evidence-in-chief, that he had nothing to do with the purchase of stores; that was the function of the Material Division.

In both cases, the private records of suppliers—before this not regular dealers in steel—are not forthcoming. Geo. Service, when asked to produce the original invoices and shipping documents showing the quantity ordered out by them from England and the rates &c. and the period, stated that they did not keep such records for more than five years, and when Salebhoy Tyebjee were asked to produce even books of account, they too expressed inability to produce them stating that they were destroyed.

In both cases, rates were paid much higher than the High Commissioner and prevailing market rates. According to Ex. 87, High Commissioner's rate in 1922 was £10-17-0, about Rs. 162/- per ton, including freight and departmental charges, and the market rates were about Rs. 10 to Rs. 15 more; whereas rate paid to Geo. Service was Rs. 218/- and to Salebhoy Tyebjee Rs. 197/8/- and Rs. 239/-. The difference in Geo. Service's rate and market rate, comes to Rs. 58/- per ton and for 2000 tons, it comes to an enormous loss of Rs. 1,16,000. Similarly for Salebhoy Tyebjee, the loss comes to Rs. 46,000. Thus, for placing these orders locally instead of with the High Commissioner, the total loss on these two orders alone comes to Rs. 1,62,030 and this amount could have been saved if only cables were sent to England as actually proposed by Mr. Sykes in Ex U. No explanation is given as to why the original proposal to send cables was subsequently given up. The original proposal in Ex. U, was that stock was to be purchased locally only if stock was available in the local market, if not, urgent cable was to be sent. Neither Geo. Service nor Salebhoy Tyebjee had stocks, still orders placed with them.

In both cases, other favours shown to the suppliers. In the case of Geo. Service, usual inspection at the place of delivery and rejection of bars not coming up to standard requirement was given up and manufacturer's test certificates accepted in return, and rates once fixed in tenders subsequently enhanced on the ground of Exchange which was also a very unusual procedure, and with regard to Salebhoy Tyebjee, though orders were placed with them on the ground of urgency and their deliveries were late and the total amount due from them on account of penalties, came to Rs. 28,000/-, still only Rs. 6,000/- deducted and the balance given up.

In both cases, wrong information was given in Council, and in both cases all tenders received by the department, were not produced to show that they were the lowest.

This is with regard to the two principal local orders for mild steel bars for the years 1921 and 1922, and the irregularity was considered so serious as to call for a despatch from the Secretary of State, Ex. 87.

Now, with regard to the other local orders for petty supplies, I submit complainant's statement that he knew nothing about them and had nothing to do with them is not correct. Here again, he tries to shift the whole responsibility on the Executive Engineer and says it was his privilege and function to make these purchases and he even goes to the length of saying that he only came to know that Executive Engineer had bought mild steel bars, against the orders, locally, only after the proceedings in this case. At page 55, Mr. Harvey says, "There were other petty suppliers. I had nothing to do with them at all. I did not settle the quantity for these petty supplies. It was Executive Engineer's privilege to do that. The Executive Engineers at Worli and Naigaum sent lists of their small requirement to the Executive Engineer, Material District, and he placed these orders. They could send any of the requirements direct without consulting me." Mr. Sykes contradicts and says no communication could come except through Superintending Engineer No. 1.

Further, at page 111, the complainant states "In the case of steel, Executive Engineer had orders to indent direct from the Material District. They had no business to go outside. There was an order to this effect."

Again at page 112, "So far as mild steel bars are concerned, there were direct orders to the contrary. The purchases of mild steel bars were not allowed but done direct against my orders. I did not know anything about this irregularity till this case came on and I began looking up the files. Executive

Engineer may have made purchases unknown to me. He is a man of some trust and he is a responsible officer. How can I make inquiries if I don't know anything about it."

Thus, Your Worship will note that so far as the complainant is concerned, as usual he entirely dissociates himself from the transactions of local purchases of mild steel bars by Executive Engineers and even goes to the length of asserting that he did not know anything about the purchases till they were disclosed in this case. He also denies all knowledge about the Bombay Petrol and General Supply Co.

Now turning to Mr. Hamid's evidence, the real position seems to be quite otherwise, and Exs. 125 and 126 clearly show that no purchase of mild steel bars of any value could be made without not only his knowledge or consent, but without his specific sanction. The exhibits clearly show that before making any purchase, Executive Engineers had to make a formal application to Superintending Engineer giving all particulars and rates, and it was practically the Superintending Engineer who decided the firm and the rate at which purchase was to be made. Ex. 126 is one such application for Rs. 1,560/-, that is below the limit of Executive Engineer, still it was necessary to apply to Superintending Engineer. These exhibits bear endorsements of the complainant. Mr. Hamid's evidence on the point is as follows :

"(Shown 125) This is an application for purchase of mild steel bars locally. Ex. 126 gives the details. I give the names of different firms and the rates quoted by them. I would point out different rates. S. E. would endorse either sanctioning or rejecting it. The amount is 1560. . . This exhibit shows that even when ordering mild steel bars of less than 2000, I had to obtain S. E.'s sanction."

Again at the next page, 187, referring to three bills of Petrol Co., all of same date, same amount and same sized bars, in fact one bill repeated three times, Mr. Hamid says:—

"I can't explain how these three bills are for the same amount and kind of goods. These bills for mild steel bars must have gone to S. E. for sanction."

These bills were in December 1922, some months after Salebhoy Tyebjee's order and even when supplies, according to I₁, K₁ & L₁, of 5/8" bars were already in stock and further required quantities were ordered from Salebhoy Tyebjee and High Commissioner, still the complainant sanctions purchases from Petrol Co. of these very sized bars at rates much above the market rates. Your Worship will see in Ex. 126, Petrol Co.'s rates are Rs. 11-8-0 per cwt. whereas others have quoted Rs. 9-12-0, thus there being a difference of about Rs. 35 per ton.

Another facility afforded by the complainant to Executive Engineers with regard to these local purchases, was that he allowed them to place orders with the few favourite firms and did not insist upon public tenders being invited, thus again violating an important provision of P. W. D. Code. Complainant admits that he allowed these orders without tenders, and Mr. Hamid on page 186, says,

“There were no tenders with regard to these purchases. We called for quotations but we did not call for public tenders. This would be against P. W. D. Code. This procedure was adopted with his (S. E.'s) sanction. The same procedure was adopted regarding the giving of piece-works to contractors without tenders. He did not object to it.”

Thus, though the complainant persistently stated on oath that he did not even know anything about these purchases, till this case was launched, and never heard the name of Bombay Petrol Co., his own records, Exs. 125 and 126, as well as Mr. Hamid's evidence directly contradicts him and it shows that he sanctioned purchases from Petrol and other companies, of bars not required, at rates much higher, and further gave actual facilities by doing away with the public tenders. If he had insisted upon the P. W. D. rule for public tenders, it would not be possible to favour a few firms with orders at higher rates.

Similarly with regard to petty works, and he does not even pause to enquire as to how Petrol Co. came to supply mild steel bars and act as petty building contractors. As a result of these facilities afforded by the complainant, the officers were enabled to enter into secret arrangements with the traders, as disclosed by the books of account of Petrol Co.

The result of these facilities afforded by the complainant to his subordinates, viz., allowing to place orders without tenders, permitting local purchases against orders, permitting purchase direct without going through the Material District, allowing purchase at much higher rates than prevailing in the market, allowing orders to be placed with firm not dealing in those particular materials and other similar facilities led to the systematic favouritism and corruption between the officers and the regular traders and suppliers. Unfortunately, in the course of these proceedings, the scope of the enquiry being limited to the purchase of mild steel bars alone, I cannot get the opportunity of proving the systematic fraud and corruption and the regular secret dealings that existed between the officers of the Department and traders in the market with regard to the supplies of materials to the Department. If permitted, I could have conclusively proved before the Court, if the books of accounts and other records were produced, of the kind of secret arrangement existing between the

officers and traders resulting in an enormous loss to the public and much profiteering to individuals and such enquiry would have unduly prolonged the prosecution and protracted the trial. But I submit, even with limited scope and placed in a position of extraordinary difficulty and disadvantage, I have been able to adduce sufficient materials to entitle me to ask the Court to draw certain general conclusion with regard to the practice prevailing in the department.

I beg to draw the attention of the Court to the extensive dealings disclosed in the course of the proceedings by inspection of the books of accounts of the Bombay Petrol and General Supply Co. The said company ostensibly dealing in Petrol and Motor Car accessories, was lucky enough to receive orders from the Development Department, particularly the Housing District of the complainant, to the extent of lacs of rupees of every conceivable article or material that were required for the Housing District including mild steel bars, furniture, all sorts of petty tools and plants and building implements, all kinds of building materials, in fact they were the jack of all trade so far as the Development Department alone was concerned, and not content with this universal supply, the Petrol and General Supply Co. very often also got contract for the petty work of construction, costing several thousands of rupees, such as pile manufacturing, pile driving, columns and beams constructions, etc. as is shown in the accounts and bill-books of the company produced in the Court. Sometimes, in the course of two or three months, they have received payment of over a lac of rupees, thus showing the extent of dealings and orders received from the department. Sometimes the same bills for the same items, date and amount, are being repeated three or four times, thus apparently, as the records show, they were paid three or four times for the same bill. Similarly, Messrs. Gagrat and Marker's certain bill was also repeated three times, Ex. No. 158. The Petrol Co.'s books also disclose that as they were not regular dealers in the materials supplied, they placed these orders with local dealers at much lower rates and the dealers supplied the materials very often direct to the Department and the Petrol Co. got much higher rates and made enormous profits by pocketing the difference.

I will only quote one or two instances with regard to the purchase of mild steel bars alone. About the end of 1922, two different officers of the same department—Mr. Colabawalla Executive Engineer of the Material District purchased mild steel bars of 5/8" from the Alliance Stores Trading Co., at the rate of Rs. 8-8 per cwt., i.e. Rs. 170 per ton, whereas the Housing District under the complainant, purchased the same dimensions, quality and size, about the same time, from the Petrol Co., at the rate of Rs. 10-8

or 11 per cwt., i.e. Rs. 210-220 per ton. Thus, there is a difference of about Rs. 50-60 per ton between the rates of two purchases made by two different officers of the same department from two different firms. The Petrol Co. used to place orders with local dealers and the difference of Rs. 50-60 per ton was divided between the officer and the company.

This is only one instance showing the general practice prevailing with regard to the local purchases of various kinds of materials, thus enabling profiteering to officers and favourite firms at the cost of public. The Petrol Co.'s books of accounts show the nature of dealings existing between the purchasing officer and the company. An open account in the name of an officer appears in the books wherein entries show besides various purchases made and expenses incurred on behalf of the officer by the company, some amounts are paid in cash and money orders of Rs. 500-600 are sent to friends and relatives of the officer at Agra and other places on his behalf. Besides, the said company practically maintained all the expenses in connection with motor cars of various officers connected with purchase of stores, including payment of salaries to chauffeurs and even petty expenses for their pairs of boots or uniforms. Besides, the said Petrol Co. had at their own expense undertaken repairs to all cars belonging to several officers and got repairs to these cars done by a particular workshop and the Petrol Co. had paid the bills on behalf of the officers for these repairs. Any attempt to explain away these transactions on any other basis than the secret arrangement of commission between the officers and the said company, is futile, particularly when it is to be remembered that these orders were placed with favourite firms without tenders for all conceivable materials and even for construction work regardless of the fact whether the firm dealt in that particular material or not, and further suspicious circumstance is that the same bills were repeated three or four times, and particularly with regard to mild steel bars as well as other materials supplied, it can be proved from the records that these materials were not required at all and on a reference to the Material District, they would have supplied these materials from the stock, and that these orders were superfluous and were only permitted with a view to afford opportunities and facilities for profiteering.

In addition to the numerous orders for miscellaneous supplies, orders given to the Petrol Co. amounted to fifty thousand rupees in two or three months, all without tenders. I herewith also attach a statement showing a list of petty building contractor's work entrusted to the same firm in the year 1922, also without tenders, extending to Rs. 70,000 in the course of a year. Thus, Your Worship will have an idea not only

Orders for Works to Petrol & General Supplying Co. in 1922.

HOUSING DISTRICT NO.	CONTRACT No.	DATE.	AMOUNT Rs.	WORK.
II	23	23-5-22	7,000	Making Piles &c.
I		13-7-22	8,000	Making new beams.
II	33	10-7-22	10,000	Making new beams. &c.
I	11	16-5-22	6,000	Removing and fixing partition forms for outer walls, &c.
II	42	3-8-22	3,500	Making Piles.
Materials: Colabawalla.		11-8-22	6,500	Casting, loading and unloading, stacking sand for.....Works.
II	48	15-8-22	3,000	Work of filling in plinth of chawls.
II	62	6-9-22	10,000	Making Piles.
II	64	25-9-22	9,000	Pile-Making.
	89	16-11-22	3,000	Erecting and dismantling cement pieces.
	99	29-11-22	4,000	Bill No. B/402 dated 12-12-22.

Total in one year in 1922...Rs. 70,000

Executive Engineer's limit of sanction upto Rs. 10,000/- but copies sent to Superintending Engineer.

of the extent of the dealings with this so called Petrol Co., but also the variety of the orders, both for supplies and construction. I do not believe there exists any other example in any other department of P. W. D. or any public body such as Municipality or Improvement Trust or Railways where an apparently insignificant firm dealing in petrol and general motor stores, have acted both as petty building contractors and universal suppliers of all conceivable materials, and Your Worship will also realise that the dealings exposed in this case are not connected with one particular district; their books of account and bill-books similarly disclose enormous and various dealings with several other officers of different district of the same Development Department, and personal accounts of other officers also appear simultaneously exactly similar to the account of Mr. Abdul Hamid including maintenance of motor cars and supplies of all sorts of materials and articles to officers. If that was the state of affairs with regard to one apparently small and insignificant firm, I leave it to Your Worship to judge what must have been the extent of such dealings with regard to several other similarly so-called petty firms, having similar dealings with the department. These dealings have not come to light simply because the records and books of account are not available.

With regard to this, the only explanation forthcoming from the witness, Mr. Abdul Hamid, is that he used to pay the company for their expenses and has produced certain receipts, Ex. 147. He himself was not willing to produce these receipts, but the defence insisted on their production as he had referred to them in his evidence.

With regard to the receipts, I will draw Your Worship's attention, although the transactions are spread over for a period of over two or three years, all throughout the years 1922-23, most of these receipts show alleged payments in one month only, i. e., November 1922. There are in all seven receipts produced showing a total payment of about Rs. 3,950/-; four of these receipts are :—

{	24-11-22	...	...	Rs.	298	13	0
{	29-11-22	...	...	"	619	4	6
{	29-11-22	...	...	"	211	0	0
{	30-11-22	...	...	"	785	0	0
{	5-5-22	...	...	"	706	1	0
{	9-5-22	...	...	"	1200	0	0
	5-12-23	...	...	"	131	0	0

thus, showing four payments, making a total of Rs. 2214/- in six days in November 1922, two payments of Rs. 1906/- in four days in May 1922 and only one payment of Rs. 131/- in December 1923; two receipts on the same day 29-11-22 while the expenditure on his behalf spreads over evenly for all the year round. According to

the receipts, payments were made within a few days in November and May 1922 and only one payment of Rs. 131/- in December, although the total expenditure for that year comes to a much larger amount. He admits at page 190, that he had a Bank account, still he says that these payments, except one for Rs. 300/- were made in cash, it is difficult to understand why? At page 190, he says "I had a current account with a Bank but I paid them in cash. I used to pay small amounts from time to time and when the man came to make accounts, accounts were made up, balance paid and receipts taken for the full amounts." This arrangement is not borne out by the dates and amounts in the receipts; besides there are no corresponding entries in the Petrol Co.'s books on these dates. When he admits all other entries, he is reluctant to admit entries showing payments in cash, i. e. in coins, and as regards an entry of Rs. 101/- sent by Money Order to Faizally Khan, an acquaintance of his, at Agra, his explanation, I submit, is not at all convincing. He says, at page 190, "It was sent by Money Order to him to be paid to a mechanic who wanted to come here and who was to be employed by them; but he did not come, so it was debited to me. I recommended him to them." Why should an amount sent to a mechanic to be engaged by the Petrol Co., be debited to him showing as if the Money Order was sent on his behalf to Agra?

I therefore submit that so far as these entries show, the gist of arrangement between dealer and officer is clearly established. That is the reason why the Petrol Co. very strongly objected to disclose the entries and made every effort to suppress them. The same book discloses similar dealings with various other officers including Mr. Caldwell, concerned in the sale of surplus mild steel bars and the several bills for repairs to cars produced by one Narayen also show that the Petrol Co. paid for repairs to cars of officers including Mr. Hamid's. Mr. Narayen has produced several such bills and has several others relating to the cars of other officers. Your Worship will find in their accounts, large amounts for Petrol consumption and also several bills for heavy amounts for car repairs within a very short period and it is impossible to believe that Mr. Hamid's car alone could have consumed so much petrol or needed so much repair in such a short time. Moreover, the dates of these entries show that Mr. Hamid had these dealings and payments made to him even when he was Acting Superintending Engineer.

Another method by which public funds were defrauded, was that whereas amounts of bills were paid for full supply, the actual supply was about 50 per cent less and this excess amount for bogus bill was divided between the officer and the traders. The Bill books of the Petrol Co. show large quantities of 5/8" bars ordered about the end of 1922 although about the middle of the same year, as is

amply proved in the course of this case, that sufficient quantities of this very size were ordered and it was not at all necessary to purchase these bars of that particular size. The complainant had stated that officers were directed not to purchase mild steel bars locally except through the Material District, still apparently he has allowed and sanctioned often the purchase of Mild Steel Bars at these excessive rates from various local dealers.

Another important circumstance to which I beg to draw Your Worship's attention in connection with the local purchase, is the admission made by the complainant in witness box that no proper record was kept with regard to the stock and he further stated that on account of this irregularity an Executive Engineer was dismissed. The non-production of this important record has considerably handicapped and prejudiced the defence, because if the said record were produced, in addition to the books of account of local dealers like the Petrol Co., I would have been able to prove with greater force the allegations and statements contained above, as to how systematically and deliberately public funds were defrauded, how at times demands far in excess of supplies were made, how enormous sums were paid for bogus bills for materials never supplied and various other irregularities.

I therefore submit that the entries in the books of account of the Petrol Co. were, according to the complainant's statement, proves a very strong foundation for these rumours with regard to certain high officers included in the category and also a strong justification for bringing such rumours to the notice of the Committee by re-quoting the passage, and the circumstances and passages quoted clearly show that the complainant was not so ignorant of these dealings as he pretends to show in his evidence, wherein he states that he came to know of it after the filing of this complaint, but as Mr. Hamid's evidence and Exs. 125 and 126 show, these transactions were made with his knowledge and sanction, and as a matter of fact, could not have taken place if he had not afforded certain facilities.

I submit that if enquiries were started in 1924 on the resolution passed at my instance shortly after these dealings, it would have been possible to prove most satisfactorily exactly similar underhand dealings with most of the firms who had dealings with the Department; but on account of this long delay, the books of accounts of other dealers are not available and the Petrol Co.'s books were also made available by a mere accident, as on account of a pending suit between the partners, these books were kept under the custody of solicitors with an undertaking to the Court not to part with them, hence they became available for this case.

I intend to submit if sufficient time is permitted a copy of accounts showing the nature of dealings with various dealers, to enable the Court to judge for itself and draw its own conclusion after perusing the same.

To give only one instance, in the list of suppliers of mild steel bars, Ex. 74, also appears the name of B. Balfour and Co. alias Balkishendas Seth, whose records disappeared so mysteriously in November 1924, i. e. a month after the resolution in the Council for inquiries. Neither the complainant nor Mr. Sykes recollect the name although the firm appears in the list, besides mild steel bars, as suppliers of coal and various materials. His private dealings with officers of the Development Department were most extensive and generous, extending from daily Bazaar supplies and supply of cars to the presentation of valuable articles, such as carpets, furs and jewellery, and I can adduce evidence to prove that most valuable and costly articles were supplied by dealers to some officers and consigned to their address in England, the bills for which were paid by Balkishendas. Two cars fully equipped were kept by him entirely at the disposal of the officers who sent slips whenever they wanted a car, and I can adduce evidence to show favours conferred, at the cost of public funds, on him by officers of the Department in return for these considerations, and he in this assumed name of Balfour & Co. supplied various materials to the whole department including Housing District, even when the complainant was in charge of Material District and took large contracts of lacs of rupees in the name of Balkishendas Seth.

To give only one instance, a large quantity of Bengal Coal was once offered for sale by a particular company at a reduced rate but that offer was refused, but when the same company offered the same coal through Balfour & Co., not only the offer was immediately accepted but a much higher rate was paid to them. I have also evidence to prove that most incriminating entries showing payments of very large amounts to officers appeared in his book and therefore he deliberately destroyed all records including slips for cars, shortly after my resolution for inquiry was passed in October 1924—he has admitted before Your Worship that his records disappeared in November 1924; he even got back the old paid up cheques from Banks and destroyed them.

There is no doubt that if the Government through C. I. D. or any other agency, had started a secret and immediate enquiry immediately after these matters were brought to their notice, sensational disclosures would have come to light, but no action whatever was taken in spite of repeated demands and challenges till the parties concerned did take steps, as is proved in

this case, and as was apprehended by me three years ago, to destroy the records throwing light on the subjects and most of the officers, high and low, had severed connection and left the country. Thus having placed me at a great disadvantage, by the long delay having securely placed records and evidence beyond my reach, the Government now sanctions this prosecution, calling upon me to prove the allegations made three years ago, in the hope that I may not succeed on account of these difficulties and thus their object of white-washing the department may be served.

Complainant at page 125 says, "it makes no difference whether the allegation is that higher officers and staff received secret commission from manufacturers or local dealers". It is not possible to prove here the dealings with the manufacturers in England; all that can be proved is dealings with the local suppliers or local contractors.

So far, I have dealt with one local firm with whom local purchases of mild steel bars were made. Now I will deal generally with regard to the other local purchases. My submission is that the complainant with regard to this matter also as regards to all other matters, at first tried to minimise the affair and said that other local purchases besides the two of Salebhoy Tyebjee and Geo. Service & Co., were very insignificant and of smaller value that he had nothing to do with them; Executive Engineers placed orders direct without consulting him; "There were other petty suppliers. I had nothing to do with them at all" (page 55). Again at page 63, "I placed no order locally." "They were placed principally by Colabawalla, a few tons by Hamid . . . Hamid, I think made one or two purchases of mild steel bars only . . ."

Thus, the general trend of his evidence is that his department hardly purchased any mild steel bars locally and that too without his knowledge. According to him, total purchases could not have exceeded 50 tons. At page 111, the total amount of mild steel bars locally purchased would not amount to 50 tons.

Again with the same object of not disclosing to the Court the fact that besides the regular big supplies from Geo. Service and Salebhoy Tyebjee, there was fairly large supply from various other dealers to his department. When in Mr. Sykes evidence asked to produce all the applications for local purchases of mild steel bars, the prosecution produced only those applications that were made by Material District and only one through the complainant's district, keeping back all the applications that were made by the complainant. This was shown in Mr. Sykes' evidence referred to above, Ex. 148. Ex. 148 are all applications and resolutions for local purchases of mild steel bars. Ex. M dated 1-8-22 in handwriting of Mr. Sykes, shows that upto that date local purchases

besides Geo. Service amounted to 300 tons, whereas Mr. Sykes says at page 198 "There are only three sanctions in Ex. 148 for the purchase of mild steel bars locally for the year 1922 upto August (i. e. date of Ex. M) totalling 114.5 tons. I don't find in this file (Ex. 148) applications for sanction for purchase of the balance of 186 tons, balance of 300 tons." i. e. there should be applications for 300 tons, according to Ex. M, whereas applications for 114 tons alone are produced. Thus, the applications for the balance 186 tons are suppressed because these applications would show that the said purchases were made by the complainant and the complainant, according to his previous statement, wants the Court to believe that he made no purchases and had nothing to do with them; again a transparent attempt to dissociate himself from shady transactions like the Petrol Co.

To give one such instance, to contradict complainant's statement that he had nothing to do with purchases, I submit the following applications and sanctions directly connecting the complainant with the local purchase of mild steel bars have been suppressed and I challenge the prosecution to disprove that statement :-

Resolution No.	Date.	Weight Tons.	Size.	Amount.	
3253	8-8-1921	50 at Rs. 11/4 per Cwt.	1/4"	Rs. 11,250	Bought from John Fleming & Co. direct by S. E. I. or his district.
1858	5-10-1922	37.3 (4000 bars) x 19'	5/8"	Rs. 6,501	Bought by S. E. IV. at the instance of S. E. I.

The name of John Fleming & Co. is also omitted from the list of local suppliers, Ex. 74, given by the complainant.

The total purchase for that period besides the few principal purchases, were not of 50 tons costing about Rs. 10,000 only, as mentioned by the complainant at page 111, but for Rs. 2,01,066, i. e. about 500 tons, and I have given two specific details of such purchases suppressed from the Court, because the complainant himself is directly concerned with the purchase and this purchase is made a few months after Geo. Service's indent when they were actually supplying superfluous bars including very large quantity of 1/4". The question is where was the necessity of this separate large order. The second instance, is more important because it shows that in addition to Salebhoy Tyebjee's order, such a large quantity as 4000, 5/8"x19' bars are purchased two months after Salebhoy Tyebjee's tender. This instance shows that 5/8"x19' bars

were for pile and again why such a large order when full quantity was provided by Mr. Hamid according to I₁ after calculation.

I give below a total list of local purchases together with the numbers of Government Resolutions and the value, making a total of Rs. 2,01,066, and I challenge the prosecution to disprove this statement :—

G. R. No. 1137	dated 26-5-22	Rs. 12,822	3	9
„ IV 1937	„ 22-6-22	„ 4,735	0	0
„ „ 1936	„ „	„ 4,615	2	0
„ „ 1934	„ 7-7-22	„ 10,500	0	0
„ 1501	27-7-22 (whole lot 5/8")	„ 10,487	8	0
„ IV 2547	1-8-22	„ 2,696	4	0
„ „ 2546	23-8-22 (5-8" Rs. 3350)	„ 8,375	0	0
„ „ 2733	dated 23-8-22	„ 2,280	0	0
„ 1858	„ 5-10-22	„ 6,501	4	0
„ 1962	„ 31-10-22	„ 10,031	4	0
„ 2116	D-15-12-22 (5-8" Rs. 3340)	„ 8,395	0	0
„ 54	dated 15-1-23	„ 10,818	2	0
„ 278	„ 1-3-23	„ 11,607	0	0
„ 329	„ 13-3-23	„ 23,625	0	0
„ 450	„ 18-3-23	„ 9,640	2	0
„ 3253	„ 8-8-21	„ 11,250	0	0
„ 95	of S. E. IV	„ 1,660	14	0
„ 99	of do.	„ 3,692	11	0
„ 107	of do.	„ 1,172	14	0
„ 1058	dated 3-7-23	„ 19,947	5	0
„ Item 108		„ 4,125	1	0
„ „ 116		„ 4,228	14	0
„ 1909	dated 21-12-23	„ 9,088	4	0
S. E. I. 17-22-1759	„ 12-5-22	„ 3,128	2	0
		„ 3,128	2	0
		<hr/>		
		2,01,066	0	0
		<hr/>		

This list clearly shows transparent attempt to conceal facts from the Court.

Again the question naturally arises, if according to the official routine and procedure, Ex. 51 annually lists were made out after due calculations and materials ordered out either from the High Commissioner or locally by means of regular big indents sufficient for the programme of that year, where was the necessity of such large local purchases over and above these regular indents and particularly when it is established that even in this regular annual indents mild steel bars of particular diameter ordered out were far in excess and still these very diameters are again included in the

local purchases. The fact of the non-production of proper records in connection with the purchases and stock of these materials, naturally considerably handicaps investigation and the purchase of such large quantities, particularly of mild steel bars, is more inexplicable because according to the complainant's admission there were special Government orders not to buy these direct locally. It cannot be suggested that all these were required urgently, because column 9 of I₁, K₁ and L₁ shows nearly 1,300 tons of various diameters in stock already, besides 300 tons as per Ex. O. Mr. Hamid says at page 188, "In I₁ I have shown 5/8" in stock since 1921." Coupled with this, the admission of Mr. Sykes in cross-examination at page 210 becomes rather significant, "I heard a good deal of rumours about lot of materials which were not accounted for. The materials quite likely included mild steel bars. It did not concern me because it was in another division." That other division refers to complainant's, and again complainant's own admission at page 113, "I cannot say how many tons were taken away in waggons. One waggon is equal to 23 tons, and the disappearance of waggons of mild steel bars without anybody knowing anything about them and without the disappearance being noticed or detected by stock records. Again at page 118, complainant says, "Articles worth Rs. 30,000 can be handed over without proper receipt, and orders can be given to any extent on "phone." The question is whether all the materials paid for really arrived or not, and the more suspicious circumstance is the dishonest denials of the complainant and the equally dishonest suppression of documents and applications for sanctions as proved by the evidence of Mr. Sykes at page 198. Again according Mr. Sykes' evidence, even for purchases made locally, the complainant himself would be responsible because the Material District could only on his requisition alone make these purchases on the ground of urgency. I have given a list of Government Resolutions with numbers and details obtained from the authentic source of Council, and I challenge the prosecution to disprove a single item of that list.

In view of such a deplorable state of affairs as perhaps never existed in any other Government or even a private department, is it at all surprising, as both complainant and Mr. Sykes admitted, that there were rumours about the officers and stock; was I not justified in merely drawing the attention of a duly constituted Committee to such rumours with a view to investigate further, and I do appeal to Your Worship to appreciate the difficulties in the way of defence on account of the long delay, and it is really surprising that in spite of such drawbacks and difficulties, when the department and dealers are both naturally interested in keeping back the materials that the defence even after three years was able to place before the Court, so much material.

Such systematic and deliberate purchases of excessive stores would naturally result in large surplus, and here again I have to confine only to mild steel bars though instances about other materials too are equally glaring. Ex. 67 is the list of Surplus left about the middle of 1925 of the value of about Rs. 5 lacs after disposing of in small quantities, after disappearance of waggons and lot of stores not accounted for. One waggon contains 23 tons and it is not known how many disappeared. As admitted by Mr. Hamid, and stated above, if regular procedure was observed, there should not have been any surplus.

With regard to the sale of this surplus, just as with regard to the purchases of stores, there are a number of circumstances that appear suspicious and call for an explanation.

In the first place, pursuant to the policy of denial uniformly maintained by the complainant throughout, with regard to this incident too the very first statement is again a transparent attempt to dissociate himself with this transaction and throw the blame on somebody who in this particular matter had nothing whatever to do with it. Complainant at page 51, says, "I was on leave at the beginning of the sale. I did not make arrangements for the sale. I had nothing to do with it. When the actual sale was effected, I was here. Sykes was not here. Hamid gave the permission. Rather it was the Government who gave the permission." Subsequently, when it became evident that he had a good deal to do with the sale, he admitted his connection though at first he says he had nothing to do with it; but the name of Mr. Hamid with regard to this sale was dragged in unnecessarily simply to throw off the blame from his shoulders. It was conclusively established—and the complainant himself admitted at a later stage that Mr. Hamid had nothing to do with it, page 119, "Hamid had nothing to do with the completion of the sale of these bars." and instead of his having nothing to do with it, as previously stated, he ultimately narrates the part played by him in this transaction, and at page 116, says "Nothing to do except my taking the letter to the Secretary. As a result of that the negotiations were certainly completed."

Thus, both the statements that he had nothing to do and Mr. Hamid recommended the sale, are to say the least, very misleading and it is remarkable that this policy of first denying and throwing the burden on somebody else and then to admit only when confronted with records, is uniformly maintained in respect of all the transactions he was questioned. Mr. Bell, Secretary to Government, states that the name of Maneckchand Jivraj was first mentioned to him by the complainant. Mr. Bell in his evidence at pages 221-222 says, "Superintending Engineer had the

authority to dispose of at the rates fixed. If the rates offered were lower, Superintending Engineer had the discretion to refer such offers as he thought fit. I can only speak of offers which came to my knowledge. The name of Maneckchand Jivraj was first mentioned to me by Harvey." Again at page 222, "Extension (to Maneckchand Jivraj) was on the recommendation of Harvey." On page 224, "I relied on Superintending Engineer to make inquiries (about previous offers)." It is further admitted that under Sec. 317, P. W. D. Code, Surplus stores could only be sold by private sale with the permission of Superintending Engineer (page 114).

With regard to this sale of surplus bars to Maneckchand Jivraj, the following facts appear from the evidence:—

That these bars became surplus and were for sale from October 1924, and first minimum rates were settled by the complainant himself. These rates ranged from Rs. 168 to 180 per ton. Mr. Bell says at page 221, "I think Harvey was here when the minimum rates were settled on his recommendation based on existing price lists. These minimum rates were subsequently revised and reduced i. e. Ex. 109. After the fixing of the rates, advertisements were issued and public tenders invited, Ex. 106. These tenders are for whole or part and 'offers should be addressed to the Director of Development' issued over the signature of Caldwell. Accordingly all tenders were addressed to Director of Development. First advertisement was given at the end of June and repeated in July 1925."

The procedure as stated both by Mr. Bell and the complainant, was that the offers were referred by the Director to Superintending Engineer; if the rates mentioned were according to the minimum rates fixed, Superintending Engineer could close the transaction; if lower, the discretion was with him to recommend these lower offers for acceptance (Mr. Bell at pages 221-222), and no private sale could be effected without his permission, Sec. 317 P. W. D. Code. As the advertisement was issued over the signature of Mr. Caldwell, Executive Engineer. Matunga, several inquiries were made of him and offers sent to him. His business was to close the transaction if the rates were according to minimum fixed; if not, his duty was to refer all such other offers to Superintending Engineer.

Between July and October, when Mr. Hamid was Acting Superintending Engineer, several offers were received from various parties, and only sales were effected if the rates were according to the minimum fixed, Ex. 109; if not, these offers were rejected. Exs. 108 and 110 are offers from the Alliance Trading and Stores Co. and Ex. 107, letter from Mr. Bell refusing offer because of not.

coming up to the minimum rates. Similarly, some sales were effected through broker also at the minimum price fixed and offer below that rejected. Ex. 122 dated 21st September 1925, appoints Mr. Anderson as broker with instructions to effect sales at the fixed rates only. Certain sales were effected by Mr. Anderson at fixed rates and brokerage was paid to him, Ex. 123. Ex. 117 dated 23rd July 1925 is a letter from Alliance Co. proposing to make a reasonable offer for entire stock. According to Mr. Bell minimum rates fixed on recommendation of complainant after taking into consideration prevailing rates and other data,—file produced by Mr. Bell—page Z 19.

From these records, it is clear that uptil the arrival of Mr. Harvey in October 1925, sales were effected through various sources of small lots only at the rates fixed in Ex. 109, and several offers from the Alliance Trading Co. and others mentioned by Mr. Bell, were refused though much higher than Rs. 102/-, because these were below the fixed rates. There are several instances of such rejection including Ex. 107, letter of Mr. Bell to the Alliance Trading Co. rejecting their offer. The prosecution has not adduced or cannot adduce a single instance of any sale below fixed rates before that date, and the defence on the contrary has adduced instances of rejection of offers even a few days before Mr. Harvey arrived, because they were below the minimum rates though much higher than Rs. 102/8/-.

That was the position till Mr. Harvey arrived on 19th October 1925. Now coming to Maneckchand Jivraj's transaction, it is admitted that Maneckchand Jivraj was known to him and the department before; Mr. Harvey admits previous transactions with him of waggons. The same firm had the monopoly to buy surplus stores from the same division and as their books disclose, they had bought surplus stores before this at very cheap rates, and hence they must have known Mr. Caldwell too who was in charge of the stores. Ex. 115 is their letter dated 20th October 1925 making an offer for the whole lot at Rs. 102/8/- and the letter states that some time back they had made a similar offer for the same rates but was not accepted. This previous offer, though repeatedly called upon was not produced, and it was stated that there was no such offer though a specific reference is made in Ex. 115. Mr. Hamid in his evidence says that the offer did not come to him though all such offers must come to the Superintending Engineer. Mr. Caldwell is in India and the prosecution has not chosen to call him to explain. It is clear therefore, that the first offer of Mr. Maneckchand Jivraj for the same rate, was deliberately suppressed by Mr. Caldwell when Mr. Hamid was acting Superintending Engineer, and other circumstances lead to a reasonable inference that the object of that

suppression was that Mr. Caldwell did not want this matter to come off before the complainant returned. The extraordinary circumstances are the fact that this letter, Ex. 115, of Maneckchand Jivraj is dated and delivered the very morning when Mr. Harvey took charge, i. e. 20th October, the day after his return from England, and is the only offer or letter addressed to him personally by name, "T. Harvey," so that it should not by any chance, go in the hands of the Ag. Superintending Engineer, although according to Mr. Bell all other tenders were addressed to the Director, page 221. There is no explanation as to how Mr. Maneckchand Jivraj came to know that Mr. Harvey was to return and take charge from Mr. Hamid on 20th October except that he must have got information from Mr. Caldwell who had also gone to the Mole to receive him. Mr. Harvey immediately takes that letter to Mr. Bell, and according to Mr. Bell, he was the first to mention Mr. Maneckchand Jivraj's name to him. Mr. Bell, had not heard his name before, page 222. As a result of that interview, that transaction was closed, and there was much anxiety to close the transaction with him immediately that the deposit of Rs. 20,000 was taken late that evening just at the closing time. This is apparent from the fact that it was too late for the Audit officer to issue a receipt that day, hence the receipt is dated 21st October, because after the deposit no other offer could be accepted. The offer from the Alliance Trading Co., of Rs. 127- $1\frac{1}{4}$ " dated 20th October was rejected and an endorsement made by the complainant "Inform them that the steel has been sold before receipt of the letter," Ex. 116, i.e. the transaction with Maneckchand Jivraj was completed on 20th October, on the very day he took charge.

Then again, there is no explanation as to why a proposal from the Alliance Trading Co., for the entire stock at a reasonable offer was not accepted or even disclosed, and no reply was even sent to them. Their previous letter exhibited, shows that they always offered much higher than Rs. 102-8, and if negotiations had been opened, on Ex. 117, for the entire stock, there is no doubt that better rates could have been obtained. Similarly, Mr. Anderson's offer for entire stock in six months at fixed rates was also not considered and not brought to the notice of Mr. Bell, and I have other instances where higher offers were suppressed for certain reasons by Mr. Caldwell during the absence of Mr. Harvey and no reply sent to them at all.

I submit therefore that such combination of circumstances led me to an inevitable conclusion that Mr. Caldwell had deliberately and with ulterior motives kept this matter over till Mr. Harvey returned and the stock that could not be sold for over a year was disposed of on the day Mr. Harvey took charge on his

return, and when the records show that several offers before this were rejected because rates were lower than those fixed by the department. This was the first offer in the course of several months when a much lower rate was immediately accepted and bargain closed, and by another strange coincidence, Mr. Maneckchand Jivraj happened to be the purchaser, a dealer known to the department before, having dealing with the complainant and Mr. Caldwell. Further favours were shown to him by giving him an extension of time of about a month and not imposing any penalties as per the terms of his agreement, Ex. 111, which stated that if there was any balance left over after 26th February, it could be sold off by Government at purchaser's risk and cost and loss recovered from him. There was a delay of about a month in the removal, still no action was suggested or taken under this clause and time was extended on the recommendation of the complainant without even charging the rent.

It is also in evidence that Mr. Maneckchand Jivraj was able to dispose of all these bars in six months at rates higher than those paid by him and the lots were removed as he sold, and according to information received by me, in fixing the rates for disposing of the stock Maneckchand Jivraj calculated a certain percentage as paid for commission in securing the order and accordingly fixed the rates little higher to cover that expenditure also. It is difficult to understand how a resourceful Government department with all its influential connections and facilities, was not able to effect these sales for more than a year when a private individual, a dealer in old and second hand iron and steel could effect the sale at higher rates and in such a short time. It is evident that Mr. Caldwell, Executive Engineer in charge of the Stores, did not place all the offers that he received before the Government through Acting Superintending Engineer Hamid and there are instances of such suppression—one instance being already furnished in Ex. 115—and Mr. Bell could only speak of offers that were placed before him and it was so arranged that the whole lot should go to Mr. Maneckchand Jivraj at extremely low rates, and the transaction should be put through only by Mr. Harvey immediately after his return. The several circumstances lead to only these conclusions, particularly when the officer concerned though available is not called.

When the entry in Mr. Maneckchand Jivraj's book showing payment of Rs. 5,000 on account of "Matunga Mild Steel Bars" with no corresponding receipt from the department or entry in the Audit Book of the Department, is considered along with these circumstances the inference that a secret commission was paid for putting through this transaction is perfectly legitimate and justifiable. All other payments to the Department have corresponding receipts except this and all other payments are by cheques except this. The entry

is dated 30-10-25, i. e. 10 days after the transaction in the rough cash book where the entry is supposed to be made first. The entry reads રૈકાશ દરતે માણેકચંદભાઈ i. e. cash through Maneckchandbhai; but in the fair cash book which is transcribed later, the entry reads પરચુરણ મજુરીના i. e. for sundry labour expenses, both on account of "Matunga Bar account." Thus there are two different explanations with regard to this sum and the first entry—cash through Maneckchand—is very significant.

Further, from the accounts it appears that there is a division of profits in respect to this transaction and Maneckchand Jivraj had paid his share of the total price, the balance coming from other partners; that accounts for the total amount paid to the department not appearing in his books alone, as the counsel, Mr. Velinkar remarked and of which a note is taken by Court.

When I, accompanied by a Gujrathi pleader who could read these books and another Gujrathi gentleman, went with the search warrant to the shop of Mr. Maneckchand Jivraj and specifically requested him to show the entry in question, he persistently denied any such entry and also denied any transaction of mild steel bars with the Development Department and referred us to the shop of another gentleman, Chotalal Keshavji, stating that the bars were purchased by him and he had only brought about the transaction and there were no entries in his (Maneckchand's) books and entries would appear in his (Chotalal's) books. As my information was positive, I persuaded him to show that entry so as to avoid his shop being searched and time and trouble being saved, but he persisted in his denials and to convince us, for nearly an hour showed several entries, page to page, of his other books of accounts, carefully keeping back the particular transaction. After having thus wasted more than an hour, I insisted upon the inspection of cash book of the particular period, when after great difficulty this entry was traced, Mr. Maneckchand Jivraj became quite confused and before we left the shop with books, he took the Gujrathi gentleman aside and told him to save his reputation as he was a merchant and if the fact came to light, his business would be ruined and he would come into trouble.

Besides this, there is other evidence to prove that the particular entry relates to the payments of consideration for this transaction and some time after that, books of accounts of one Chotalal Keshavji, another dealer, were also brought under a search warrant as he was a partner with Mr. Maneckchand Jivraj, and between the two, according to the books, about Rs. 20,000, more than the actual cost of the bars paid to the Department, appears to have been spent which can only be accounted for as payment of consideration.

One more circumstance that I submit may be considered as having a direct bearing on the question as to how these surplus stores were allowed to be accumulated, is in connection with the steps taken to cancel orders after the discovery of the error. According to the prosecution, this discovery of error was made about the end of October or beginning of November, when Salebhoy Tyebjee's deliveries commenced. It is admitted that if a cable had been sent to England immediately after the discovery, 5/8" could have been substituted for 7/8", because the cable, Ex. Y, is sent on 8-1-23, over two months after the alleged discovery of error, and this delay becomes all the more significant when we consider that the High Commissioner's supply, according to Ex. P, and indent, was to commence from 31st December 1922, so that the cable goes just a week after the period mentioned for commencement of delivery, and hence naturally it is too late to have the original order cancelled. There is no explanation of this long delay in such an urgent matter of sending a cable. Even if a letter had been sent to the High Commissioner immediately after the discovery of error, the order could have been cancelled, and it is admitted by the prosecution witnesses themselves, that the order could have been cancelled if action had been taken in time.

Similarly with Salebhoy Tyebjee's order. It is said that a telephone message was sent to cancel the wrong size, not even an official letter, confirming the telephone message, to be placed on record. It is inconceivable that in a Government department, dealing with lacs of rupees, such important communication should be made on telephone without any records, just as even large orders for supplies were also communicated through phone.

From such conduct and attitude, the defence is entitled to ask the Court to presume in the absence of any explanation that the officers concerned and responsible for the alleged error, were not at all anxious to get the order cancelled even after the discovery of error and they, for reasons explained in the entry in Maneckchand Jivraj's books, rather allowed the surplus to swell. Their conduct also supports the theory of intentional order for surplus and wrong sized bars, rather than the theory of a bona-fide mistake.

The books of accounts of Salebhoy Tyebjee, the selling firm are not forthcoming under very suspicious circumstances, and the books of account of the purchasers of surplus stores show such suspicious entries and coupled with the numerous other circumstances connected, both with purchases and sales of these bars, the allegation, I submit, merely stating that there are ugly rumours about secret commission, is perfectly justified and in both these transactions, though the complainant denies connection at first, it ultimately turns out that he was directly connected with them.

One further circumstance mentioned in connection with the purchase of stores, is the connection of one Capt. Griffiths. This gentleman was in Supply and Transport Corps during the time of War, and as such, had come under certain circumstances, into contact with several firms. He also happened to know some of the officers of the Development Department, who were also formerly in Military Service. In several cases he acted as an intermediary and introduced several suppliers to the Development Department and arranged terms between them earning his own commission. Mr. Sykes being questioned about him, at first denied all knowledge about him, but being pressed, subsequently admitted, at pages 211-212,

"I don't remember anybody in Bombay by the name of Capt. Griffiths."

Then, being given the name of the firm where he was employed, he states,

"I now remember the name of Capt. Griffiths. He came to see me to buy coal from Bird & Co.

"Q: Did Capt. Griffiths see you in connection with other suppliers or supplies?"

"A: He may have.

"Q: And large supplies were made through him?"

"A: I don't remember.

"Q: Do you remember having seen Capt. Griffiths with regard to sand or shingle?"

"A: He did have some proposals. I think he left Bird & Co. and I recollect his seeing me about sand and shingle. I cannot recollect whether on his own behalf or on behalf of other person.

"Q: I put it to you, Capt. Griffiths used to see you with regard to various supplies and suppliers?"

"A: My own impression is that he saw me on behalf of himself or Bird & Co.

"Question repeated and witness asked "You cannot contradict it?"

"A: I cannot contradict you."

Thus Your Worship will notice, at first there is even no recollection of such a name, till gradually he admits connection with regard to coal, sand and shingle, and ultimately he cannot contradict if he saw him in connection with various other supplies though at the time he was not connected with any firm. Why, as usual, such contradictory and halting statements if the dealings were honest and straightforward?

Information about further scandals about stores received by me, was to the effect that for some time the officers passed off tons of bags as of standard quality of cement for which the department paid Rs. 190/- per ton, but these bags did not actually contain cement but sometimes saw-dust or seed or other similar stuff and the department paid for it as cement. This must be in pursuance to an arrangement with the officers. This was detected after a long time and after the department had sustained heavy losses. The complainant being questioned about it, tried to explain away the incident by stating that some bags of cement got torn in the transit and whilst re-filling, some seeds accidentally got mixed up in cement and thus they were found in cement bags. Mr. Sykes being questioned about this incident, as usual, first denied it and then being pressed, admitted at page 205, "I don't know that some of the cement bags contained seeds. The difficulty was about the empty bags. We took deliveries of cement bags at the Bunder. I believe it was discovered at the Bunder that some bags got mixed up with seeds. Probably there was correspondence on the subject. It is not likely that I was asked for an explanation; my Executive Engineer would be asked. Six months after this I left service." The department on account of certain long time agreements, paid Rs. 90/- per ton for cement when the market rate was reduced to Rs. 50/- or 40/- per ton, and as thousands of tons were required, lakhs of rupees were wasted over these transactions. The audit department also raised a protest for placing order for a large stock of Motor tyres with a local firm instead of buying them cheaper direct from the local agents of the manufacturers. Mr. Sykes, at page 204, referring to this, says, "It is quite likely I had placed a very large order for tyres with some local company. There was correspondence between my Executive Engineer and Audit Officer over this. I probably did consent to this order being placed with local firm." These were not mere irregularities due to laxity but with a set purpose and object.

The next instance to which I might draw the attention of the Court, is that of Mr. Owen or the firm with which he was connected, viz. Gannon Dunkirley. This Mr. Owen was formerly with Richardson and Cruddas (page 68, complainant's evidence) when that firm got orders from the same officers for Delhi Imperial Work. He was perhaps connected with that firm when the first large order for mild steel bars was registered with Geo. Service and Co., which was connected with Richardson and Cruddas. Later on, he joined as Managing Director of Gannon Dunkirley. This firm was formerly only dealing in sanitary requisites and only supplied sanitary fittings &c. Then a strange phenomenon happened, whereby simultaneously several innovations took place both in the firm of Gannon Dunkirley and the Development Department, both connected with

each other. So far as this firm is concerned, when Mr. Owen joined as the managing director, the firm begins a new branch of activity, viz. takes up also sanitary contracts and they also get agency of Adam's Patent for Man-hole covers &c. about the middle of 1923. About the same time and so far as the taking of agency is concerned, practically the same month the Development Department, on the recommendation and requisition of Mr. Harvey, thinks of starting a separate Sanitary District and the creation of a new post for Mr. Krishnaswamy as the special head over that district, and what is more strange, about the same time Mr. Harvey suddenly discovers that locally made man-hole covers and other sanitary requisites that were hitherto used by the department and that were and are in use in the city and elsewhere universally for the last 50 or 60 years, were suddenly at the particular time found to be unfit for further use in these labourers' chawls, and therefore it was decided to introduce Adam's patent for the department and Gannon and Dunkirley also began to get sanitary contracts from the Development Department, this being the first contract in their new concern. This, the complainant alleges, was all a series of lucky accidents, and mere coincidences although they appear rather strange. But, I submit, that it is equally reasonable to suppose and assume that all these extraordinary events in quick succession in two entirely different and independent institutions, could not be mere accidents but they were pre-arranged and this inference is further strengthened when it is remembered that Mr. Owen who seemed to be the cause of all these innovations in Gannon Dunkirley, happened to be a friend of Mr. Harvey so close that he and Mr. Harvey on one occasion even stayed together for some time and had trips together both before and after business relation started (pages 68 to 72 of complainant's evidence).

Just as in the case of mild steel bars, one section of the P.W.D. Code, Sec. 347, that requires that article of foreign manufacture must be indented through the High Commissioner was violated, so in the introduction of Adam's patent another corresponding provision, Sec. 350, of the same Code, when local manufacture is available, it should be used,—was set aside and the excuses for violating both these important provisions are most flimsy and untenable. The fact is that whenever the provisions of the Code were not suitable or particular object in view could not be attained by adhering to that provision, then these provisions were quietly ignored. Ordinarily in all the Government and Public Works all over India, P. W. D. Code is strictly followed and Superintending Engineers and Executive Engineers came into serious trouble for not observing its provisions, but so far as the Development Department was concerned, it was the most irresponsible depart-

ment and there was no control or supervision by higher authorities on the officers concerned.

It is to be noted that before Mr. Owen and Gannon Dunkirley got the agency of Adam's Patent, these appliances were available in the city but they were never introduced in the department till the agency was transferred to them. Till this, the Executive Engineers in all districts used locally made covers and no defect was discovered in them till the agency was transferred to Gannon Dunkirley. In order to justify his wrongful action, he does not hesitate to discredit both Indian manufacturers and also Indian talents. At pages 70 and 71, he says, "Before Sanitary District was created, Mehta and Hamid looked after sanitary works along with other works. It was during that time locally made goods were used. They allowed articles which turned out to be unsatisfactory. The reason was both the Executive Engineers knew nothing about sanitary works and they allowed contractors to put in what class of work they liked. I then had to appoint Krishnaswamy who was a specialist." Thus a serious reflection is cast upon the capacity of both his Indian subordinate—Executive Engineers though both of them were qualified—and particularly Mr. Mehta held one of the highest English Degrees in Engineering and is a gold medalist and had varied and long experience of all kinds of constructions in various parts of India, and it seems ridiculous that preference was given over such qualified and experienced engineers to Mr. Krishnaswamy who had no degree at all and who held a subordinate post in Madras P.W.D. till the end of his career and he was selected when he was on the verge of retirement. The plain fact is that he was preferable because he was more pliant and submissive to the wishes of complainant and Mr. Mehta was more independent and resisting.

After Mr. Krishnaswamy is given charge of Sanitary District in the department, a cousin of his, a Mr. Aiyer was taken up by Gannon Dunkirley, to be in charge of this work on behalf of the firm, so that with Mr. Owen and Mr. Harvey, two friends, and Mr. Aiyer and Mr. Krishnaswamy, two cousins completed a nice happy family arrangement between the department and firm, and Mr. Krishnaswamy's service to the firm, when in the department, was duly rewarded, because in spite of his age and retirement, he was taken up as a Manager by Gannon Dunkirley on a handsome salary and free use of a car, and some other employees of the department who had similarly helped the firm, were also taken up by them after the termination of their services here.

Similarly, he discredits the Indian manufacturers in order to justify the use of foreign articles and the locally made manhole covers and other appliances that have been used in this city as well

as all over the country for more than half a century in all the important public and private buildings, including Government Houses and Palaces of Rajahs and high public officers, for more than half a century and have given entire satisfaction to P. W. D., Improvement Trust, Municipalities etc. he suddenly discovers them to be unfit even for poor labourers' chawls, and at one time he said almost all of the Indian covers that had been used on the first contract chawls, were found broken. On a personal inspection of the chawls with an Engineer friend, I discovered most of these to be intact and Indian, and when the complainant was challenged to disprove that statement, he began to prevaricate and said some were broken and he introduced another excuse that they had no locking arrangements. If at all it is a defect, it can easily be remedied by providing such locks. These sanitary fittings were to be used according to the Municipal standard, because they are to be passed by the Municipality, and locally made have for years satisfied the Municipal standard and are passed by the Municipality. If they had the defects mentioned by the complainant the Municipality would not accept them as coming up to their standard, and there are to-day in certain localities in Bombay locally made covers that can be proved to have remained intact for half a century.

Instead of thus discrediting the Indian subordinates and Indian manufacturers, it would have been more frank on the part of the complainant to have stated the plain fact that these devices were introduced because he wanted his friend Mr. Owen, to profiteer at public cost, because there is ample evidence to prove it and the complainant himself has admitted at pages 71/72, that Adams were more expensive than local and in some instances, the rate payers had to pay two or three times as much, and to that extent Gannon Dunkirley were benefitted, and the fact that Adam's patents were introduced simply with a view to allow profiteering to his friend Mr. Owen and not because locally made were unsuitable and the Executive Engineers who allowed them were unfit, is further corroborated by the partial attitude of the complainant towards the company in the distribution of sanitary contracts. The defence have quoted a series of instances with facts and figures which the complainant has admitted after referring to his file, show how in several instances Gannon Dunkirley's tenders for sanitary works were accepted though the rates were much higher sometimes even though there were four or five other tenders lower. In at least two or three cases, work was entrusted to them even without tenders, thus openly violating P. W. D. Code, which requires that ordinarily lowest tender should be accepted, I have also given one or two instances to show what devices were resorted to give an appearance that their tenders were lower than others, so that by some means or other the work should be entrusted to them.

They are narrated at pages 68 to 72, 78 to 80 and 96 and 97, and some subsequent pages in complainant's evidence, and in order to justify this open partiality and favouritism, he had to run down Indian manufacturers and Indian engineers. So also in order to justify his preference for the firm, in spite of higher rates, he has discredited and defamed several Indian firms of Sanitary Engineers and Contractors of much higher standing and reputation than Gannon Dunkirley. Pallonji Edulji and Sons, a well known firm of several years standing, who have undertaken Government and other public contracts for several lacs for the past so many years, were not able to satisfy the complainant or Mr. Krishnaswamy in comparatively petty works for these chawls. Your Worship will remember the instance of work at Worli in 1923-24 when work of about Rs. 3 lacs had in the first instance to be entrusted to Pallonji Edulji because there was a difference of about Rs. 48,000 between their rate and Gannon Dunkirley's and no excuse could be alleged for not giving the work to such a well known firm. So the work was entrusted to them in the first instance, but they were so harassed by both the complainant and Gannon Dunkireley, who were given some other work in the vicinity, that they had to leave in a few months as their complaints to the Department were not heeded, and although there were four other tenderers whose rates were lower, the work was ultimately entrusted to Gannon Dunkirley and thus the complainant's object was served.

Similarly for Naigaum Plot A, work was given to Gannon Dunkirley although their rates were much higher than others, on the ground that the firm whose tender rate came next to Gannon Dunkirley was a petty firm with only one clerk and small establishment and will be unable to carry out such large work. This was entirely untrue because this firm is also a well known firm run by qualified and competent engineer acting also as government contractors and the complainant himself has entrusted to them work when they have not competed against his favourite firm of Gannon Dunkirley.

With regard to Naigaum Plot B, a trick was resorted to, to justify the entrustment of work to Gannon Dunkirley. One of the principal item in the specification of tender was a number of water tanks, each costing about Rs. 125. Other tenderers quoted the ordinary rates for these tanks, i. e. from Rs. 120 to 125, but Gannon Dunkirley, for this particular tender, quoted ridiculously low rates for this particular item, i. e. about Rs. 90, so that if they were to supply the tanks at this rate, they would actually sustain loss. This was very surprising to the other tenderers because about the same time they had given quotations for these very tanks to the same department at the rate of Rs. 125. It was a mystery as to why the same firm had given two quotations for the same tanks to

the same department about the same time, there being a difference of about Rs. 35 per tank. Their tender rates were naturally lower than the rest on account of this extraordinary low rates for tanks and the work was entrusted to them, and the mystery was solved after the tender was accepted, because shortly after the acceptance and before the commencement of work, the complainant issued instructions that the tanks for which Gannon Dunkirley had quoted very low, were not required at all and that item was scrapped. The trick was transparent. The complainant himself must have known at the time of issuing of tenders that tanks would not be required, still he included that item and somehow or other, Gannon Dunkirley alone knew that secret, that tanks were ultimately to be dropped so that they deliberately quoted very low for that item, even lower than the last price, and thus resorting to such device their tender rates are reduced and work entrusted to them. In the other work in which they had quoted proper rates for tanks, the tanks were retained. There could be no other explanation for the conduct of the officer and contractors. Although the complainant tried to get out of the awkward situation by alleging that at the time tender forms were issued, water pressure from the Municipality for water supply was not sufficient, hence tanks were necessary, but shortly after, i. e. after the acceptance of Gannon Dunkirley's tender, suddenly pressure was increased rendering tanks unnecessary. No record from Municipality or anything else is produced to show such difference in pressure in such a short time, and to those who know about the water supply in the city, the suggestion is ridiculous as the pressure is normally the same in particular localities and the increase in the pressure is only to be effected after the new huge Tansa scheme is completed where new pipes are being laid. It is impossible to change so much pressure of water supply in a few days and there is no explanation of two different quotations by the Gannon Dunkirley.

Similarly Sewri make-shift and Khar works, were entrusted to them even without tender and numerous other instances quoted by the defence and most of them admitted by the complainant when work was entrusted to them in spite of their rates being much higher. Marsland & Price, other well known firm of standing, who have also undertaken work of lacs of rupees both Government and private, were rejected though their rates at times were lower than Gannon Dunkirley, because they did not come up to "complainant's standard" and they could get work from the department only when the complainant was absent on leave.

Although Adams cover and other requisites were usually always insisted upon, still quotations in the original tenders were not asked for Adams but only of the Municipal standard, i. e. locally made

and after the tenders were accepted for such locally made, these covers were removed and Adams were substituted. This procedure was also very irregular, because specifications in the tender could not be altered after acceptance of tender and usually Gannon Dunkirley quoted low for these articles which they knew were to be rejected and Adams to be substituted.

Besides, this instance of selection of Adams Patent also proves that complainant could directly influence the purchase of stores not only, as stated by Mr. Sykes at pages 195-196, the quantity, size, tonnage and whether they should be locally purchased or through the High Commissioner, but also could direct the particular kind or nature of materials by specifying particular standard or make to be used for the chawls. Thus, in spite of his denials, the discretion and powers of the complainant even with regard to purchase of stores, were very very great and practically he was the officer deciding the details so far as his Housing Schemes were concerned and others had merely to carry out his instructions.

For the sake of brevity, I will not refer to other several instances where Gannon Dunkirley were given works although their tenders were higher than others, because they are enumerated at pages 68 to 100. There was no justification for rejection of lowest tenders on the ground of inefficiency or inability of tenderers because tender forms were issued to only a few approved contractors after the Superintending Engineer was satisfied about their capacity and efficiency and the only deciding factor after issuing tender forms to a few approved contractors, should have been the rates. The only question for consideration is whether all this open favouritism and partiality towards a particular firm of his friend was merely to oblige and confer benefits on a friend or was it for any other reason? In view of the admitted facts, I submit there could be no doubt that both with regard to purchase of stores and distribution of work, Gannon Dunkirley were treated with special favour and partiality resulting in loss to public funds and profiteering to that particular firm. The sequence of particular events in the department and the firm coinciding in a particular period, is most extraordinary and suspicious, and coupled with other circumstances, lead to an adverse inference against the complainant.

Another circumstance to which I might draw Your Worship's attention in connection with this question, is the incident about the supply of furniture by a petty contractor and supplier, Udaisingh (page 107, complainant's evidence) to the complainant. This Udaisingh who is also an upcountry man, it will be remembered, first came as a petty building contractor and used to get petty works from the Development Department. He was, however, in expectation of getting

larger works. When he was getting petty works, he made some pieces of furniture for Mr. Harvey's bungalow which, according to him, were worth about Rs. 900/1,000. These pieces were received by Mr. Harvey and used by him for several months—nearly 12 months—without any demand on the part of Mr. Udaisingh and offer on the part of Mr. Harvey to make payment. Shortly after this, Mr. Udaisingh did get some large work of chawl construction at Naigaum, but it seems that he could not pull on well according to him, because the complainant wanted to give the whole work in that district to his greater favourite Mr. J. C. Gammon, and hence shortly after the commencement of the work, the contracts of both Mr. Udaisingh and Mr. Vally Mohomed Hussain, both Indian contractors, were found unsatisfactory, and the whole work ultimately was transferred to Mr. J. C. Gammon.

It was after the termination of the contract and unpleasantness created between the parties, that about ten months after the delivery of the furniture Mr. Udaisingh, for the first time, thought of the pieces of furniture and he sent a lawyer's notice amongst other matters including this demand, Ex. 133. It was after this threat that the complainant made payment, after getting the furniture valued and much less than what was demanded.

The fact that the value of the furniture delivered to him was known or settled and had to be independently valued for the purpose of payment, shows that they could not have been purchased, because if they were purchased, then there would be a fixed price and the value of the articles presented is not fixed or definitely known. In this matter too, the usual attempt of the complainant to shift the responsibility on Mr. Mehta is ridiculous. If the complainant sincerely and really desired to pay, what could have prevented him from offering the money to Mr. Udaisingh when he was on his work when he must be seeing him often. Again if he did not want to receive these pieces of furniture without paying for them, neither Mr. Mehta nor anybody else could have forced him to accept.

From the circumstances, it is clear that had this friction not taken place between the complainant and Mr. Udaisingh, Mr. Udaisingh would not have demanded and Mr. Harvey would not have paid, and it would have been a pure and simple case of illegal gratification though perhaps undetected. In this particular instance, though the amount is comparatively small when dealings extended to lacs of rupees, still the instance is important for the purpose of this case as showing the tendencies and views of the complainant on such matters and the defence is entitled to ask the Court to draw a legitimate inference in other matters, when circumstances seem extremely suspicious against him. At page 107, he says, "If I had

known there would be trouble between me and Udaisingh, I would never have even ordered the furniture." If an officer is capable of receiving even such a small consideration from a comparatively petty contractor with whom he had apparently no previous association, we can judge as to what his relations must be with regard to much larger contractors on whom he has conferred greater favours and with whom he had admittedly previous association and friendship.

Similarly, I will refer Your Worship to another instance which, though apparently small and insignificant in comparison with other instances adduced in this case, still has an important bearing and significance in this case. That is the instance of mysterious disappearance of official records and registers when required by the High Court in connection with Mr. Unwalla's DeLisle Road Acquisition matter (pages 58/59, complainant's evidence). That can, as stated above, the above pages, show that the Development Department acquired certain property in the occupation of Mr. Unwalla and the Department undertook to remove the structure and cotton waste &c. stored on it at the cost of the lessee. An Official register was kept showing the daily expenditure incurred in number of lorries employed and trips made, and these entries were initialled by lessee. The original estimate of the removal by Acquisition Officer was about Rs. 2,000, Ex. 71 affidavit and papers, but after the completion of works, the department demanded about Rs. 6,000 which lessee refused to pay and demanded inspection of the original register. Several appointments were given by the complainant himself to lessee's solicitors, driving him from pillar to post, but inspection was not given under one pretext or another. Ultimately the matter went to the High Court when lessee explained the reason for non-payment, viz. non-production of the Register. When that register was demanded, the complainant in an affidavit declared for the first time that the register had been stolen or misplaced, for some time, although after the alleged theft, the complainant had given false appointments for inspection. Lessee alleged that suppression was intentional as the actual expenditure incurred was much less than demanded and the officer concerned wanted to make illegal profits. This instance is not only important as illustrating that whenever a court demands documents to prove certain facts against the department, the documents mysteriously disappear as often happened in this case, but further, the allegations of lessee who rightly attributed motive of such suppressions and complainant's complicity in knowingly giving false appointments for its inspection.

The instance which I now wish to submit to Your Worship, is, from the defence point of view, rather important and in a way illus-

trates the relations that usually existed between the officer and some of the favourite suppliers and contractors. As stated above an enquiry of this description initiated by this case, is extremely limited and constantly hampered by continuous legal and technical objections, and it is not possible for the defence to adduce and place before the Court a series of instances illustrating particular facts. The defence can only put forward one or two important instances illustrating a particular point and ask the Court to infer from these few instances, the general condition of the state of affairs existing in the Department. I submit contractor and supplier Bishambarnath Kapoor's instance as one such illustrative example. I would refer Your Worship to pages 65 to 68 and 107/108 of complainant's evidence, and pages 205/207 and 209 of Mr. Sykes' evidence and Exs. 150 and 151 as relating to this instance.

From the above references and records produced before Your Worship, the following facts are disclosed :—

That Mr. Bishambarnath Kapoor is an old resident of Delhi acquainted with Mr. Sykes for several years that he was a supplier and contractor of bricks under Mr. Sykes in Delhi Imperial Works having some kilns on the works and his business relations with Mr. Sykes dated so far back as 1913; that after the Development Department started the same work in Bombay was given to him because of his previous Delhi acquaintance with some officers; that the Department started a Brick factory at Vasind near Kalyan at an enormous cost, ordering very expensive plants, which concern ultimately resulted in a huge loss; that public tenders were invited to prepare bricks in the Departmental factory and supply the said bricks to the Department and about 20 persons sent in their applications quoting rate for 1000 bricks. These applications came to Mr. Sykes, as Superintending Engineer No. 1 states, amongst the applicants were two gentlemen doing the same work at Delhi Imperial Works under Sykes. They somehow came to know that it rested with Sykes to secure the job for them, hence they were tempted to put in their application even from Delhi. Of all the applicants, Mr. Sykes recommended his old acquaintance Bishambarnath Kapoor at Rs. 20/- per thousand although there were four other tenderers whose rates were lower than Kapoor and two of those rates were equal. There was one well known local tenderer whose rate was Rs. 13/8, there being a difference of Rs. 6-8-0 per 1000 and as the requirements of department was lacs of bricks, this favouritism to an old acquaintance Kapoor meant an enormous loss to the department. There was no question of any special skill, knowledge or science, and the bricks were to be accepted after inspection, the department having a right to reject those not coming up to the required standard, and the tender forms

as usual were given to only a few approved contractors ; hence this selection of Mr. Kapoor, an outsider, at much higher rates, could only be explained away on the ground of certain understanding and favouritism. Most of these facts appear in Ex. 150, Mr. Sykes, note on tenders from bricks manufacturers where he states the reason for selection was previous acquaintance. Even after the commencement of work, this lucky contractor was treated with the same spirit of indulgence and liberalism regardless of the interests of the department, one such instance of special favour being that he was given a house belonging to Government free of rent for occupation, and he occupied it for months free although the Government paid for the constructions of this house for requisite accommodation. At a later stage, long after the termination of contract, when this grave irregularity was discovered and an explanation called for from Mr. Harvey, then in charge, who stated on 4-9-24 "I regret I am unable to make any further report than made in No. S. B. 5095 dated 16-8-24, as I cannot trace from the records the motive that actuated my predecessor to give this concession. It is not possible to recover rent at this stage," (part of Ex. 151). The predecessor whose motive Mr. Harvey is not able to discover, is Mr. Sykes, although long after this, he recommended a large amount to be paid to him as compensation, it did not strike him to recommend to deduct large amount due as rent to set off against that alleged claim of compensation. What motive actuated the successor of Mr. Sykes to grant this concession of foregoing rent and state in a Government report "It is not possible to recover rent at this stage" ?

This gentleman selected on account of the Delhi experience turned out to be an utter failure ; the bricks were not good enough for the work and Vasind concern started by the ingenuity of these officers had to be closed after having entailed enormous loss to the department and thousands of bricks were left over in the factory. One important fact to be remembered in connection with this transaction was that the contract was on K₂ form and the contractor was entitled to receive only for the number of bricks actually delivered and the Department can put an end to the contract at any time without any notice and the contractor would not be entitled to any compensation. The contractor had entered into this agreement with his eyes wide open and he understood his position well, because on the termination of the contract earlier than expected, he at first made no complaint or grievance. The accounts were made up by Mr. Colabawalla, Executive Engineer at the time, and whatever was due to him was paid and one Sirdar Arjunsingh, duly constituted attorney with Power of Attorney from him and who usually looked after his work, signed a receipt for that payment in full settlement of his claim. In spite of all this

and some time after the receipt in full settlement is passed and amount received by him, he puts up a claim for large amount for compensation for the termination of contract earlier than expected. This was in the beginning of 1924 when luckily Mr. Colabawalla was still Executive Engineer and the matter, in the ordinary course, came to him and he made a report after investigation, totally rejecting his claim. His report dated 13-3-24 is as follows:—

“As the contract was on K₂ form, there is nothing binding for five years condition. A condition of the agreement runs as follows, ‘Executive Engineer may put an end to the agreement at any time.’ Moreover, the contractor was not willing to carry on the work longer. As regards construction of kiln and coolie lines, the department paid for all such expenses, as contract was for moulding and burning bricks only.”

And the more important point was that the final bill was signed as in full settlement by his duly constituted attorney Arjunsingh. Mr. Harvey had to act on this report and reject his claim, and in his letter to Mr. Kapoor rejecting the claim on 13-3-24, he states “Final bill was signed in full settlement and payment was made to your accredited agent Sirdar Arjunsingh and I regret the matter cannot now be re-opened.” Further, it states that in accordance to his letter of 8th August, 1923, he cannot be permitted to remove clay and bricks and he is not entitled to anything extra for alteration to the House as Government had paid for its original construction. Thus, on 13-3-24 the matter rested there when Mr. Colabawalla was there and the claim was definitely rejected for reasons given in the report and the letter.

Shortly after this, further correspondence shows that Mr. Kapoor tried to revive the matter when Mr. Colabawalla was there, but he did not succeed, and Mr. Harvey in his further reply dated 30th March 1924 again re-iterates the same position that Sirdar Arjunsingh's receipt for final settlement was valid and he adds, drawing his attention to K₂ form, “I may also draw your attention that agreement is terminated by the Department and not by the contractor and would invite your attention to the terms of K₂ form on which the work was undertaken.” Even after that, further attempts were made by Mr. Kapoor by his letters dated 24th March and 18th April 1924 and reply by Mr. Harvey refusing to re-open the question. In July 1924, a further attempt was again turned down and Mr. Harvey refused to reconsider.

I have to trouble Your Worship with some details in this matter to point out the definite attitude taken up by the complainant so long as Mr. Colabawalla was there, and three or four

repeated attempts to re-open the question were turned down and contrary to this, the reverse attitude adopted by him in respect of the same matter after Mr. Colabawalla had left and Mr. Sykes' intervention was sought. Mr. Sykes admits at page 205 " Kapoor told me about it in Delhi 1923. I made him no promise. I may have written to Harvey about Kapoor." Again in the memorandum signed by Mr. Harvey himself dated 7th June 1924, he states "the contractor appears to be satisfied with the final settlement arrived at and that he was pleased when the work was closed down." Thus, being repeatedly foisted in his attempts, Mr. Kapoor turns to his old acquaintance and patron, Mr. Sykes, and seeks his assistance, and Mr. Sykes comes down to Bombay to interview his old colleague Mr. Harvey, with whom he apparently still has great influence, puts in a word on behalf of his favourite contractor, and as a result of these two or three interviews and persuasive agreements, he agrees to re-open the question that he hitherto agreeing with Mr. Colabawalla, had positively turned down so often. Mr. Harvey then suddenly discovers that Mr. Colabawalla was wrong and Mr. Sykes agrees in that view. The advocacy of Mr. Sykes on behalf of Mr. Kapoor is so powerful that Mr. Harvey takes a complete somersault, goes behind his own decision reversing the attitude and position he had taken up so strongly before, and in March 1925 he recommends a payment of Rs. 16,550/- to Mr. Kapoor.

Besides the advocacy of Mr. Sykes, the additional circumstance that weighed with him in thus suddenly changing his mind, was the fact that Mr. Colabawalla was shortly to leave the Department and he would not be there to obstruct by the time the claim matured for payment and this recommendation too was made shortly before his departure to England.

I would invite Your Worship's attention to the changed tone of the correspondence showing an entirely different kind of relationship that had sprung up between Mr. Harvey and Mr. Kapoor. The former correspondence was strictly official and formal confined to his claim and business topics only; now the tone became more friendly and flattering. Mr. Harvey becomes the great patron and benefactor of Mr. Kapoor and Mr. Kapoor is extremely anxious that this matter should be settled before he proceeds to England and even requests Mr. Harvey to arrange that his successor should be as patronising and kind to him as himself, and the pliant successor, Mr. Hamid, agrees that the matter of final payment should stand over till Mr. Harvey returns.

I will refer Your Worship to a few extracts from Mr. Kapoor's letter and wires, showing the new relationship that had started in the altered circumstances :—

Letter dated 27-3-25 from Mr. Kapoor about a month after the recommendation : " I learn that you would very shortly be proceeding home on leave. The news has perplexed me much. If this is true, will you kindly let me know by return post so as to enable me to come from Delhi ? I am afraid the occasion should not prove similar to that of Mr. Sykes' departure from Bombay of which I did not know and had to suffer heavily after his having left. Hoping to be excused for the trouble, Sd. Kapoor."

Why should Mr. Harvey's departure have perplexed him so much or Mr. Sykes' departure made him suffer heavily, it is not difficult to understand. Mr. Harvey's endorsement to above, " File I have already written to him." Unfortunately the reply is not available. Again on 23-4-25 from Mr. Kapoor to Mr. Harvey :—

" With reference to your letter 27-3-25, I would respectfully request you to keep your word and to keep your patronage on my head for the future."

Again on 6-2-25, from Delhi, Mr. Kapoor wires to Mr. Harvey:—

" Please decide finally before your goodself leaves." Again on 6-5-25 :—

" I am quite perplexed when I see that the time of your going is approaching nearer, and nothing is done for an unfortunate man like myself, I hope you will get my case decided."

Later, Mr. Kapoor wires.

" Pray wire when you going, Intend coming to pay respects." On 22-5-25.

" I had intended to come to Bombay to pay respects but daughter's illness prevented me. If she is better on 29th I will come. If I cannot come, request your goodself mercifully to grant the following. As you are treating me from the beginning, if the reply is not received from Government before you go, you will very kindly leave instructions to your successor to treat me in the same merciful way in which you are doing and take my bricks at the rate you fixed according to the agreement."

After this, Mr. Harvey goes on leave and some correspondence with Mr. Hamid, Acting Superintending Engineer, and his endorsement on the letter of 3rd September 1925. " To await till Harvey's return" shows his anxiety also to leave this matter in the hands of Mr. Harvey as desired by Mr. Kapoor. This is some of the typical correspondence in Ex. 151, a file.

But the most important document in the file is the report of the Finance Officer in the matter. Departmental Finan-

cial Advisor desired disciplinary action against officer or officers concerned and the Financial Department should be kept aware of further developments in the case and also wanted to know from the Director of Development why officers took over bricks from contractor whose dispute was not decided and thus created liability and loss to Government. The report further states "The specification file distinguishes between A and B class of bricks. B class of bricks are positively inferior . . . S. E. now says that B class of bricks are as good if not superior to A class and proposes to pay for the same at A class, rates. If they are so good, it is not understood why they are classed B, Development Director may please explain. Even with regard to A class, it is not clear whether there is a legal liability to pay, as contractor has accepted payment in full settlement." The paper was referred to Superintending Engineer No. I for remarks on points raised by the Secretary, Financial Department. This shady transaction was considered to be grave enough to be brought to the notice of the Finance Committee, of the Legislative Council and in the report to the Finance Committee, I was surprised to find Mr. J. R. Colabawalla, Executive Engineer, mentioned as the officer responsible for this, and a further inaccurate statement that no disciplinary action could be taken as the officer concerned (Mr. Colabawalla) had left Government service, when as a matter of fact, he is still employed at Sukkur Barrage. From the records and facts as adduced in these proceedings, it is clear that Mr. Colabawalla had strongly reported against this payment and so long as he was here, he had successfully prevented this payment to Mr. Kapoor. On the eve of his departure, the question was again revived by Mr. Sykes and Mr. Harvey, and he had nothing to do with the revival of the question; still, in a responsible report to the Council by the Department his name is mentioned as the officer responsible, and in order to drop a curtain on this matter, a further false statement is made that he is no longer in Government service in order to prevent any further enquiries being made from him by a member of the Committee. This is a transparent attempt to shield a higher European officer concerned who is even blamed and from whom an explanation is called for by Finance Department, and most unfairly to throw the responsibility on an Indian subordinate after he had left the department.

Similarly, I submit, Mr. Sykes' attitude in Court in connection with this matter is positively dishonest. I would draw the Court's attention to page 203. When questioned if he knew Mr. Kapoor, he at first stated "I do not know Kapoor; but I know Kapoorchand who was a supervisor in Punjab." When pressed further and asked about Vasind Brick factory, he admitted "I know Bishambarnath.

His gotra is Kapoor. He had kilns at Delhi. He comes from Lucknow. "It now transpires that his acquaintance and business connection with Mr. Kapoor began from 1913 and all along in correspondence as well as in the tenders considered by him, he is known as Kapoor, and his reference to Kapoorchand, supervisor in Punjab, was merely to hoodwink the Court and the defence.

Another dishonest statement in connection with the same matter is at page 204, where he states "To my knowledge I had not any conversation with Harvey about Kapoor's bill but I may have had some conversation." This false statement he was compelled to retract when Mr. Harvey's evidence on the point was read to him and he coolly stated "If Harvey says, it is correct. If Harvey says, that I came to the office and discussed the matter with him it must be correct." He also states that he knew Mr. Kapoor had come to Bombay. There is no doubt from the circumstances that Mr. Kapoor brought him to Bombay to influence Mr. Harvey and succeeded in influencing him, and it is hard to believe that Mr. Sykes who was then out of service, took all this trouble for Mr. Kapoor without any consideration and the circumstances under which the claim that was so often positively turned down, was revived after the interview, and the correspondence that followed, also shows Mr. Harvey's close association with Mr. Sykes in this transaction. The only explanation given for this revival, viz. that Mr. Kapoor threatened to file a suit is not at all convincing, because other contractors such as Mr. Vally Mahomed Hussain and Mr. Gaya had not only threatened but actually filed suits, and still their claims were not received. Besides, there is nothing adduced on record to show that there was such a threat or why the threat was given, not even a solicitor's letter holding out any threat.

I have dwelt on this subject at some length to point out to Your Worship that this incident about the revival of the claim happened a few days before my Council speech in March 1925, and the matter was brought to my notice practically when the Council proceedings were going on, and this was one of the fresh instances of misapplication of public funds referred to in my speech. As a matter of fact, I even attempted to see if the payment could be prevented, but I found that I was helpless unless an open enquiry was granted.

There are several such instances of payments made in spite of Executive Engineers' and Financial Advisor's protests, but for brevity's sake, I could select only one or two typical instances that led me to a particular inference. Evidently, in this as in several other matters, the Financial Advisor's protest has been ignored and no disciplinary action taken; on the contrary, a transparent attempt is made to shield the real wrong-doer and expose an inno-

cent officer, though at page 107, complainant says "I did not report that Colabawalla is responsible for the payment." Complainant at page 65 states, "There have been many instances in which in spite of the report of Executive Engineer, I have made recommendations for payment. I can give at this moment cases in which such a thing happened," and the defence has given only a few instances and gone into detail with regard to one to serve as an illustration.

But more glaring than these instances of purchases and disposal of stores, are the instances about the contracts with regard to the construction of chawls, and according to the complainant's own statement, a reference to the Superintending Engineer with regard to purchase of stores, may mean either Sykes, Hamid or himself, but with regard to the contracts, a reference to Superintending Engineer could mean him alone. Your Worship will refer to my written statement in Ex. C. wherein I have made more serious allegations, that according to the complainant's statement, it would refer to him more directly, with reference to the distribution of chawl contracts, wherein I have directly insinuated that the favouritism could only be explained on the hypothesis of a sort of understanding between Superintending Engineer and the contractors and as I have frankly stated before, with regard to the allegations—purchase of stores—I was not positive or certain about the particular part played by various officers, because the procedure as is disclosed in the proceedings of this case, was rather complicated, never explained in the manner it is done in Court.

First the list came from Executive Engineer, then it went for consultation to the Superintending Engineer, then after certain process of checking and scrutinising, it went to the other Superintending Engineer, who formally forwarded it to the Secretary to Government, and from thence to the High Commissioner or the local suppliers. Thus, several officers and at least two Superintending Engineers performed different functions with regard to the purchase of stores, although ultimate responsibility, as stated by Mr. Sykes and Mr. Hamid, turned out to be on the complainant; but with regard to the distribution of contracts, there was no such complication as the Superintending Engineer, the complainant alone, recommended to the Government the acceptance or rejection of the tender, as well as decided the several details and specifications of construction of work, even with regard to the designs, plans etc., and as it is in evidence, the Government invariably acted upon that recommendation. So that the allegations with regard to contracts would go more directly to the complainant than with regard to the purchase of stores, still, curiously enough, the complainant has taken no notice of these allegations and remarks, in the same written statement, Ex. C, although on the point of relevancy too, this

subject could be considered less relevant than the other. I only draw Your Worship's attention to this, under these circumstances, I would be justified in inferring that the complainant did not dare to court an inquiry with regard to these allegations, and that is the only reason why he has not included these in his complaint; and from this attitude of the complainant, I would be justified in asking the Court to draw a certain inference with regard to the allegations on this subject. Again I also might frankly confess that more than these scandals of purchase of stores and instances that I have submitted in the course of these proceedings, the complaints and information that came to me with regard to the distribution of chawl contracts, naturally influenced my mind in a greater degree, to arrive at a particular conclusion to which the prosecution now takes an objection. As it would affect the question of good faith and justification, that I submitted these instances before Your Worship, particularly, most of these incidents referred to with regard to the contracts, happened long before the remarks complained of in my speech of March 1925, and they were constantly brought to my notice, by parties directly concerned, either in the Department or outside; so that I had also considered the authenticity of the information and the disclosures in these particular proceedings, have proved most of these information to be substantially correct. I therefore, ask Your Worship, to pay particular attention also to this part of the case, because it has a strong bearing on the general remarks about the higher officers, and it was this conduct on the part of the officers concerned that influenced my mind, in not accepting the theory of "bona-fide mistakes," even with regard to this. I will first submit a few general observations and remarks and then refer Your Worship to certain particular instances trying to confine myself strictly to the evidence of the case. It is not possible to give reference of pages as this matter is scattered over in the evidence of various witnesses, but I will try to give reference when citing particular instance.

The first point to be noted with regard to the distribution of these contracts, is that these works costing crores of rupees to the Department, was confined to a few selected firms wherein it could be shown that the complainant or some other high officer of the Department had some sort of previous association with the principal or other partner of these firms, and that practically no firm, however, well reputed and of old standing could secure any work and successfully continue the same unless he had in the said firm some gentleman as partner who can claim previous association, friendship or acquaintance with the complainant, though all the firms who got the large proportion of works with regard to the chawl constructions were only started practically with and on account of this Department, and most of them closed their business with the closing

of these particular activities of the Development Department. In this, as in other matters, the wholesome provisions of the P. W. D. Code when they came in the way of the officers gaining certain object in view, were entirely discarded and particularly in the case of acceptance of tenders, the ordinary rule of usually accepting the lowest tender was reversed and in almost all the cases, practically without exception, the tender accepted was either highest or fourth or fifth, in point of rate, and in all cases when highest tenders accepted, they happened to be of the firm with whom friends of Mr. Harvey were connected, and this practice alone I could substantiate, is the cause for the loss of lacs of rupees to the Department, and the public.

I will now generally point out the various firms that managed to get the contracts together with a short previous history, showing the association and connections with Mr. Harvey leading to the conclusions, that some sort of arrangements must be existing with all the firms to whom the contracts were given under such peculiar and extraordinary circumstances. There can be no valid reason to reject the lowest tenders of well known firms and contractors from all over India, particularly, when we remember and realise the fact that the tender form in these cases too, were issued only to a few approved contractors, after the Superintending Engineer, Mr. Harvey, had thoroughly satisfied himself about their capacity, efficiency, and financial position. Many contractors and firms were not even supplied with a tender form and even refused an opportunity to tender on the ground of either of their unfitness, inefficiency, incapacity or weak financial position. The reason for rejecting the lowest tender in P. W. D. and other Public bodies is only one or the other of the above causes but since these causes or drawbacks could not exist in the case of approved tenderers, because tender forms were only given after close inquiries on these points, the only consideration in accepting or rejecting the tender would be or should have been the rates; whereas we find that ordinarily, in almost all the cases the lowest tenderer was rejected, on various flimsy grounds and pretexts which on the face of them appear to be untenable.

Another thing to be remembered is, with regard to the complainant's own statement and admission; the decision to give contracts, instead of Departmental work was taken on his recommendation. On page 79, he says, "On my recommendation the Government issued a circular or order that it should be done by contract." It must probably be some time at the end of 1922.

Another point to be noted is that as soon as this decision was taken and shortly after when the contract work was going on, at least three officers, who were well employed before and who belonged to the same profession of Mr. Harvey, and were on friendly terms

with him, thought it fit to either resign their post or to go on long leave and start a new career of building contractors—all three of them succeeded in getting contracts from the complainant—and from the circumstances which I will narrate later, it appears that they could not have risked on this new venture, giving up their well paid posts with prospects, without a sort of assurance from their friend, Mr. Harvey, of securing the contracts from the department. These three officers are Major Parselle, Executive Engineer in Military Land Scheme, Development Department, whose resignation almost comes in sight and practically falls in the same month as the Advertisement for inviting public tenders, Mr. D. R. Vaidya, who was Assistant Land Acquisition Officer and Deputy Secretary, Development Department, also puts in an application for long leave about the same time, and a third friend, Mr. Cervallo resigns a little later from his post in the Improvement Trust, shortly before the tenders for Sewri chawls are invited. Shortly before this, all three, Messrs. Harvey, Cervallo and Maj. Parselle, worked together for some time on a committee in connection with building construction work undertaken by Mr. J. C. Gammon.

Now coming to the individual firms, I will first give a list of firms that were favoured with these contracts and the names of the principal partners having previous association with Mr. Harvey, and thus substantiate, the allegation that, practically outside this association, none could get, even a small share out of this enormous expenditure of crores of rupees. First firm to be thus favoured, in the early stages, practically with the announcement of the Housing scheme in 1921, was the Indian Construction Company.

Almost simultaneously with the closing of the Indian Construction Company and the disappearance of Col. Grisewood and his experts Peterson and King from the scene, there cropped up another company to take its place in point of favouritism. That was the Bombay Concrete Construction and Engineering Company. Not that the said company did not exist before, but that from this period that is from September 1922 by an addition of one member, Major Parselle the prospects of this company, so far as the Development Department was concerned, were entirely changed and considerably improved. It is necessary to go briefly into the history of this new company and how it came to be formed. As clearly indicated both in the Agreement, Ex. 99, as well as in the evidence, that this B.C.C. Co., so far as the work of the Development Department was concerned, was entirely managed and controlled by Major Parselle. This gentleman was according to the evidence, in the military service at Simla, and joined the Development Directorate at its inception. Being an Executive Engineer in the Military Land Scheme at Colaba, it appears

that he must have started his career in the Department some time before the complainant and Mr. Sykes. One point to be noted is that he was a new arrival in this city, and according to the evidence, he had no experience whatever about any contract work or any kind of engineering work in the city beyond what he gained as Executive Engineer in the Military Land Scheme. It appears that as soon as it was decided that the Departmental work of the chawls should be given up, and work should be given by contract—and that course, it is to be remembered, was adopted according to complainant's own statement at page 79 "On my recommendation the Government issued a circular or order that it should be by a contract. It must be sometime at the end of 1922"—Major Parselle resigned from the Military Department. Complainant says, "I cannot say, when Major Parselle resigned from the Military Department." From other records, we are able to fix this date. However, before the actual contract work began, according to Mr. Hamid's evidence it became known amongst the parties interested that tenders were to be called for the chawls contract, and as soon as that information got wind Major Parselle, according to Mr. Hamid's evidence began to show a good deal of interest in reinforced concrete construction of chawls that were then going on departmentally at Worli and other places, and even when he was Executive Engineer in the Military Land Scheme at Colaba, he often visited the chawls at distant Worli and was taken round sometimes by Mr. Hamid and sometimes by the complainant himself and shown various items of construction and he began closely to study this work. Mr. Hamid at page 170, says "He (Maj. Parselle) came with complainant to see the work. The complainant took him round and explained to him the details. I used to see him often at Worli" and at page 171, "It was decided to give contracts and we called for tenders shortly after these visits." Thus, it appears that shortly before the actual tenders were invited, there must have been some sort of deliberations going on between the complainant and Major Parselle, with regard to the future career of Major Parselle, and as a result of which, ultimately Major Parselle tendered his resignation in September 1922. The dates are rather interesting and important; according to a letter addressed by the Chief Engineer to Major Parselle, accepting his resignation with effect from 30-8-1922: a copy of which I give below.

"With reference to your letter dated 31-7-22, I am directed to accept your resignation of your appointment as Executive Engineer with effect from 30-8-22."

And according to Ex. 99, practically the very next day, i.e. 1st September 1922, his partnership with B. C. C. commenced. It appears that Major Parselle's resignation was accepted and his services termi-

nated on the 30th August 1922. This letter is rather important for two reasons. First, for the actual date of the termination of his services and also the fact that Major Parselle was connected with the Development Department, Reclamation Branch, as the letter to the Chief Engineer indicates. This I beg to bring to Your Worship's attention because though repeatedly called upon, for certain reasons the letter of resignation of Major Parselle is not produced, and at one time as an excuse for the said nonproduction, it was even suggested that Major Parselle belonged to the Military and therefore his employment or resignation had nothing to do with the Development Department or the Government of Bombay. This is an incorrect statement as is disclosed by this letter, but more important than that, if Your Worship will turn your attention to Ex. 99, is the Agreement of Major Parselle with B. C. C. The said agreement is made on the 17th September 1922; the very first clause says that the partnership begins from 1st September 1922; i.e. the day following the termination of his services, and according to other evidence some time before the actual agreement with B. C. C. was made, Major Parselle was on the look out for a financial help and he had also indicated his intentions to resign and take contract work, both to Mr. Marker and the complainant himself. This I beg to bring to Your Worship's notice, because the complainant has stated that Major Parselle must have resigned some months before tenders for Worli were called. He says at page 79:—

“I believe his reason for coming to Bombay was to get the contract ; he told me so ; I don't know how long he was in service : he continued to serve for about two years. I don't know what was his salary when he resigned. He joined the B. C. C. Co. I went on leave in 1923, March to October, then in 1925, 1st June to October. Major Parselle was, I believe, in England in 1923. I never went home with Major Parselle. In 1925 Cervallo was on the same boat with me.”

Therefore, sometime before he actually joined the B. C. C. Co. he was contemplating starting this new career and resigned his job. Now turning back to the record, complainant's evidence, that tenders for chawls were invited in August 1922, i. e. about the same time when Major Parselle commenced his search for a financial partner. I might also draw Your Worship's attention to one important clause in Ex. 99. The Agreement of Major Parselle with B. C. C., clause 14, runs as follows:—

“If the partnership is unable to secure contracts of the value of Rs. 10 lakhs at the least within six months from the date of this present.....or the works in the hands of the partnership are found insufficient to engage the

said Major Parselle, remuneratively, then in such case either all the parties shall have the right by three months notice in writing, to determine the partners..... Otherwise the Partnership was to run for five and half years."

Thus the continuance of Major Parselle in this company depended solely upon his ability to secure the contracts within six months from the 1st September 1922 at least of the value of Rs. 10 lakhs; otherwise his connection with the firm would be terminated. Now I request Your Worship to consider whether a gentleman who evidently was fairly well established in Government service with prospects of future increments—and according to the complainant his services were of very long standing—would suddenly make up his mind, just at the time when the department is to invite tenders and take the very great risk of being thrown out of employment on the mere chance of being able to secure contracts of such a large value as Rs. 10 lakhs and in a short period as six months, in a city where he was an absolute stranger and when he had never done in his life either in this city or anywhere else, the business of a Building Contractor before. Complainant says at page 86, "The advertisement stated only experienced contractors need apply. Experience or no experience, I considered them good enough." Major Parselle had no experience as contractor at all and exception was made in favour of Major Parselle. Even well established firms of contractors possessing good deal of influence and wide acquaintance could not venture to give such hazardous assurance of securing such large contracts in the city, unless some sort of a positive assurance was conveyed to him or them beforehand; and I would be perfectly justified from these circumstances alone, although there are many other circumstances besides, to ask Your Worship to draw a legitimate inference, particularly in connection with the closeness of the dates in sequence of events and with the further fact of Major Parselle's visits to the works and conference with Mr. Harvey and Mr. Hamid, and also the admission of Mr. Harvey that Major Parselle informed him of his intention to resign beforehand, that this resignation was in pursuance of a previous arranged plan and this assurance was in pursuance of a previous arranged plan and this assurance to B. C. C. was given in pursuance of the same plan, whereby the complainant must have promised Major Parselle the giving of the contracts even before the tenders were invited, and in accordance with that Major Parselle could have resigned and started the new career. For this inference, the defence does not reply upon this very strong circumstance alone, but I shall point out to Your Worship several other circumstances leading to the same inevitable conclusion, the very first being that Major Parselle

was able to fulfil this promise to B. C. C. within the period as stipulated by the favours and help of Mr. Harvey alone. The promise was to get contract worth about Rs. 13 lakhs in six months from 1st September 1922, and curiously enough the very sixth month B.C.C. started in September 1922, the contract began in February 1923—the B. C. C., through Major Parselle, launched itself on one of the largest contract work that ever was entrusted to any firm of Building contractors by P. W. D. or by other institutions in the city; that is the largest contract in the whole of the Housing Scheme and perhaps the largest individual contract in the whole of the Development Department and also the largest contract in the whole Presidency so far as the P. W. D. is concerned and that went to Major Parselle; that was for 80 chawls at Worli at the rate of nearly a lac of rupees per chawl and with the extra rates, the said work ultimately went very near a crore of rupees. The circumstances under which the B. C. C. got this particular tender, lead to the said inevitable conclusion that the whole thing was a pre-arranged plan and in accordance with the said plan the contract was entrusted to Major Parselle. As usual, for the sake of mere formalities, that seems to be observed in the P. W. D. Code,—public tenders had to be invited for this as well as for all other districts.

I will also submit another coincidence and extraordinary circumstance, which also goes to show that a sort of pre-arrangement and understanding existed between Major Parselle and Mr. Harvey. I would refer Your Worship to page 86 of the complainant's evidence, wherein the complainant has stated "We stipulated that for the work of 80 chawls, a contractor should have at least 3 lacs of rupees. I believe it was stipulated in the advertisements." I submit the belief expressed in the last sentence, is not correct, and the advertisements for Worli, Ex. 139, which were called for 25, 50 and 80 chawls, did not mention any capital that could be required; why should the capital for 8 chawls alone be stated when advertisements were for other batches of 25, and 50 also? I challenge the prosecution to produce the said advertisements which will at once disprove this statement, and the complainant knowing himself that the statement is incorrect, puts in a very guarded language and only says that "I believe." These Advertisements must be about August/September 1922, and about a month after tender forms were issued only to approved contractors, and again tenders were called for the three batches mentioned above. Along with the tender forms were attached instructions issued to tendering contractors, also containing conditions of contract. Neither in the tender form nor in the instructions and conditions, is there any mention about the capital required for each or any batch of chawls. Tenders were according

to the complainant, accepted in the beginning of 1923, and in tenders, tenderers had given different rates for the different number of chawls, that is 25, 50 or 80. Nothing was mentioned about the capital required in the previous record, but according to the complainant's statement, it was a stipulation which the department had in mind, before accepting the tenders or entrusting the work for 80 chawls to the contractors who furnished a capital of Rs. 3 lacs. Now I will turn Your Worship's attention to Ex. 99. That is the Agreement of Major Parselle with B. C. C. The Court will remember that Major Parselle was on the look out for a financing firm before he could take the contracts, and he was introduced to B. C. C. by Mr. Marker. This must be before the B. C. C. contract, i. e. in August 1922, last month of his service; according to Mr. Marker at that time he was in urgent need of Rs. 3 lacs for contract work. Ultimately, an agreement was entered which is Ex. 99. The said Exhibit is dated 17th September 1922 and the partnership is to commence from the 1st September 1922. From the terms of the said agreement, it appears that at the time of the agreement, Major Parselle knew that he was to get the contract work some months after, for 80 chawls at Worli, because the Capital provided for in the said agreement, Ex. 99, it is exactly the amount, i. e. Rs. 3 lacs, that according to the complainant's statement at page 86, was stipulated by the Department for 80 chawls. Thus Major Parselle makes a provision in September 1922 for 80 chawls contract which he ultimately got in the beginning of 1923. Further, according to Mr. Marker's evidence, Major Parselle was in urgent need of Rs. 3 lacs in August. It is indeed very strange that two figures, namely what the department had stipulated to have a capital required for 80 chawls, should be exactly the same that is provided for by a private company in an agreement some months before, and then actually got the said contract. The question naturally arises, how did Major Parselle know in August or September 1922, even before his resignation, what capital the department stipulated for 80 chawls, and further how did he know that he was to get the Contract for 80 chawls, so as to make a provision for exactly the capital required for it by the department, although, as stated above, the tenders called for and quoted including Parselle's, were for three different batches of chawls. This can be explained away, either as one of those extraordinary coincidents, that always conveniently happened to explain away certain inconvenient facts or that it establishes previous arrangement or plan between Major Parselle and Mr. Harvey, whereby Major Parselle came to know beforehand that he was to get contract for 80 chawls at Worli and that the capital stipulated for it would be Rs. 3 lacs and therefore he should arrange first with Mr. Marker and failing him, with B.C.C. for the capital. It is possible some pliant minds may believe in the theory of such coincidence, but at the same

time the Court will conceive, that in view of the other instances coming to my knowledge, I would at least be justified in holding and maintaining another view, that such things could not be mere accidents or coincidence but have the appearance of a preconceived or pre-arranged plan. The extraordinary circumstance, under which the most lucrative and largest work for 80 chawls at Worli ultimately went to Major Parselle and B.C.C. Co., also lead to the conclusion that under any circumstance, it was pre-determined to give this work to Major Parselle for which he had made preparation and provided capital beforehand. I am also informed that long before the acceptance of his tender, Major Parselle had constructed huts for coolies and made other preparations for starting construction at Worli. Another clause in Ex. 99, which also lends colour to any theory, is clause 20, wherein in September 1922 a provision is made for four months' leave for Major Parselle from April 1923 to proceed to England. When we realise that this provision made in September 1922, several months before another strange coincidence is that this leave, thus arranged beforehand, long beforehand, long before the tender for 80 chawls was offered or accepted, happens to fall due about two or three months after the commencement of the work for 80 chawls at Worli, when, according to the prosecution, the contract work commenced about the middle of February 1923. How did the contracting parties in September 1922, know that the tender would be accepted and Major Parselle would be free in April 1923, and that the contract work would by that time have commenced and started at Worli? Still another coincidence is that this leave and departure to England arranged in September 1922, happens to coincide with the leave and departure of the complainant also, who has stated in his evidence that he also according to the previous arrangement went on leave from March 1923, for four months, so that both of them were together in England, shortly after the commencement of the work.

Now coming to the question of the entrustment of the work, as stated above, the circumstances show that it was pre-determined to give this contract to the B.C.C. Being such a large work, it was formally necessary to invite public tenders and public tenders were accordingly invited, and about nine or ten tenderers, including B.C.C. Company had tendered on the old established and approved and experimented design of the department; B. C. C. Co.'s tender for all the three batches of chawls, was the fourth in point of rates and there was a difference of Rs. 13,000 per chawl between Gaya's, which was the lowest, and B.C.C. Co's. If the ordinary course provided for in the P. W. D. Code was adopted, and work entrusted to the lowest tenderer, on the design approved and passed by the department itself, from the very start there would have been a saving of nearly Rs. 10½ lacs in this transaction alone.

In connection with this, it is once again necessary to remind the Court that according to the usual practice, tender forms were issued only to the approved firms of contractors after satisfying with regard to their efficiency and capacity, and therefore, as stated above, after having taken these precautions, the only deciding factor would be the rates, and it might have been excusable if there was any insignificant difference in the rates, to give preference to a slightly higher rate than the others. But after having given the tender form, thereby admitting that the tenderer was, so far as other qualifications were concerned, fit and qualified, and the only point to be decided was the question of rates, there can be no excuse or explanation for selecting such a high rate and causing such great loss to the department and the public. Besides, as subsequently admitted, when questioned, the complainant stated, that Gaya's tender was rejected because it was thought that they would not be able to finance such a large job. If that was the case, then why were they allowed to tender even for 80 chawls, when it was known that if the work was entrusted to them they would not be able to cope with it financially? Since quotations were called for three batches of 25, 50 and 80, they should have been permitted to quote only for the number of chawls according to their capacity in the judgment of the complainant. I submit, therefore, that this excuse of financial inability is an after thought, and could not have been considered by the complainant at the time of rejection. Besides, if that was the only ground, why were not the lowest tenders of the old design, namely of Chotani and Rai Bahadur Sardar Naransingh preferred to B. C. C., because even Chotani showed a difference of nearly Rs. 9,000 per chawl and Chotani was a well known contractor already doing the work for the department and against him the question of financial difficulty could not have been alleged nor against Rai Bahadur Naransingh, because they were known to be financially very sound.

Another point which Your Worship will take into consideration in connection with this, is the fact that a few months before this, that is when Major Parselle had not joined with the B. C.C.Co. in 1921, B. C. C. had also tendered for Naigaum Plot A for 10 chawls, and their quotations and their tender too, was third in rates, there being a difference of only Rs. 3,000 per chawl between them and the Indian Construction Co. that was selected on the departmental designs, still their tender was not accepted then, because Major Parselle had at that time not joined the B. C. C. and this preference, in spite of the rates being much higher than the first tender, was shown to them a few months later simply because of the presence of Major Parselle. When questioned about this point, the complainant stated, at page 86, "It was not only the personal

qualifications of Major Parselle that induced me to give this contract to this company; it was one of the reasons. The personal experience and qualifications of Major Parselle did, to some extent, induce me in deciding the company to have the contract. I did consider the question very seriously. I agree that the greater the cost, the rent would be greater. Major Parselle came from Simla. He was a Military Engineer at Simla, and I have been informed that previous to his joining Military in Simla, he had great experience in reinforced concrete construction." We do not believe of this experience of reinforced concrete construction was gained by Major Parselle while in Military service, because it is extremely unlikely that such experience could have been gained in the Military line; besides, it is admitted on record that he had no experience whatever about contract business, and it is undoubtedly the personal consideration for Major Parselle that decided the selection, so far as Worli chawls were concerned, because later on, on the same page, he says, "Experience or no experience, I considered him good."

However, one more circumstance which further shows the attitude of the complainant and his determination, at any cost, to give this largest work to Major Parselle, is the excuse or pretext under which he seeks to set aside the other lower tenderers and to give the work to him. That excuse was that Major Parselle submitted an alternative design which was considered by the complainant as preferable to the old departmental design. With regard to this I have no hesitation in submitting from all the facts and circumstances of this particular case, that this alternative design was mere hoax and excuse or pretext to confer this favour on Major Parselle. As said by Mr. Hamid in his cross-examination, "the departmental design was settled after a great deal of expenditure and experiments", after some series of chawls were departmentally constructed on various plots and difficulties of previous construction were remedied and removed in the subsequent ones and after several members of the public had been invited to give their suggestions and criticisms. In 1921, one model departmental chawl was formally opened, at Worli by the then Governor of Bombay and a large public function was performed and several members of the public were invited to inspect the chawl, and after all this ceremony and pomp, this particular chawl was declared to be the model departmental chawl and on this design it was decided to call for subsequent tenders for the other chawls, and as a matter of fact, with the exception of Major Parselle, all the other chawls were constructed according to that departmental old design, and the other favourite contractor of the complainant, Mr. Cervallo, who is considerably extolled by the complainant as a great expert on this

question of reinforce concrete construction, and who was often consulted by the complainant, according to his own admission in connection with the chawl design and construction, even that expert when the work was given to him for Sewri chawls, preferred the same old departmental design and constructed on the same design. Therefore, the only gentleman who was permitted on the altered design, was this Major Parselle. In the original advertisement, the alternative design was not mentioned and tenders were invited on the old design and it was even stated in conditions for contract.

With regard to this altered design, it is important to note the condition that was issued in the general instructions to tendering contractors:

“Condition 3. Should contractors have any chawl structural to put forward, which although not reducing the strength of the structure, would decrease the cost, they are at liberty to do so, as alternative to the present design. In this connection, however, the room dimensions, the lay out, all the rooms and general exterior parts must not be altered materially.”

According to this, there were three conditions precedent to the acceptance of an altered design, namely that structural strength should not be materially reduced, that cost decreased, and thirdly, the room dimensions should not be materially lessened. I beg to submit, therefore, with regard to all these three conditions, the altered design of Major Parselle do not fulfil them, and on the contrary, as even today, it can be proved that structural strength was considerably reduced, that the room dimensions were lessened. It is already proved in the statement in cross-examination of Mr. Hamid and in the examination of plans of altered design with the old design; that the cost was not reduced, is evident from the comparison of rates submitted by Major Parselle for the altered design and by Mr. Gaya and others for the old design. As regards the first condition about the structural strength, it is naturally difficult to establish from mere records or plans, but the chawls as constructed by Major Parselle, are still in existence in the same condition and any independent and impartial engineer could prove conclusively that structural strength of flooring was the only difference in the construction, and is much less than in the old design; but the point that could be more firmly established, is the room dimensions and Mr. Hamid, after making calculations and measurements in the old plans and comparing the same with the altered design, page 172, stated that “the altered design is less by 319 sq. ft. The area shown in the departmental plan, i. e. the old design, is 5346 sq. ft. per each floor per chawl. The area shown for

the alternative design—plan of B. C. C.—is 5027 sq. ft. The B. C. C. chawl was 319 sq. ft. less per floor than the departmental chawl. Corridor is 3" narrower than our design, and the room is 3" less in length and 3" less in breadth. The strength of the structure is not obvious from the plans," according to this, 1276 sq. ft. less per chawl and hence proportionately lesser cost. This statement is made by looking at plans, Ex. 134. Further question with regard to the structural strength from the plans was objected to and not allowed, but as regards the room dimensions, it is clear that each floor was 319 sq. ft. less than the departmental chawl. Thus, admittedly from the record, it is one of the most important conditions on which the altered design alone was to be permitted, which was not observed, as room dimensions were much less. Further, in the advertisement for the chawls, Ex. 139, which invited public tenders, there was no mention made of any alternative design; on the contrary, the advertisement invited tenders on the plans according to the departmental design, copies of which were sold to the tenderers at the cost of Rs. 250, and the advertisement further stated, clause 3, "Tender forms issued only to approved contractors, experienced and capable." Application for permission was to be made to Superintending Engineer No. 1, and it was only in the specification that the alternative design was submitted; and Mr. Hamid at page 172, says "In the specification, which was issued to the intending tenderers, the alternative design is mentioned; the only tenderer who submitted the alternative design was the B. C. C. This alternative design was accepted because the S.E. 1. believed that it was a better design than the departmental design. He further says, "I was in favour of our own design which was fixed after so much experience," and as stated above, as regards the condition that the alternative design would cost less, as a matter of fact, the rates quoted showed the alternative design cost about Rs. 10½ lacs more, whilst it gave lesser area to the tenants and as regards other matters, so far as amenities to the tenants were concerned, it made no difference at all, as complainant himself admits, at page 87, wherein he says, "The old design was settled by the department. The B.C.C. tender was the fourth. The old design was approved by the Government. It was prepared by Hamid, and that was the design on which, more or less, all the other chawls were constructed except these 80 chawls." He also admits what Mr. Hamid has proved by calculations and measurements of Plans, that "the old design gave greater accommodation in some cases; in others it did not. On the whole, the old design gave more area. The cubic contents of the new design was less. The number of rooms, light and air and material convenience from the tenants' point of view, were materially the same. The main difference was for the methods of construction." And this difference was only confined to the method of construction in the floors. In

the new design, what was known as "Monolythic Method" was used and any engineer of experience will tell Your Worship that this method of floor construction has proved to be a failure. But the point I have to urge before Your Worship, is that why was this old design, settled by himself, approved by the Government, accepted by the public, allowed to be altered as it cost Rs. 10½ lacs more than the departmental design, the burden ultimately falling on the poor tenants and although the altered design did not comply with conditions with regard to area, cost and also structural strength specified in the conditions of contract issued to tenderers. The only explanation, that one can find for such na attitude, is that under the circumstances coupled with other facts adduced, it would be quite reasonable to infer that the altered design was permitted merely to serve as an excuse to reject the lower rates tendered and to serve as a pretext to confer favour on Major Parselle. Thus, I have dealt with circumstances connected with this incident, showing reasonable grounds to believe that some sort of pre-arrangement or plan existed between Major Parselle and Mr. Harvey, and it was in pursuance of that plan, that this largest and most lucrative work, was, under the extraordinary circumstances, entrusted to him.

Now, when we proceed further with the work of B.C.C. and consider the numerous cases in which this particular company was openly favoured, and large amounts of extra payments made to it in spite of protests from the subordinate engineers, and further for the same item of construction work, higher rates are paid to this company, than those other contractors for exactly similar kind of chawls by the same department, this suspicion and belief is further strengthened. It is not possible to go into all the details of such instances, where open partiality and favouritism is showed to this particular contractor, but I will submit to Your Worship, only a few instances that have been adduced in the course of these proceedings.

The point that was urged about there being some understanding between Major Parselle and Mr. Harvey, further meets corroboration in the evidence of Mr. Marker, the last witness for the prosecution. According to him, Major Parselle saw him in or about August 1922, that is some time before the Agreement with B.C.C. (Ex. 99) which was in September 1922, and told Mr. Marker that he was in urgent need of Rs. 3 lacs, that he needed to take the contracts. This date, or time at which Major Parselle made the statement to Mr. Marker, is rather important, because this statement was made nearly four or five months before the tenders were actually accepted and work for 80 chawls given to Major Parselle. The same question would be asked with greater emphasis and force, how did Major Parselle know early in August 1922 about the amount that would be required for taking up the work for 80 chawls?

Besides, how was he certain of getting this contract for 80 chawls alone, and not for 25 or 50? And this statement also shows preparations and arrangements made by Major Parselle by entering into partnership with B.B.C., and arranging for funds, discloses the fact that Major Parselle was assured of this work and therefore these preparations in earnest.

I give below some of the instances showing special favours and extra payments and higher rates to B.C.C.

1. Rates for general construction already stated above, whereby B.C.C. were paid about Rs. 10½ lacs more than the lowest tenderer, Mr. Gaya, and about Rs. 7 lacs more than the next tenderer Messrs. Chotani and Sirdar Naransingh.

2. Sanitary fittings to all the chawls were the same according to the department design and specifications, and what is more the same sub-contractor Gagrath and Marker did the work of Sanitary fittings for all the chawls for various contractors; therefore, there could be no difference either in the construction or in expenditure, because all the chawls were to be exactly alike, and there could be no excuse such as of alternative design for a difference in the rate for different contractors for this particular item. Still, if the Court will examine the records, considerable difference appears in the rates allowed for Sanitary work. As usually expected, the higher rate is paid to B.C.C. According to the evidence of Mr. Marker, the sub-sanitary contractor, who actually did the work and therefore could give authentic information on the subject, states, "B.C.C. got sanitary contract for Rs. 13,000; they did some masonry work, then transferred other sanitary work to us for 10,500 per chawl. Masonry must have cost about Rs. 500 to 600." According to this evidence B.C.C. made a clear profit of about Rs. 2,000 or total of about Rs. 1,60,000 for merely transferring the contract from the department to a sub-contractor, that too contrary to the rules; as the contract was for piece work, the department could have transferred this work direct to the Sanitary contractors and save so much amount. At page 110, the complainant says, "Our contracts were always based on the condition that the contractor must do his work." In spite of this, sub-contract for Sanitary work was allowed all through. And if your Worship will compare their rates with other contractors in the same district, also given by Mr. Marker, namely that Gaya & Co. were paid Rs. 5,500/- for the same work in the same district of Worli for their 21 chawls and they transferred this work to Gagrath and Marker for Rs. 4,000/- per chawl. The complainant himself states at page 102 that works of the various contractors were the same but the rates were not the same:

"Q: The rates were about Rs. 2,000 more than those of Gaya per chawl?"

“A: They were certainly more, but I can't say how much. By referring to the papers before me I say the difference was about Rs. 700. The B. C. C. transferred this chawl contract to the sub-contractor. Gagrut and Marker, were, I believe the sub-contractors for all these contracts.”

This statement, trying to minimise the difference in the rates, is directly contradicted by the evidence of Mr. Marker; according to him the rates were much higher.

According to my information, the original departmental scheduled rates for Sanitary fittings per chawl were Rs. 7,400, and even with extras and other items, the department's estimate never exceeded above Rs. 10,000; and though high rates were paid to his other favourite contractor, Mr. Cervallo, viz. Rs. 9,900, still to none was paid such a high rate as Rs. 13,000. It is difficult to understand this enormous difference in the rates for exactly the same items of work done by the same sub-contractor, according to the same departmental designs and specifications, in the same district.

Again, later on, after the completion, some extra work was decided, namely of providing a “Nahani” in each room. Even for that extra work again, exactly similar and same for all the chawls, the B. C. C. were given higher rates than Gaya or Chotani or other contractors, Exs. 100, 101 and 102.

Windows. Again, as regards this item as well as for all the items of construction, it is to be remembered that the design, quality, nature and measurement of the works were the same as all chawls of the scheme were to be similar, and hence the windows for all the 207 chawls are exactly similar in size, dimensions and other details, still a special higher rate per window is fixed for B. C. C. alone, whereby they are paid at the rate of Rs. 58 for 5 ft. and Rs. 30 for 3 ft., windows whereas the other contractors were paid much less. According to measurements not only were B. C. C. paid much higher per window than the other contractors, but they were also paid more than the amount which was actually due to them per measurement, in spite of the protests of the Engineers, who actually took measurements and prepared the bill. As admitted, the size of the windows on the top floor for all the chawls is smaller in height, because of the projection of the corners on the roof, and whilst calculating payments for the windows for all the other contractors this fact of lesser size of top floor windows was taken into account and proportionately lesser amount paid, B. C. C. were paid at a flat rate for all windows on all the floors. It came to a fairly large reduction if a proportionately lesser rate were paid for top floor windows, as there were a number of such small windows and for the total number of chawls, the amount came to several thousands. This was the arrangement so far as all the contractors were concerned, and

accordingly, Mr. Dhuria, who was the Acting Executive Engineer, made a proportionate reduction in the case of B. C. C.'s windows also. However, Major Parselle raised an objection to this reduction and there was some correspondence on the subject, and in spite of a very strong protest from the said engineer, Mr. Dhuria, who actually after detailed and careful measurement, came to the conclusion that Rs. 17-11-0 per window should be deducted from B. C. C.'s bill for the top floor windows, full amount was paid to B. C. C. There are about 20 windows on the top floor lesser in size and for 80 chawls there would be 1600 windows and the total amount thus over paid came to Rs. 30,000. The original rate with B. C. C., if Your Worship will refer to the specification, is fixed at Rs. 58 and Rs. 30, and this rate per window is much higher than the rates paid to the other contractors for exactly similar windows. Thus, on the general specifications, B. C. C. must have received an enormously larger sum than that paid to others, under the special arrangement allowed by the complainant. In addition to that, a sum of Rs. 30,000 is paid more in spite of a report of a responsible engineer protesting against such payment and convincing by facts and figures that the said payment would not be in accordance with the actual measurements. This is practically a payment on a false bill for an amount not actually due.

4. Just as special higher rates were granted to B. C. C. for various items of construction, correspondingly special favours were shown and special low rates were taken from them for materials supplied to them by the department. I will only give one or two instances as disclosed in these records, of Ex. 151 in which, Executive Engineer Colabawalla complains that bricks are supplied to other contractors at the rate of Rs. 35/- per thousand and Rs. -/4/- is paid to Messrs. Tata for unloading and stocking at Worli, still to B. C. C. or Major Parselle a special rate was fixed, which was Rs. 2 less per thousand than the departmental fixed issue rate. Memorandum of Mr. Colabawalla, U. O. R. dated 13-8-24, supply of bricks at Worli, "Conversation with Major Parselle gives to understand that you have already agreed to allow these bricks, however, at Worli in waggons, at Rs. 33/- per thousand. If so, kindly favour me with a copy of the order. The present issue rate for bricks is Rs. 35/- per thousand, and we pay Rs. 0-4-0 per thousand to Messrs. Tata for unloading and stocking at Worli. "Sd. Colabawalla." This is a memorandum in the file put in as Ex. 151, clearly showing special lower rates for B. C. C. and what is more serious, after the departmental fixed rates, at which materials are to be issued to the contractors, the complainant makes an exception even to that fixed departmental rates, in the case of Major Parselle alone, and Executive Engineer Colabawalla naturally wants for his own safety a written order from the complainant to that effect.

5. Another instance mentioned by the complainant, with regard to the materials, is the case of Galvanized binding wires of 17 or 18 gauge. The usual market rate for this kind of wires is Rs. 375, and 12 gauge binding wires were actually supplied to B.C.C. by the department at that rate of Rs. 375 per ton. In the calculations of their bills, that rate was taken into consideration which was the usual market rate, and accounts settled on that basis calculating the binding wires supplied to B. C. C. at Rs. 375/- per ton. However, long after this, B. C. C. put in a claim that they had paid Rs. 375 per ton for binding wires under a misapprehension and misunderstanding that they should have been charged other rate of Rs. 200/- per ton, the same rate at which mild steel bars were supplied and therefore they actually applied for a refund at the rate of Rs. 175/- per ton paid by them and claimed to set off that rate for the future amounts due by them to the department. On the face of it, this was the ridiculous claim, set up after several months, when they had actually paid the amount at the rate of Rs. 375/- per ton and accounts were settled and bills paid on that basis. As a matter of fact, it was an attempt to re-open the question and the claim was more ridiculous, in view of the fact that the actual market rate of this kind of wire was about Rs. 375 per ton. No officer with any sense of responsibility, or with the slightest regard for public funds, could have entertained such a belated claim, still, strangely enough, the complainant, not only entertained this claim, because it came from Major Parselle, but even allowed it to its full extent, and on account of this decision, actually the accounts were reopened and from the subsequent bills due from Major Parselle the amounts of Rs. 175 per ton, supposed to have been paid by him in excess were refunded. The complainant at page 100 says, "we supplied very fine binding wire of 17 or 18 gauge at the rate of Rs. 375 and Rs. 325. There was a dispute with the B.C.C. as regards 12" gauge wires which under the India office specification was classified as bars. For a long time in the bills this 12 gauge wires were calculated at Rs. 375 per ton. It was long before the settlement of the final bill, they claimed that they should be debited at Rs. 200 per ton. This claim was made when the job was half through. I put the matter up to Government, together with the India office specifications and Government held that their claim ought to be allowed. They paid at the rate of Rs. 200 per ton. They got a credit for the excess they paid. It amounted to Rs. 175 per ton. No contractors were supplied with this gauge binding wires. It was not binding on them to buy. If they wanted it, they would be supplied at Rs. 375 or 325." This India office specification was never produced, and I am quite sure that its production would not support the absurd contention, whereby the department would be asked to supply

a material which would cost in the bazar the rate of Rs. 375 and 325 per ton, at a special reduced rate of Rs. 200 per ton, thus causing great loss to the department. This specification, fixing the rates of issue of the department, is always a little higher than the prevailing market rate, as Your Worship will find from the rates fixed for several materials supplied by the department. Thus, in this case not only special low rates were fixed but special rates were allowed, after half the job is done, giving extra credit in the future bills.

Similarly with regard to other matters, that under various pretexts and excuses large sums were paid to Major Parselle and the B.C.C., thus increasing their profits.

Similarly B.C.C. were paid a fairly large sum of money for broken cement slabs left over after the completion of chawls. Usually, after such large constructions of works are completed, there is a lot of broken slabs and cement lying about the area, which the contractor is bound to remove on the completion of the works, and thus clear the area, but B.C.C., instead of removing the same, offered to sell this stuff to the department at ridiculously high rates, and Mr. Harvey agreed to buy the same although his subordinates reported against it and while making payment for this, the B.C.C. included all the broken cement slabs that were left over, not only from their own chawls but from the chawls constructed by the department and by the other contractor, Gaya & Co. although it was pointed out to the complainant that the chawl stuff for which he had directed payment, did not belong to them. The B.C.C. and Ferro Concrete Construction Co., another favourite contractors Co. headed by Mr. Cervallo, were the only contractors who were thus favoured by the department, and the rest of them had to remove this stuff at their own cost.

The financial arrangement between Major Parselle and Mr. Marker when detached and isolated, appears to be a business arrangement, but when considered in conjunction with several circumstances, preceding and succeeding it, I submit, it assumes a different aspect and appears to be a cloak to cover some other arrangement. First with regard to time, it is dated 12th Jan. 1923, i. e. a few days before the actual commencement of contract work of B.C.C., which commenced in the middle of February 1923, but is about three months after the contract of Major Parselle with B.C.C. is signed Ex. 99, dated 22nd September 1922. By this agreement Major Parselle's financial position was quite secured, as he was to get Rs. 2,000 a month without contributing a single pie for capital and also large profits that were anticipated. The terms of the agreement also suggest that Major Parselle must have been sure of securing large contracts before entering into this agreement, otherwise it is not likely that a firm of contractors would agree to engage him on

such favourable terms, particularly when he was unknown in Bombay. But with regard to the arrangement with Mr. Marker, the point I wish to submit, is that in view of such secure financial position, Major Parselle was not apparently in immediate need of such a large sum of a lakh of rupees in cash and the arrangement was such that this payment of a lakh of rupees was to be completed during the period when both Major Parselle and Mr. Harvey were in England together and the bank account of Major Parselle shows that during that period almost the whole of it or larger part of it did go to England. Under clause 19 of Ex. 99., B.C.C.'s agreement with Major Parselle, Major Parselle was entitled to leave from 1st April for a period of four months and under clause 1 of Ex. 152, agreement of Mr. Marker with Major Parselle, a sum of lakh of rupees was to be paid to him, Rs. 30,000 on 15th June 1922 and the balance of Rs. 70,000 in equal monthly instalments of Rs. 10,000 each. Under Ex. 131, Major Parselle's account with Lloyds Bank, according to an entry for passage money for self and wife, Rs. 2361/- is dated 22-5-23, and Mr. Harvey, according to his evidence, goes from March 1923. According to the same Bank account, Ex. 131, out of the amount received from Mr. Marker, nearly Rs. 40,000 goes to one Purbhoodas Jeevandas, a well known Exchange and share broker, shortly before his departure, i.e. 16-4-23, Rs. 34,660/- and 18-4-23 Rs. 4,637, apparently for transmission to England. Again a further sum of Rs. 14,941 is remitted on 17-5-23, to H. S. King & Co., Bankers in England. This is shortly before his departure. Apparently under his instructions, following further amounts are transmitted: 8-6-23 Rs. 10,000 remitted to London Office for your credit, £ 669-5-5; again on 20-7-23 remitted to West Office (England) for your credit £ 670-11-5 = Rs. 10,000; and some cheques are paid through one Mr. Newman who, according to Mr. Marker, was a friend of Major Parselle and an assistant in the Lloyds Bank. These large amounts out of this lakh of rupees are transferred to England when both the complainant and Major Parselle were there. Again the most favourable and extraordinary terms accepted by Major Parselle from Mr. Marker, also show that Major Parselle at this particular time must be in urgent need of this cash. For a lakh of rupees' advance in about seven months in 1923, he gets back in 1924 and 1925, in the course of ten months, a large sum of Rs. 2,38,000, although according to the terms of the agreement, Ex. 152, Mr. Marker was to get only once a year after B.C.C.'s account in April were settled, half the share of profit of Major Parselle in the course of 5½ years, the period of partnership, still he gets back this large amount in four instalments in the course of ten months. According to Mr. Marker's evidence and also Major Parselle's bank account, Ex. 131, Mr. Marker was paid on 4-3-24, Rs. 73,188-12-5 on 9-10-24 Rs. 59,000/-, on 8-12-24 Rs. 47,721, and

on 4-7-25 Rs. 30,000/-, totalling Rs. 2,38,000 in about ten months. After the last date, he got nothing from Major Parselle under the agreement, though B. C. C. continued some time after, according to Ex. 153, till 29th February 1926, when in a meeting of B. C. C. shareholders, it was decided to pay Rs. 6,000 to Major Parselle out of the profits. If the agreement, Ex. 152, was bona-fide, Mr. Marker should not have got Rs. 2,38,000 in 10 months in 1924-25, but according to the agreement on payment by B. C. C. every year after the balance sheet of B. C. C. drawn up in April, till February 1926, and he was entitled to half of Major Parselle's share till the end. Thus, according to Mr. Marker's own admission, the most important clause about annual payment of half profits, was not observed. Then again the consideration for such an agreement seems to be extraordinary. The only consideration, according to Mr. Marker was that he introduced Major Parselle to B.C.C., though in return for that he got very lucrative sub-contracts for Sanitary works for all 80 chawls at very favourable rates and although under clause 11E of Ex. 99, Major Parselle's agreement with B.C.C., Major Parselle could not mortgage or charge his share in the profits of partnership, and if the object was merely to oblige Marker, he could have been openly taken as a sub-partner to Major Parselle's share under clause 20. When Mr. Marker was questioned as to why Major Parselle wanted that large amount at this particular period, and what he did with it, he very properly replied that Major Parselle would answer that question. Under the circumstances, I am perfectly justified in demanding a thorough inquiry into Major Parselle's financial deal in England at this particular period when both the complainant and Major Parselle were there, shortly after the commencement of the work, and I submit that a decision of this case without conceding this legitimate demand of the defence, would be extremely unfair and unsatisfactory.

In connection with this financial arrangement in England Your Worship will also take into consideration a certain incident that happened here when both Major Parselle and Mr. Harvey were in England. In 1923, shortly after the commencement of the work, Mr. Hamid, Ag. Superintending Engineer, and his staff came to know of this isolated and separate arrangement, from which they were left out, and strongly resented it, and hence there was trouble as admitted by complainant, during his absence between Major Parselle's men and the staff, Mr. Hamid even reported against Major Parselle's work and recommended the cancellation of contract, on the ground that they had not kept up to the programme. Major Parselle was informed about it by cable and he sent a cable requesting not to take any action till his return, and he hurriedly returned followed by Mr. Harvey, and after Mr. Harvey's return, this trouble was tidied over and no action was taken as recommended by Mr.

Hamid. Major Parselle naturally resented this action of Mr. Hamid and the staff, with the result that the complainant reduced the supervising staff on B. C. C.'s work and left them to carry out the work as they pleased on Major Parselle's agreeing to remove any bad work if subsequently detected. This was a special arrangement with B. C. C. only; the result is that of all the chawls, the B. C. C.'s are the worst constructed, most of them vacant, as during monsoon they are practically uninhabitable on account of huge leakage and the maintenance charges are also very high. Subsequently the disagreement between Mr. Hamid and Major Parselle was made up. Complainant at pages 88 and 89, says, "There was no report made by Hamid in 1925 about the completion of chawls. I believe the report was made in 1923, when I was not in Bombay. I believe he did report for certain action against B. C. C. (Mr. Nariman calls for telegram by Major Parselle and for report of Ag. Superintending Engineer No. 1. Velinker objects. Objection upheld). I returned here on 1-10-23. I don't know when Major Parselle returned." Then again at page 101, "I reduced the staff. It was very concentrated and I reduced it. It was made on the representation of Major Parselle that they were harassing him and not allowing him to do the work. I asked the Company if they would undertake to pull down any column out of plumb. They gave an undertaking and I removed the staff from this kind of work as it became superfluous. . . . The work then went on smoothly and they did the work within time. It did not affect the quality of work." At another place, complainant has also stated that during his absence, Mr. Hamid and his staff could not pull on with Major Parselle's staff and they were harassing the staff for certain reason which he did not disclose. This reason, according to my information, I have submitted before.

If the demand for an inquiry as per my Council Resolution of 1924 had been conceded earlier, Major Parselle with his books was here till 1925 or 1926, and this point could have been cleared. This is one instance to show how long delay in starting an enquiry has been prejudicial to the defence. It will, however, be extremely unfair and unjust to make the defence suffer because the available materials and evidence have disappeared on account of this delay in enquiry caused by the Government. Similarly, I have served Mr. Judah, the Chairman of the Bombay Concrete Construction Co. to produce all books of account, but he too has left for England without arranging to comply with the Summons, and it is difficult to trace the books now.

The next firm to be considered according to the evidence and record in this case, is the Ferro Concrete Construction Co., or in short F.C.C., in many circumstances similar to B.C.C., showing a

system existing in the department. What Major Parselle was to B.C.C., one Mr. Cervallo was to F.C.C. He too like Major Parselle, claimed previous acquaintance and friendship with the complainant, belonging to the same profession, often consulted by Mr. Harvey in connection with concrete construction, as he was considered an expert; he too served on a Committee of Enquiry with Mr. Harvey and Major Parselle some time before he got contracts; in proper time like Major Parselle, he too resigned his post as Engineer from the Improvement Trust, and to complete the simile, like Major Parselle, he too was lucky enough very shortly after the resignation, to get his tender accepted for Sewri chawls though his tender too curiously enough, just like Major Parselle, fourth in point of rates, there being three lower tenders rejected, and the difference between his and lowest tender being about Rs. 9,000/- per chawl. F.C.C. was also a company like B.C.C. that was created with the creation of Development Directorate. In this case the lowest tender rejected, was of Marsland and Price, a firm against whom complainant cannot bring forth the excuse of financial stringency; so he had to resort to other excuse of inefficiency and incapacity though in point of reinforced concrete construction work, there is hardly any other firm that could come up to their experience, capacity and efficiency. They were considered unfit by complainant to be entrusted with the construction of labourers' chawls although the P.W.D., Tatas, the Central Bank and other well known private buildings in Bombay were constructed by them, including the Bombay House, the Central Bank Building, Framji Cawasji Institute, &c. I am simply pointing out to the Court the absurd position to which the complainant is driven by attempting to support an untenable position; consistently with this preference in selecting their tender in spite of its being fourth, throughout the works continuous favours were bestowed on them like B.C.C. regardless of protests from subordinates or report from Audit officer or financial advisor; in point of payment and granting claim under one pretext or another, Mr. Cervallo was treated most lavishly and generously by complainant at times such payments of very large sums amounting to nothing short of presentation of purse from public funds to a private friend.

First and foremost, the tenders for Sewri chawls were called for 16 chawls though it was known to complainant very well that the building plots available in that area were only for 12 chawls, the other four plots could not be built upon till the Port Trust had excavated some rocks and hills and levelled the ground which would have taken some months. It is very important to remember that all contracts were made on K₂ form; under P. W. D. Code, the essence and gist of that form is that the contractor is to be paid according to the piece work actually done by

him; he is not entitled to any compensation for any curtailment or variation in the programme and it is specifically provided that the contract can be terminated at any time by the Department. Under the said contract form, several Indian contractors, such as Mr. Vally Mahomed Hussain and Mr. Udaisingh &c. agreements were terminated in the course of construction entrusted to them and they were not paid a single pie as compensation as they were not entitled under the agreement; the agreement with Mr. Cervallo and F. C. C. was made on that form, but as stated above, although the plots available were for 12 chawls only, tenders were invited for 16 chawls.

Complainant at page 81 says, "I produce the agreement with F. C. C. Co. One of the clauses was that the Director of Development might put an end to it at any time. Also tender forms were embodied in the agreement (Ex. 83)" and at page 80, "Under K, the contractor is entitled to be paid for actual work done. F. C. C.'s contract was on K, form". Thus there is a clear evidence from complainant himself of the nature of the agreement with F. C. C. (Ex. 82 is a K, form). "A few months after the commencement of the work, it was decided to give up four chawls as the Port Trust could not blast the hills", and further at page 84, complainant says, "We told F. C. C. that the land was ready for 12 chawls and that they should work and that by the time they finished them the land for four chawls would be ready." Thus, F. C. C. before the commencement of work, were informed that land for 12 chawls alone was ready and work for four chawls was to begin after the completion of 12 chawls. At page 81, "Agreement with F. C. C. was made in February 1924," and complainant says at page 84, "I sent in my recommendation that the (four) chawls should not be started on 30-5-25" i. e. about a year after the commencement of work, and as they were to commence work of the four chawls after completion of 12, at the time when curtailment was decided they could not have started any expenditure on four chawls because 12 were still under construction. In spite of this, on 28th August 1924, less than six months after the commencement of construction, complainant as the Superintending Engineer of the Department, first writes to the contractors F.C.C. asking them to submit their claim for compensation, Ex. 88. This is rather extraordinary; the officer of the department whose duty it was to resist any such claims as against law if submitted by a contractor, first takes the initiative in the matter although the contractors themselves had not hitherto taken any steps, and he distinctly incites them to send in their claim against the department. The letter, Ex. 88, is marked "Without Prejudice" and "Very Urgent" and reads: "With reference to my conversation dated 30th ultimo, will Mr. Cervallo inform us of his additional charges in case of

curtailment, although K₂ form can be terminated at any time." Complainant on page 90 says, "I was the first to write to contractors." Being questioned on the point at pages 90 and 91, complainant says, "I did make calculations of their profits beforehand,There was an urgency to get a figure from them. I wrote to them to make them commit themselves in writing to some figure." The fact that he put the legal phrase "Without Prejudice" on the top shows he did not want to commit them to any statement. How was an Engineer concerned with the profits of the contractors, and why was he anxious to settle it "Very Urgently," it is difficult to understand. To this kind reminder of the Superintending Engineer to the contractors to submit their claim, the contractors naturally willingly and readily responded, and as directed in Ex. 88, they submitted their claim, Ex. 85, on 10th September 1924, addressed to Superintending Engineer No. 1, and in that they too admit, under the terms of agreement, Department is at liberty to terminate work at any time; still, in accordance with the desire of the Superintending Engineer, they submitted a claim for Rs 20,000/- However, from August/September 1924 to April 1925, nothing transpired and the matter rested there and according to complainant, at page 92, "the matter rested till April 1925," i. e. for eight months. However, about that time, complainant's leave was sanctioned and he was anxious to have the F. C. C. matter settled before his departure, hence once again he revived the matter that rested for 8 or 9 months from August/September 1924 to May 1925. Just as his first letter, Ex. 88, he took an initiative in the matter asking the contractors to send in their claim, so again as the contractors had slept long over it and took no steps beyond merely submitting their claim, Ex. 85, so he once again took the initiative in reviving that matter, and before proceeding on leave, sends a memorandum, Ex. 91, renewing the claim for compensation to F. C. C., which runs as follows :—

"Subject : Sewri Chawls. Memo. E. E. I. is requested to report after consultation with F. C. C. Co. what compensation would be reasonable for limiting the number of chawls at Sewri to 12 instead of completing 16, as per original agreement. This question should be ready for discussion on Wednesday next when the up-to-date bill of F. C. C. is being discussed. This has reference to his office No. 2582 of 22-9-24."

I ask the Court to note the language of this memo; although F. C. C. is not entitled in law or on merits to any compensation, still Superintending Engineer even before any report is made, has already decided to pay compensation, the only question is the amount to be paid. Again, the urgent matter must be ready by

Wednesday, Memorandum put in as Ex. 91, and at page 91, complainant says "On this, the question of compensation was again revived and F. C. C. submitted their claim for Rs. 56,000/- In their second claim the last item of Rs. 6,000 refers to the loss of staff. The items appear to be the same kind of items in their original letter; they increased the rates of some items. I recommended Rs. 36,000/-. Cervallo and I sailed together some days after." It must be stated the circumstances under which complainant was forced to admit this memo, Ex. 91; first, Mr. Cervallo who was summoned in Court was asked to produce a letter from Executive Engineer and in that letter, Ex. 90, there was a reference to this memo forwarding copy of memo from Superintending Engineer No. 1. Therefore complainant was asked and forced to produce it; before that, being questioned, he stated, "I do not remember causing circular to be issued to contractors to put in their claims". So as complainant desired, this matter was settled before his departure on leave, and a few days after the settlement, both of them sailed together in the same boat to Venice, and being questioned, he admitted this claim could not be sustained in law, but he based it on the ground of equity and justice. The first claim, Ex. 85, was only for Rs. 40,000/- of September 1924 and was sent to Executive Engineer for inquiry and report, and his report after personal inquiries was entirely against it; particularly about an item of centering, he reported the claim to be false as F.C.C. had no extra set of centering as claimed by them Ex. 85, and complainant states that he found the Executive Engineer's report false, still he never endorsed on that report that it was false. At page 93, he states, "According to Executive Engineer's report, there were only 3½ sets of centerings (F.C.C. said there were five and claimed Rs. 20,000 on one extra set), but I personally went and actually counted them. I did not report my subordinates. I was accustomed to such reports from my subordinates. It is a serious matter to make false reports. Shortly after this, I gave him a good certificate and recommended him for a post in Sukkur Barrage. He got the post." Thus, Executive Engineer Colabawalla's first report clearly shows that complainant in allowing compensation, even allowed for items and materials which were not in existence and thus allowed false claims, and further on, he says "We did not take possession of the materials we paid for." At page 94, "I don't know if these materials were entered in the stock book." Their first claim in September 1924, Ex. 85, was for Rs. 40,000 only (page 90). Subsequently in May, they enhanced it to Rs. 54,000 although the subject matter and the consideration for both claims were the same, they enhanced the rates and put in some additional items in the second claim. Gaya and J. C. Gammon were paid for a similar set of centerings hardly Rs. 4,000 when F.C.C. were allowed Rs. 15000/-

All the circumstances put together in connection with this shady transaction, go to show that this whole affair about payment of compensation to F.C.C. was a pre-arranged transaction, and the claim put up by contractors was on the face of these documents certainly inspired by the complainant. I have never heard of an officer in charge of a department first writing to a contractor to send in a claim for compensation in a matter in which clearly, legally or equitably, the contractors are not entitled to any compensation and when the contractors after the first adverse report of Executive Engineer apparently do not desire to press their claim and for nine months make no further mention of it at all again, the Superintending Engineer revives that almost forgotten claim, and in spite of the positive report of a responsible officer that compensation claimed for certain items did not exist and claims were bogus, the complainant recommends a payment of Rs. 36,000 and now describes the report of the officer as false though at that time he made no endorsement on it to that effect but gave a certificate to that officer, and further after having paid that large amount, a greater part of it for extra materials supposed to have been bought for extra chawls, does not take possession of any materials and no entry is made in stock book of any materials having been received from F.C.C. for the simple reason that there were no extra materials to be taken charge of and the whole claim was bogus and inspired. That it must be so appeared from his own statement, according to which F.C.C. were not to commence work for 4 chawls till 12 chawls were completed, and only a few months after the commencement curtailment was decided and therefore the work for four chawls could not have commenced, and within a few months a claim for Rs. 40,000 swells to Rs. 54,000. In the first claim, Ex. 84, it is distinctly mentioned for cost of construction of extra set of centerings Rs. 15,000 were paid and no centering was delivered to the department. Complainant at page 82 says, "We did not take possession of materials for which claim was allowed. The compensation was a general claim; they had made sufficient centerings for 16 chawls. In Ex. 90, one item is for quoting lower rates for 16 chawls, Rs. 16,900, when as a matter of fact the rate quoted by them was very much higher, being nearly Rs. 9,000 more than the lowest. Such flimsy claims were allowed and shortly after, both complainant and Mr. Cervallo sail together. In 1923, his leave coincided with Major Parselle's and both were together in England and in 1925 his leave again coincided with Cervallo and both of them go together.

But what is more outrageous is that why this contractor friend received a large sum as compensation though no court or responsible officer could have allowed a single pie; on the other

hand he does not impose any penalty or take any deduction from the deposit though legally penalty and deduction are due from them for being far behind the stipulated agreed time. One of the reasons for accepting their tender was that these chawls were required urgently and they undertook to finish them soon ; still they were far behind the time and the whole deposit is returned to them though one of the terms stipulated was that large deduction from the deposit would be made in case of delay. When the question of this compensation came before the Deputy Financial Advisor appointed by the Government of India, although all the facts were not placed before him—and particularly he was not aware that the complainant was the first to invite this claim—still on both legal and equitable grounds, he very strongly protested against this payment and submitted a strong report. When called upon to produce that report, the Government solicitor claimed privilege under Section 123 of the Evidence Act, the only objection to the production of that report being that it would considerably damage the prosecution case, because in the said report the Deputy Financial Advisor has severely criticised the conduct of the Superintending Engineer who recommended the claim and has held that contractors were not entitled to any compensation at all, and as regards the set of centerings stated “that the Department in 1922 spent Rs. 17,929 for preparing 2½ sets of centerings, one of which was sold to J. C. Gammon for Rs. 4,865. I cannot therefore understand how Rs. 15,000 for one set of centerings,” and it was also questioned why tenders for 16 chawls were invited when plots for 12 chawls alone were available and threatened to report the matter to higher authorities if the contractors’ claim was allowed. Complainant also admits at page 96, “I remember one centering supplied to Gammon for Rs. 4,000.” Such an important and authentic piece of evidence for the defence is kept back by Government from the Court on the ground of privilege although this matter was partly discussed before the Finance Committee and Deputy Financial Advisor’s report was probably known to the members. The matter was even considered so serious that the Accountant General has made a special reference in the Annual Administrative Report of the Presidency and criticises this payment as illegal and wrong, and even there it is openly stated that payment was made in spite of objections by Finance Department ; then what objection could there be to the production of the same report in Court ? This clearly shows that the Government do not desire to produce documents that considerably damage the prosecution case. This case of payment of compensation is enough to show the Court the attitude of complainant towards his particular friend contractors alone. This is not the only instance ; besides this, complainant has got very large amounts paid to him on flimsy and bogus claims and pretexts in spite of

positive reports of his engineers against such payments. I will only mention a few more glaring instances.

Complainant on page 84 states, "the curtailment of 4 chawls was sanctioned on 23-6-25. I sent in my recommendation that the chawls should not be started. My recommendation was made on 30-5-25. I did not inform the contractors as I did not get permission." This statement is made on 24-5-27; the very next hearing, i. e. on 30-5-27, the production of records and documents proves this statement to be false. Ex. 88 produced on 30-5-27, is the first letter sent by complainant to F. C. C. asking them to send in their claim for compensation for curtailment, and in that letter he refers to a previous conversation dated 30th ultimo. This letter, Ex. 88, is dated 28th August 1924 and the conversation referred to therein is on 30th July 1924. According to this letter he first informed them about it on 30th July and again wrote to them on 28th August 1924, still at the previous hearing he makes a misleading statement that they were not informed till June 1925 because he did not get permission. If he admitted the fact that F. C. C. were informed in July 1924, their claim for compensation would appear weaker because they commenced work in February 1924 and were informed about the curtailment in July 1924 and so they could not have incurred extra expenditure in four months for four chawls. Again if the final curtailment was decided on 23-6-25 and complainant sent in his recommendation for curtailment on 30-5-25, still nearly a year before that, i. e. in July and August 1924 complainant writes to them asking them to submit a claim for a contingency that was to occur 10 or 11 months hence. As a matter of fact, from the record it appears that complainant was more anxious to get this compensation paid to them than the F.C.C. themselves, and if complainant had not moved in the matter, they would never have thought of claiming any compensation. The inference, under the circumstances, is perfectly legitimate that complainant's own interest was involved in this payment.

In addition to this sum of Rs. 36,000 recommended by complainant and paid to F.C.C. for compensation for chawl curtailment, a further sum of Rs. 34,000 was paid to them on supplementary claims for alleged extra work. Although all conceivable items were included in the original specification, still whenever additional amounts were to be paid to these favourite contractors some extra items were always subsequently thought of and large amounts paid in addition to the original Bill based on original specifications, as in this case a sum of Rs. 34,000 was recommended by complainant and paid to F.C.C. for supplementary claims for alleged extra items.

One instance, adduced in evidence, will suffice to show how supplementary claims were allowed to be swelled. The system with

regard to extra items is that no extra item beyond specification in original contract, can be carried out without a formal written confirmation by Superintending Engineer or sanction by Executive Engineer or Superintending Engineer, and there is always a record and correspondence with regard to that extra item carried through Assistant Engineer and Executive Engineer. F.C.C. put in a claim for extra mild steel bars supposed to have been used at some places in partition walls. Mr. Rajadhyaksha being Assistant Engineer, it came in the ordinary course to him for investigation, and he desired to have the previous record in connection with this claim such as Superintending Engineer's sanction in confirmation for this extra item; no records were available either in the office or with the contractors. Upon this he became suspicious that the claim must be bogus and so he actually bored holes in all the places in partition walls where F.C.C. stated they had used mild steel bars and for which they claimed extra payment; and to his surprise, he found that with very few exceptions, this claim was entirely bogus and in most of the places no bars were used in partition walls as stated by F.C.C. in this claim. This matter was brought to the notice of the complainant, as in the ordinary course very serious action would have been taken against the contractors for the grave offence of attempting to cheat and putting in a bogus bill, but complainant took no action at all but on the contrary, allowed a greater part of even this claim, proved to be bogus, and a fairly large amount was paid to F.C.C. in spite of an adverse report of Assistant Engineer and Executive Engineer. Mr. Hamid's evidence on this point is important and supports Mr. Rajadhyaksha's report that the claim was false and got up. At page 177, he says, "Rajadhyaksha made a report showing in how many cases bars were used and in how many cases not used. I endorsed the report and sent it to S. E. I went to see the holes bored in the walls and checked the place as was mentioned in the report. I was satisfied that a greater part of the claim put forward, was false. The matter went to S.E. Payments were made. There were no papers in office showing that this work was sanctioned. This matter is referred to at page 95 by complainant, "I could not find any papers in connection with this claim. Hamid as E.E. did not recommend this payment." At page 96, "One part was paid, wherever it was found that these reinforcements had been put in. I recommended Rs. 15 per chawl." Mr. Rajadhyaksha's report is Ex. 97. The report says, "Claim is baseless and unjustifiable. If these claims are admitted, it would simply mean invention of other claims and there would be no end to them."

This one instance, quite accidentally brought to light, illustrates how extra claims were got up resulting in extra bills from contractors.

“Another supplementary claim of F.C.C. was for Rs. 48,557, I recommended Rs. 16,069. The supplementary claims came to about Rs. 86,000. That was in addition to payments made according to rates,” complainant’s evidence, page 84.

As regards surplus cement blocks for which F.C.C. were paid Rs. 10,000, Mr. Hamid says at page 177, “They are still lying at Sewri.”

Similar laxity and indulgence was shown by complainant in connection with another serious matter of F.C.C. brought to his notice. Mr. Cervallo had an assistant and looked after his Sewri works, and he had joined hands with one Kalasingh, an Assistant Engineer of the Department at Sewri. As a result of this, the monthly running bills of F.C.C. swelled to 30 to 40 thousand rupees a month and several bogus items were passed by Mr. Kalasingh. There was a measurement book wherein measurements were supposed to be taken and signed by both Assistant Engineer and contractors’ representative, and on these entries payments were made. The bogus entries of measurements made in the register by Mr. Kalasing and the contractors’ representative were found out when another Assistant Engineer, Mr. Rajadhyaksha came in the place of Mr. Kalasingh, and it became part of his duty to take fresh measurements and make fresh entries and he cut down the cost per month by about Rs. 40,000. Ex. 96, Mr. Rajadhyaksha’s report dated 27th May 1925, says “As I have cut down the cost per chawl from Rs. 94,000 to Rs. 91,500 (i.e. Rs. 3,500 less per chawl; for 12 chawls about Rs. 40,000 less), he (i.e. Ebrahim, the contractors’ representative at Sewri) has made S. E. to change his opinion about me. He threatens to do me harm after he leaves his job. I have invited Cervallo to show if there is any mistake. I want to prove that the complaint of Cervallo that I have made less payment is false.” He attaches detailed comparative statement and requests Mr. Colabawalla to place this matter before the Superintending Engineer to remove bad impression. Mr. Colabawalla, Executive Engineer, also went into this matter carefully and reported that Mr. Rajadhyaksha’s report was correct. Thus in the time of Mr. Kalasing, F.C.C. were paid about Rs. 40,000 more per month for the same work which was reduced subsequently by Mr. Rajadhyaksha. Mr. Kalasingh was subsequently dismissed and F.C.C. at first held out for a long time and ultimately accepted the reduced amount as per Mr. Rajadhyaksha’s report, Ex. 96, thus admitting that the previous bills prepared on fraudulent measurements between Mr. Kalasing and Mr. Ebrahim, were incorrect. It is not known for how many months these excess amounts were paid causing such enormous loss to the Department. Ex. 92 is Executive Engineer Colabawalla’s report upholding Mr. Rajadhyaksha’s

measurements and report; it says, "I beg to submit the original Mr. Rajadhyaksha's letter addressed to me together with the statement showing quantities and amount of each sub-head as per estimate, paid for by Mr. Kalasingh and those now passed for payment In justice to Rajadhyaksha, I place on record the work measured is quite up-to-date and accurate. Mr. Rajadhyaksha has no desire to trouble the firm. My impression and honest conviction is that Ibrahim, work manager of the firm, with some ulterior object, is trying his best to complicate matters. The account maintained by the officer is quite neat and accurate." Complainant's endorsement on it, is more important, "E.E. has an idea in his head that I have a bad impression about Rajadhyaksha. I think, however, that he writes too much. Sd/- Harvey, S.E.I."

Thus it is clear from the above report and other evidence in the case, that two responsible officers, Assistant Engineer and Executive Engineer, after careful and personal investigation found out that Mr. Ebrahim, the work-manager of F.C.C. and Mr. Kalasingh, Assistant Engineer of the department, had combined to defraud the department by swelling the monthly bill of F.C.C. by about Rs. 40,000. This was discovered and proved by subsequent measurements taken by Mr. Rajadhyaksha. Mr. Kalasingh's services were terminated and F.C.C. after raising objection for some time, accepted Mr. Rajadhyaksha's measurements as correct and took the lesser amount. What is most important for the purpose of this case, is the attitude of complainant as the head of the department in such a serious matter. Ordinarily, this should have resulted in a further investigation and a criminal charge of false accounts and cheating, but instead of taking any action, complainant's attitude was distinctly to shield and encourage F.C.C. and its staff and to run down his own subordinates who had discovered such fraud and prevented further waste. Though Mr. Rajadhyaksha had complained of threat of violence against Mr. Ebrahim, still no action was taken and the work-manager was not even removed as the Superintending Engineer had the right to get any staff of contractors removed in 24 hours; instead of taking action against the work-manager, he, as usual, run down his own staff and expressed open displeasure for thus interfering with their profits. Referring to this matter at page 92, he states, and tries to explain away Mr. Kalasingh's termination of services by saying, "It was not on any report that Kalasingh's services were dispensed with. He went on leave and he was asked not to return owing to the establishment being considerably reduced." This is not correct as departmental records, if produced, would prove. "After Kalasingh another Assistant Engineer was appointed in his place" (i.e. Mr Rajadhyaksha). Usually contractors sent monthly bills. The Assistant Engineer is to check them." The

Executive Engineer made a report on 30-10-24 before Mr. Kalasingh left, against his giving excess measurements ; complainant says, " I found that Colabawalla had made the report though he never checked the measurements himself....The Assistant Engineer spent his time in writing which was all rubbush...There was a very great deal of harassment....He was not fair to the contractors. The F.C.C. raised objections against the measurements of the new Assistant Engineer. Rajadhyaksha made several reports. I believe I made an endorsement on those reports, (Ex. 92 with endorsement) (Report of E. E. to S. E. put in as Ex. 93). It is likely that if a report comes to me and I don't agree with it, I would make an endorsement that I don't agree with it or with this or that in this particular report. I made only an endorsement that he writes too much....I found that the contractors agreed more or less with E.E.'s report. I only made that endorsement. They accepted the measurements of the running bill." Thus again, when he finds his subordinate engineers either Executive Engineer or Assistant Engineer reporting against his favourite contractors although the reports are supported by facts and figures and on personal investigations, as his endorsement shows, he could not challenge them at the time ; now, for the purposes of this case, he has no hesitation in running down his own staff charging them with making deliberately false reports as he alleges against Mr. Colabawalla's report, regarding claim for compensation or describes this report as rubbish, as in the present case, although at the time he makes no adverse remarks on the report itself and took no action for making false report but on the contrary, gives him a certificate.

It is such attitude, openly trying to shield and uphold outrageous, wrong and fraudulent conduct of his favourite Contractors that naturally creates suspicions against him, and when that conduct is coupled with such outrageous instances as the payment of compensation regardless of legal position or protests from higher Financial authorities or reports from his own staff, it further leads to an inference of complicity because instances occurred only with regard to these firms of contractors with whom his friends and previous associates or colleagues are connected. I will not wear out the Court with the details of other similar act of favouritism to the particular firm, such as purchase of surplus materials, like B. C. C., in spite of the adverse report of subordinates. At page 93, complainant says, " We took over the blocks and other materials that were good. It was not included in the compensation. I think whole payment came to Rs. 7,000," and various other similar small items making a total sum of a large amount of extra payment, so that ultimately the payments came to a much larger amount than the fixed tender rate although the rate too was higher by about Rs. 9,000 than the lowest tenderer. With regard to sanitary

fittings and other special items, these rates were also higher than the rest of the contractors and next to B. C. C.

Compare and contrast this preferential treatment with the treatment he meted out to some Indian contractors with whom he had no previous association or acquaintance, who had managed to make an inroad into the department and secure small contracts of a few chawls. With them, he was an entirely different officer, over strict, severe, most exacting and so persistently harassing that they had to give up the work and leave completely ruined. The legitimate claims, though recovered by subordinates, were not paid. Mr. Udaisingh left in the middle of the work and had correspondence over his claim. Mr. Vally Mahomed Husain similarly was compelled to go and forced to file a suit in the High Court and to file his petition in Insolvency and unfortunately died before he received his claim. Even such a reputed and well known firm like Pallonji Edulji & Sons, had to leave the work before completion and made bitter complaint of the unfair treatment at the hands of the complainant and his assistant, Mr. Krishnaswamy.

I have dwelt at some length on this question about F.C.C because so far as the investigation before the Mears Committee was concerned, it was the most recent and in spite of the exposures, agitation and criticism, large illegal payments were being made to them, practically about the time when the appointment of the committee was being considered and announced.

I submit, that I am justified in drawing an adverse inference of complicity against the complainant on account of his attitude of open partiality and favouritism to these contractors who are admitted to have been his friends before they became contractors. His conduct in making large payments to them, payments that could not be supported in law and equity, in spite of strong reports of subordinates and protests from the Financial Advisor and his refusal to take any action against them in spite of serious acts of misconduct being brought to his knowledge and his present attempts to shield and defend this conduct by criticising the reports of his officers against them as rubbish or false and in both cases the leave and departure to England so arranged that both these contractors by turn meet him in Europe and one of them making arrangement to transmit a large amount of cash there; all these circumstances, I submit, are strong grounds for justifying that inference and complainant at any rate, could have no reason to complain against such an inference, because he himself has drawn exactly similar inference against his own responsible officers for much lesser acts of favouritism and partiality towards a particular contractor. I would refer Your Worship to complainant's evidence at page 131, where he says. "I did suspect that the Executive Engineer and Assistant

Engineer were working in complicity with the contractor", and what were his grounds for this very serious charge against his own officers, one of whom had twice acted as Superintending Engineer in his own place and on his own recommendation? The grounds in his own words are "Because another matter came forward too when Gaya & Co. submitted their claims, many of them backed up by the Executive Engineer contrary to the clauses in the agreement. I did investigate as far as I could. I could not make a report, because I could not prove anything . . ." At page 132, he says "The agreement was very clear indeed in these particulars and there was no likelihood of his taking it and they should not have recommended them." Now I would ask the Court to consider the position. The complainant draws an inference against his own officers and lays a charge against them that they acted in complicity with the contractors on the ground that they recommended a claim that according to his opinion, was not tenable on the clear clause in the agreement and because they backed up a claim which he thought was false. Has not the complainant himself backed up a claim of a contractor friend Mr. Cervallo of F. C. C. in spite of the terms of the agreement, K2 form being quite clear that Director of Development could terminate the contract at any time and contractor was not entitled to any compensation? Has not the complainant himself not only recommended but ultimately got his contractor friends large sums of money although after personal investigation of two officers, claims were found to be bogus and fraudulent, and in spite of their written report against such payments? Although in one case the records in respect of such claim (F. C. C.'s claim for mild steel bars used in partition walls) were missing just as some documents were found missing in Gaya's case? Has he not backed up not only bogus but fraudulent claims and refused to take any action in spite of serious misconduct being proved? If Your Worship will carefully consider his conduct and attitude in this respect it has been more suspicious and shady than that of Mr. Hamid who after all has only once recommended after fully discussing and considering certain claims of a contractor as against complainant's recommending and paying such claims not only to one, but to all his favourite contractors, and not only once, but often; can he complain if such conduct and attitude on his part lead others to exactly the same inference which he himself has drawn against his own officers for much less suspicious conduct? It is admitted that complainant, Major Parselle and Mr. Cervallo were friends, whereas the previous relationship between Mr. Hamid and Mr. Gaya is not known. I submit that my position before the Committee was much stronger and my allegations not so serious nor so specific as the complainant has ventured to make against his own officers from the witness box. He has

described them as incompetent and unfit, he has charged them with making and submitting false official reports and he has even charged them with complicity with contractors, and after such grave and serious allegations, he gives some of them certificates of good conduct and recommends them for service in other Government departments.

He has also similarly charged his other subordinate, Mr. Mehta, on equally flimsy grounds, with destroying Registers and even of stealing waggons of mild steel bars; more reckless charges without any grounds for justification—and still he takes exception to a general statement of merely repeating ugly rumours of higher officers receiving secret commission.

I have never gone to the length of levying such specific and serious charges against the officer as he has done in the witness box.

The next dealings in connection with the same matter that I wish to submit, are those of Gaya & Co. This was one of the two Indian firms that managed to secure and retain comparatively small contracts, the other one being Chotani & Co. Though rejected when pitched against the greater favourite, Major Parselle, still at Worli, next to B.C.C., they managed to get the contract for 26 chawls. There were no separate tenders invited for these works, but this was given to them as a sort of consolation prize, partly to make up for the injustice done to them by rejecting their lowest tender for the larger contract of 80 chawls; but this firm was no exception to the usual rule, viz., to continue the dealings with the department under Mr. Harvey, one of its partners or one closely connected with the firm must claim some previous association or acquaintance with him or other higher officer of the department. Mr. D. R. Vaidya, Land Acquisition Officer and Deputy Secretary to the department, a gentleman holding a very high and responsible post, perhaps not being so sure of his position, would not take the rash and risky step of completely resigning his post, but in the first instance applies for a long leave, Ex. 142, in February 1922 for two years, and according to Ex. Z 17, applies for permission to do private practice as a surveyor in Bombay during the period of his leave. The decision to give contracts for chawls, according to Mr. Harvey, was taken about the middle of 1922 on Mr. Harvey's recommendation, and it is also admitted that parties interested knew about this for some time before. That matter must have been considered for some time before the final decision was taken, and therefore it is reasonable to presume that Mr. Vaidya being closely connected with the department, must have been made aware of the contemplated decision about the time when he applies for leave and actually takes it, i. e., in February 1922, when he applies for permission to do private practice as a surveyor. Ex.

Z17 was produced by the prosecution to create a wrong impression on the Court that the said permission would justify his association and interest in Gaya & Co., who were government contractors. A permission to a Government servant to do private practice could certainly not justify or regularise the grave irregularity and official misconduct of that public servant taking building contracts from the very department in which he occupied a very important and responsible post; on the ground of public policy and official morality, no public servant or even a pensioner is permitted to have any contractual relations or business dealings either directly or indirectly, under the cloak of a binami, with any department of government and least of all, with a department in which he occupies a responsible position. As a Land Acquisition Officer, it must have been part of his duties to decide rates and compensation to be paid to the land-holders for the very plots of land acquired for the purposes of chawl construction and shortly after the connection with a contractors' firm, he is engaged in the construction of chawls on these very plots. The first attempt was to show that he himself had nothing to do with the firm of Gaya & Co. but his son Chintamani was a partner, but when in the course of proceedings it became more and more clear that Chintamani was a mere binami for his father and the real partner was Mr. D. R. Vaidya, the father, the other blind was attempted by producing Ex. Z17, to show that permission to practise when on leave was granted to him and he was permitted to take up government contracts. On the contrary, this document only shows the preparation made by Mr. Vaidya shortly after his leave and shortly before it was decided to give contracts, to join the firm of contractors and take government contracts. Mr. D. R. Vaidya himself has not ventured to step into the box although he was all the time in Bombay, but has sent his brother to be the carrier of the horoscope and School certificate of Chintamani to Court. The brother's evidence, if anything, has made the position more clear. He says at page 194, "He (Chintamani) was a partner of Gaya. I don't know if he had a real interest or not. I did not make inquiries whether he was a nominee of his father or not. His father told me he was a partner. He did not bring in any capital. He had just left the school then. He was not learning properly, so he was taken away. He was in the 5th or 6th Standard. He had no experience of contractors' or engineering line. His father was an engineer. I don't think he was taking any active interest in Gaya & Co. I don't know if he is now employed with some contractors." That is the evidence of a gentleman, the brother of Mr. D. R. Vaidya, who was brought to prove that Chintamani being older than what he was represented to be, was the real partner of Gaya & Co. and his father had nothing to do with it. In addition to that, Your Worship will

find ample evidence on the record to prove that the son was a mere nominee and the real active partner, looking after the engineering part of Gaya & Co., was Mr. D. R. Vaidya, the father. Exs. 143 and 144, show that he openly carried on correspondence with officers of the department on behalf of Gaya & Co. in connection with the works and signed in his own name, and Exs. X2 to X6, correspondence between Gaya & Co. and another partner, Mr. Sambhoo Bhagoji, also has a reference to Mr. D. R. Vaidya. As a partner, he was constantly consulted not only in engineering but also financial matters, and like Major Parselle, even when in service, he used to visit and inspect the works and study the chawl construction, thus indicating his inclination to give up his job and take up contracts. Mr. Hamid at page 178, says, "Vaidya was an engineer. He used to come to works sometimes when he was in service. He used to come when the department work was going on. I used to meet him. Harvey did not take him round. I took him round. Vaidya's connection with Gaya & Co. was only through his son. I often saw him at Gaya's works at Worli. He was advising Gaya in engineering points. S. E. might have seen Vaidya managing Gaya's works." Mr. Hamid gives away the whole show by admitting that Mr. Vaidya's connection with Gaya & Co. was through his son.

In view of this strong evidence, both oral and documentary, I submit that it is fairly well established that Mr. D. R. Vaidya was the real active partner of Gaya & Co. and that his son Chintamani, was a mere nominee, and the fact that the device was resorted to of formally putting up the son, goes to show that Mr. D. R. Vaidya and others must have known that he could not be a partner openly. Under the circumstances, the age of Chintamani, the school boy, of 5th or 6th standard, is irrelevant.

Still, I must admit that howsoever irregular or wrong the piece of conduct on the part of Mr. Vaidya might have been, it would not be relevant to the present case unless it is connected with the complainant. In all the instances I have submitted to the Court, almost uniformly and invariably it has been pointed out from the records, that complainant at first, either denied all knowledge or dissociated himself from the said transaction till ultimately by documentary evidence or records, his connection was proved, and thus alone he was forced to admit it; so also in this particular case of Mr. D. R. Vaidya. At page 127, being questioned on this point, he says, "I don't know what 'C' stood for. I suppose C.A. Gaya means his name was C. A. Gaya. I did not care to inquire who 'C' was. Subsequently I found out there were three partners. Mr. D. R. Vaidya, Mr. Gaya, and a third man; that was at the end of 1922."

“ Q :—In 1922-23, Vaidya was in government service, holding a high post in Development Directorate ?

“ A :—I don't recollect when he left the department.

“ Q :—When this name of D. R. Vaidya came to your notice, did you make inquiries if he was in government service ?

“ A :—I did not make inquiries as I did not know he was the same Vaidya. At the end of the contract, I assumed that he was the man who was the partner of the firm. I saw him personally at the termination of the contract in connection with the contract. I assumed that he was the partner. He came on behalf of the company. I met him at Worli and I thought he belonged to the company and I treated him as acting on behalf of the company. It must be at the end of 1925 or in the early part of 1926. That was the first time I realised that he was the partner of Gaya & Co. I don't know definitely when I first came to know he was a partner of Gaya & Co.”

Again at page 128 “ I don't think D. R. Vaidya saw me till Gaya had some dispute.”

Now, I will refer Your Worship to Exs. 143 and 144, directly contradicting the above statement and the official records themselves prove that Mr. Vaidya was taking an active part on behalf of Gaya & Co., and by seeing complainant and others, not on the completion of the work and contract at the end of 1925, or beginning of 1926, as complainant alleges, but about the beginning of 1924, when that work was in full swing. Ex. 143, dated March 1924, are certain slips on which Assistant Engineer Gazdar has made certain remarks about Gaya's works and on which Mr. D.R. Vaidya has endorsed noting either compliance with the requirements or that “ S.E. has allowed them ” or some other steps have been taken in connection with them. More important than that, is Ex. 144, with regard to certain defects in chawls Nos. 89 and 110 of Gayas' in February 1924 ; Mr. D.R. Vaidya in his own handwriting has sent a letter to complainant as Superintending Engineer, making certain alternative suggestions with regard to these chawls, and the said letter addressed on behalf of Gaya & Co., is signed by Mr. D. R. Vaidya. There are many such vouchers and correspondence, but I have only adduced some, enough to show the connection of Mr. Vaidya with the firm and knowledge of complainant of the same at the early stage of construction and to prove from their own records, that the complainant's denial could not be correct and his ignorance is only pretended. The question naturally arises, as to why this studied effort to keep Mr. Vaidya's name out and why such a deliberate attempt to mislead the Court ?

Again, when repudiating the suggestion that Gaya and Co. were treated less favourably than B. C. C., he gave some instances when similar indulgence and facilities were also given to Gaya and Co. At page 123, he says, "The department paid him (i. e. Gaya) Rs. 3,300 more per superstructure. I treated everyone fairly. I made revision in their rates for nahanies. I found their rates were not fair and I increased them", i. e. he gave higher rates than were fixed and agreed upon under the agreement. Again at page 99, he admits he gave them higher rates for windows. "I subsequently gave them the same rate as given to B. C. C. That was in spite of their not being entitled to under the contract. I gave them increased rates in order to treat them fairly." Does the complainant wish to suggest that he gave unfair rates in the original agreement, so in order to treat them fairly, he had to increase the rates subsequently after the agreements were made and work commenced or completed? At page 88, he further admits special facilities being given to Gaya & Co. for recovery of amounts. Usually one bill is given to contractors every month after monthly measurements and calculations, but to Gaya & Co., he said "in spite of the fact that we gave them three bills every month, they ended up the job by giving trouble to the labour and we had endless trouble." The question the Court will have to consider, is why was Gaya & Co., so much in financial difficulties always in spite of so many facilities? What was the secret drain on this income that caused this trouble in spite of other circumstances being favourable? The entries in the books of account of Gaya & Co. solve this question. These books prove as clearly as a book of account can prove, that a secret arrangement existed, whereby 12½ per cent were paid on the amount received on bills. According to evidence, the actual contract work commenced in February 1923.

From Gaya's books, it appears that first a deposit of Rs. 40,000 was taken from them for the tender of 80 chawls at Rs. 500 per chawl, and when that tender was rejected, a sum of Rs. 27,000 was returned to them on 12th January 1923 and an entry to that effect appears on that date as a part of the deposit returned, retaining the balance of Rs. 13,000 for 26 chawls at Rs. 500 per chawl. That was the amount of deposit also appears from Ex. 128, assignment to Mr. Marker, which shows that simultaneously with the rejection of 80 chawls contract, it was decided to give the other contract to Gaya and only a part of the first was returned. Seven days after that i. e. on 19th January 1923, two sums of Rs. 5,000 and Rs. 1859-12-9 are debited to "Miscellaneous Expenses Account" without any details—Haste Mr. Gaya (in vernacular)—although for the same period there are various other small amounts from Rs. 7 or 8 to Rs. 15 debited to "Miscellaneous Expenses Account" for which details are given. The two amounts of Rs. 5,000

and Rs. 1,859-12-9 are debited a few days before the work commenced in February 1923. After that on 9th March, a sum of Rs. 1,34,929-4-0 is received from the department as the first large bill on account of the work and against that Bill, the following entries are debited to "Miscellaneous Expenses Account" without details :—

Haste Gaya Rs. 1,200	on 2-2-23.
„ 1,250	„ 6-2-23.
„ 5,000	„ 15-2-23.
„ 9,380	„ 11-3-23.

Thus, the total sum debited to "Miscellaneous Expenses Account" is Rs. 16,830, and the total due at $12\frac{1}{2}$ per cent. on the bill of Rs. 1,34,929 works out at Rs. 16,866. Twenty days after, i.e. on 29th March, a further sum of Rs. 12,799-9-0 was received on account of the second bill and on the same day, a sum of Rs. 1,600 is debited to "Miscellaneous Expenses Account" (without any details) with a note "at the rate of $12\frac{1}{2}$ per cent, Haste (i.e. through self.)" At the same time, from that date to five subsequent days, there are small sums of Rs. 22 to 39, all separately debited on separate consecutive days to "Miscellaneous Expenses Account" with details and particulars of the said small miscellaneous expenditure. $12\frac{1}{2}$ per cent. on Rs. 12,799 of the amount of the bill being worked out in Court, came to exactly the amount of Rs. 1,600 debited to "Miscellaneous Expenses Account" by the hand of Self (Haste). A day previous, on 28th March 1923, there is a sum of Rs. 3,400 credited on account of Bill received and nine days after, i. e. on 6th April, another debit entry of Rs. 425, "Miscellaneous Expenses Account" Haste (self) with a note "This amount goes with the account of Rs. 1,600 of 29-3-23" is shown. Thus the total amount of bill received is Rs. 12,799-9-0 or say, Rs. 12,800 on 29-3-23 and Rs. 3,400 on 28-3-23 and total debit entries to "Miscellaneous Expenses Account" are Rs. 1,600 on 29-3-23 and Rs. 425 on 6-4-23 = total Rs. 2,025; $12\frac{1}{2}$ per cent. on Rs. 16,200 works out exactly at Rs. 2,025; this being practically the second entry, the arrangement is entered, viz. at $12\frac{1}{2}$ per cent. but subsequent to this, practically all throughout similar arrangement of calculation is carried out, viz. large amounts at bills received are credited and corresponding amounts at about $12\frac{1}{2}$ per cent. are debited to "Miscellaneous Expenses Account," mostly by the hand of Mr. Gaya, i. e. self, either on the same date or a few days after though the note "at the rate of $12\frac{1}{2}$ per cent." is not repeated each time.

I have pointed out the first two or three entries in detail to illustrate the arrangement, but the most convincing proof is towards the end, where a total summary is drawn of this "Miscellaneous Expenses Account", which comes to Rs. 1,56,861 for

the Samvat year 1979 i. e. upto October 1924, and the said expense is debited to the four partners on account of "Contractors' salaries." Instead of putting "Officers", the word "Contractors" is used and thus all the four partners are made to bear this burden of expenses in proportion to their shares out of the profits.

There is one entry which needs further explanation. On 12th October 1924, being the end of Samvat year before Diwali, the account for the year practically closes, but an outstanding amount, under the arrangement, of Rs. 2,500 is paid some months later, i. e. on 12th February 1925. At this time, as is brought out in evidence, Gaya & Co. were already in monetary difficulties, and hence an amount of Rs. 2,500 was borrowed from Mr. Marker on 4-2-25, Ex. 167B (Pro-note by Sambhu & Gaya for Rs. 2,500 dated 4-2-25 to Marker). On the same date, Mr. Gaya writes a note to his partner, Mr. Sambhu, with the pro-note asking him to sign the same. Mr. Gaya writes in that note, Ex. X6, "Our cheque for Rs. 14,955 and some annas is ready in the Audit office. I have requested Mr. Marker. He agrees this time to give only Rs. 2,500 as the amount is small. The Worli office, as usual, has kept back, Rs. 5,600 to our credit. He may be persuaded to give some more moneys from the next bill. Please sign the accompanying receipt and send per bearer. I have an appointment with Mr. Marker to take the cheque at 4 p. m. today." A few days after, i. e. on 12-2-25, an entry appears of Rs. 2,100 "Miscellaneous Expenses Account by the hands of Mr. Sambhuji, Mr. Marker and Mr. Gaya." This entry is in the handwriting of the same Mehta, Mr. Ratilal, who has made the other entries, but is written on a slip of printed form of Gaya & Co. and is dated 12-2-25 and attached to the cash book page of 12th October 1924, the reason being that as this payment was made on 12th February 1925 and the account for the year was closed on 12th October 1924, the slip is attached to this last day's account, as showing the payment pertaining to that year. The Pro-note, Ex. 167B and letter, Ex. 6 and entry all taken together, support the statement that the amount was borrowed from Mr. Marker for payment on secret commission account, and Mr. Marker and Mr. Sambhuji were present at the time of payment to satisfy themselves that it was properly paid and not spent for any other purposes. Mr. Marker tries to explain away this entry by saying that the amount was required to be paid to labourers and he further says that at this time their work was stopped for want of payment; but according to Ex. 164, departmental record shows that according to the contract, Gaya & Co. were to complete the work by August or September 1924 but they were late and they actually completed and handed over the chawls to department by the end of January or beginning of February 1925. According to official records the work was completed

and chawls were handed over by this time, hence the statement of Mr. Marker—that the amount was wanted in February 1925 for payment to labourers and the work was stopped and could not be carried on is absolutely false. But the loan, as a matter of fact, was given for payment as secret commission and the wording of Ex. 6, letter from Mr. Gaya to Mr. Sambhuji “I have requested Mr. Marker. He agrees this time to give only Rs. 2,500 as the amount is small,” clearly shows that Mr. Marker was acting as an intermediary.

This piece of evidence, I would request the Court also to take into consideration whilst considering the nature of the second assignment from Gaya & Co. was made to Mr. Marker, Ex. 128, and the arrangement between Mr. Marker and Major Parselle, Ex 152.

As regards Ex. 128, the second assignment of Rs. 25,000 in February 1925 from Gaya & Co. to Mr. Marker, I submit that sufficient evidence has been adduced to hold that as alleged by the defence, it was a bogus assignment, not passed for any actual amount due on account, but that this amount was to be held by Mr. Marker in trust for the officers for their share of the secret profits of this last outstanding final bill when paid and settled. At this time, a dispute about the final bill was pending between Messrs. Gaya & Co. and the department; whereas there is ample evidence now in support of the first assignment of Rs. 60,000, part of Ex. 128—that is not challenged by the defence—Mr. Marker could not produce a single document or record, either in the shape of a work-order bill, voucher or letter of demand or entry in his books of account to show that Rs. 25,000 or any amount was due to him after the final settlement of his bill and passing of the first assignment in December 1924. The only documents he relies upon, are the two hand-written memos of account prepared, according to his statement, from memory for the purposes of this case, Ex. 161A and Ex. 161B. Ex. 161A, produced on the previous day, is not the same in details as the Ex. 161B produced the next day, and he further admits that these memos show an amount of Rs. 20,000 in excess of the amounts that would be actually due to him according to the terms of agreement between him and Gaya & Co., Ex. 154. Ex. 156 is a regular bill on the printed form of Gagrath & Marker to Gaya & Co., dated 15th October 1924, according to which the total for all three items, i.e. the original work and extra, comes to Rs. 1,75,780 and Mr. Marker says in his evidence “According to the terms of agreement, Ex. 154, the total amount due would be Rs. 1,78,962.” Out of that, he states, “we received about Rs. 1,17,000 from Gaya & Co.,” thus leaving a balance of about Rs. 59,000 and according to this account contained in the final bill, Ex. 156, deducting the amount received from the total amount due, for the balance of about Rs. 59,000 an assignment of

Rs. 60,000 was passed in December 1924, and that final bill bears the certificate signed by Mr. Marker certifying the measurements as correct. The first endorsement also states that the amount will become due after the works are completed.

In order to support his false contention, Mr. Marker says, that after the first assignment was made, extra work continued for four or five months, i. e. till about April or May 1925, and hence further amounts became due in April 1925 for which second assignment for Rs. 25,000 was taken, but as stated above, he cannot produce any document to show that such a large amount became due after that date and the said statement is false is further apparent from the official record, Ex. 164, which is the contract and specification of Gaya & Co. and includes a letter from Executive Engineer, Sanitary district, to Executive Engineer No. 2, which says, "With reference to your letter No. 157 of 17-1-25, I have the honour to inform you that 20 chawls Nos. 20-27 88-89, 93-101 and 110-111 will be ready for handing over to the department at the end of this month of contract of C. A. Gaya" i. e. at the end of January 1925, and according to the exhibit and statement of prosecution, all Gayas' chawls were handed over at the end of January, or beginning of February 1925; how could Mr. Marker have continued the work for four or five months after first assignment in December 1924, when long before the chawls were already completed and handed over to the Department?

Thus, I submit there is sufficient material to warrant a conclusion that there was no more amount due to Gagrath and Marker after the first assignment of Rs. 60,000 and that the second assignment of Rs. 25,000 was passed for the reasons stated above. The amount claimed by Gaya & Co. on final bill was about Rs. 2 lakhs and he has filed a suit for over Rs. 2½ lakhs, and this second assignment is also dated about the same time when a conference was held to settle this claim between Mr. Harvey, Mr. Hamid and Mr. Gaya and others as stated in complainant's evidence. The conference was held shortly before Mr. Harvey left; he went on leave in May or June 1925 and the necessity for this arrangement was that Gaya & Co. were, as admitted, in monetary difficulties and could not be trusted to pay the dues after the bill was paid.

Thus, I submit that the entries in the books of account, the correspondence between partners of Gaya & Co., Ex. X6, and the assignment to Mr. Marker, part of Ex. 128 and the pro-note Ex. 163B, coupled with the other circumstances, lead to a reasonable conclusion that some secret arrangement to pay secret commission did exist between the contractors and all officers concerned with the said contract.

In this connection, the Court will also consider the two entries of Rs. 5,000 and Rs. 1,859, seven days after acceptance of the deposit and before commencement of the work. First and foremost, I submit, that this payment, if at all, was in consideration of the granting of the contract work; the granting of that favour rested with the complainant alone, and it was on his recommendation alone that the work was entrusted to Gaya & Co. without formally calling for fresh tenders for these 26 chawls. In this connection, Mr. Hamid, as a subordinate officer, had no discretion, and as the granting of this work was the sole foundation of the arrangement with contractors, it is reasonable to presume that the officer primarily responsible for granting that work could not have been left out of such an arrangement. Howsoever much Mr. Hamid and Mr. Gazdar might have desired to confer favour on their favourites or friends, they could not have succeeded without the help and co-operation of Mr. Harvey, and the two debit entries of Rs. 5,000 and Rs. 1,859 before the commencement of the work, are significant. Again, apparent connivance of Mr. Harvey at Mr. Vaidya's inclusion in the firm when he was still in Government service and his further clumsy attempt to conceal that fact from the Court by apparently false and misleading statements make matters more suspicious against him, Mr. Vaidya was known to him as an officer of the department, and according to Mr. Hamid, he used to visit Worli Works like Major Parselle, even when he was in service, and before he proceeded on leave. What was the consideration for allowing Mr. Vaidya when still in government service, to take this contract. I will refer Your Worship to complainant's evidence on this point, wherein he admits that he himself suspected his Executive Engineer and Assistant Engineer to be in complicity with these contractors—and that was before the disclosures of their books—and other evidence; he says at page 131, "I did suspect that the Executive Engineer and Assistant Engineer were working in complicity with contractors"; still, his attitude towards them, after this suspicion is extraordinary. He makes no enquiries in spite of suspicion of such grave misconduct; makes no report against them, and what is more strange, that in his report on the very subject of Gaya & Co.'s claim, Ex. 129, he makes no reference to the suspected complicity, but on the contrary, states with regard to one claim that it cannot be proved or disproved. He states at page 132, "I have made no reference to the conduct of Executive Engineer in this report, but I have made a special report on the subject"; that alleged special report was never produced, and from his subsequent conduct towards these officers, it appears that he could not have made any such report against them, because, instead of taking any action, very shortly after this when he goes on leave, on his recommendation that very officer, suspected of complicity with contractors is promoted to

be Acting Superintending Engineer, and further more, that the same Assistant Engineer is promoted to Acting Executive Engineer; they are given certificates a few months later. In order to get out of this awkward position, complainant makes an absolutely incorrect statement at page 132, "I believe I gave them certificates before this incident. I gave a separate certificate after I came back." There could not have been any certificates given to them before this incident when the officers were still in service and were to continue for some time after. Mr. Hamid in his evidence, also says, "Harvey has never alleged in any of his reports about his suspicions.....No enquiry was made to my knowledge about this charge. I was not asked for any explanation. Long after this, he gave me a certificate. I never knew that Harvey suspected me to be in complicity with Gaya & Co., the contractors. The first time I heard suspicion cast on me was in Court when Harvey gave his evidence and made that statement."

Thus complainant's own admission shows that he had suspicions of such an arrangement or complicity, and his subsequent conduct in not taking any action at all but on the contrary recommending them for promotion the very officers to be acting Superintending Engineer and Ag. Executive Engineer and giving them certificates and further not making any reference on the report on this very subject; all these circumstances rather tend to the conclusion or inference of a common arrangement between the officers and contractors. After this disclosure, he even did not want to admit that he was replying to Mr. Hamid's letters, though very cordial correspondence had passed between them.

Although the appointments were made by Government, the allotments of districts and other arrangements rested with Mr. Harvey; Mr. Hamid was appointed to the largest district of Worli when Major Parselle and Mr. Gaya got contracts, and Mr. Hamid's favourite Mr. Gazdar brought by him from Hyderabad, is throughout the works kept under him in the same district.

All the above circumstances as stated before the Court, are to be taken into consideration in deciding the nature of the arrangement between the officers and the contractors. Out of several contractors who had dealings with the department, the books of account of Gaya & Co. alone have been available and produced before the Court, and these books were also secured because one of the partners had become an insolvent and these books were in possession of the Official Assignee. An effort to get other books, particularly of B.C.C., has failed although witness summons was issued and served. Other contracts were given and maintained under circumstances more suspicious than Gaya's, and the non-production

of their records on account of this long delay in starting this enquiry, has to that extent handicapped and prejudiced the defence.

The other two minor contracts were with regard to Mazagaon, DeLisle Road and Naigaum Plot B.

With regard to DeLisle Road, J. C. Gammon was accepted although his rate was third and though contracts were first decided to be divided between V. M. Hassan, Udaisingh and J. C. Gammon, still in a short time, the first two had to leave and the whole work was entrusted and carried out by J. C. Gammon. The same company had quoted Rs. 1,24,004 for 25 chawls at Worli for the same old departmental design, whereas their quotation for DeLisle Road, the same design and about the same time, was Rs. 86,077. It is difficult to understand such a great difference in the quotation of the same contractors to the same department about the same time for similar chawls to be constructed on the same departmental design ; a difference of nearly Rs. 38,000 per chawl, but apparently although contract was given to them on account of their low rate, ultimately, by means of extra and supplementary claims, they were paid nearly the amount they had quoted for Worli per chawl. When questioned about this difference in quotations between Worli and DeLisle Road, the complainant explained it away by saying " That this tender (DeLisle Road) did not include sanitary fittings " (page 105.)

The complainant also submitted a statement to the Advisory Committee, and in that statement, he has stated that J. C. Gammon's tender for DeLisle Road is quoted with inclusive rates, i.e. including sanitary fittings. That was the excuse given to the Committee for accepting their tender, although theirs was third, because the other two with lower rates, Mr. V. M. Hassan and Udaisingh had not quoted with sanitary fittings. The statement, I submit, either to the Court or to the Advisory Committee must be incorrect and it shows how complainant changes the statement when it suits his purpose.

Again, for Sewri chawls, which were also according to the same departmental design as DeLisle Road and Worli, the tender of Marsland Price for Rs. 85,121 per chawl was rejected, and one of the reasons stated to the Committee was " Many of their rates were too low to be compatible with good work and had reasonable rates been tendered their contract would have amounted to over Rs. 95,000 in each case," but for DeLisle Road, J. C. Gammon's rate of Rs. 86,077 per chawl was considered high enough to be compatible with good work and their tender for that rate was not rejected on the same ground. These instances again show how complainant changes his statements and judgments as it suits and serves his purpose. The complainant though repeatedly requested to give final figures

per chawl for DeLisle Road, did not do so stating at page 105, "It is impossible to give the figure per chawl for DeLisle Road." When he can give the figures for other districts, what could be the difficulty for DeLisle Road, alone? The figure per chawl, if given would show the great difference in the original rate on which their tender was accepted and the final payment, when they were paid over Rs. 30,000 more per chawl.

Complainant, Major Parselle and Mr. Cervallo and other engineers were sitting on a committee together, among other things to inquire into the collapse of a concrete construction alleged to have been constructed by Gammons. In the course of these proceedings some time before the contract was given, Gammons came to know these officers, although complainant denies previous acquaintance in his case.

With the solitary exception of Chothani, who managed to secure a small number of chawls at Naigaum Plot B after being twice rejected, in every other instance, for all 160 chawls, the contract was given to a firm in which either a friend, associate or colleague was a principal managing partner.

The following is the list of contractors with whom Mr. Harvey had previous association or friendship before contracts were given :

Major Parselle (B.C.C.)	...	80 chawls at Worli
Mr. Cervallo (F.C.C.)	...	12 „ at Sewri
Mr. D. R. Vaidya (Gaya & Co.)	26 chawls at Worli	
Col. Grisewood (Indian Construction Co.)	...	20 „ at Naigaum Plot A
Mr. J. C. Gammon	...	20 „ at DeLisle Road
Mr. Owen	...	Sanitary contractors and suppliers.

In all cases of chawl contracts, except Gaya & Co., tenders were accepted, though the rates quoted were much higher, sometimes difference in rate being Rs. 8 to 13 thousand per chawl. In several cases, large payments were made to B. C. C. and F. C. C. in spite of reports from subordinates and protests from higher financial authorities. In some cases, even illegal payments were made on measurements and claims found to be false and bogus after investigation by responsible engineers and officers and reports made to him to that effect.

I will submit before the Court what I had submitted before the Committee, the grave financial losses due to the mal-administration and effect of it on the general administration of the Presidency, to show that a subject of such great importance demanded

all the efforts, vigilance and care on the part of every citizen, and that it was not a question of petty spite or intention to harm the reputation of any officer.

Ex. 42, page 12 :—

“ The Committee while dealing with these questions will realise the grave financial loss not only to the city but to the whole Presidency. This mad and chimerical venture has practically mortgaged the resources of the Presidency for at least a generation to come. All other schemes of public utility, even such as primary education and medical relief must be suspended till the huge gap in the Bombay treasury is filled up.

“ According to the last Budget, three crores are to be funded, i. e. twenty lakhs every year for the next thirty years are going to be set aside for paying the loss on the Back Bay Reclamation. This is no doubt a modest estimate to prevent a scare and panic in the public ; ultimately, it is bound to be much more and all this on a Province that is already most heavily taxed and most heavily burdened with loans. The incidence of taxation per head of this province is higher than other provinces and the debt charges are more than two or three other provinces put together.”

The statement refers to the losses on Reclamations, but applied with equal force to the equally great losses in the Housing Scheme.

SUPPLEMENTARY WRITTEN STATEMENT.

Ex. 165 is complainant's letter dealing with the mixing of oil-seeds and oil-cags in cement bags referred to at pages 122 and 123, and the same exhibit also deals with the case of purchase of tyres dealt with on page 123. Ex. 165 shows that the incident about cement bags happened when complainant was in charge, in March, April 1924, and the explanation submitted by him is that the cement bags were torn in the boat and whilst refilling, oil-seeds and oil-cags got mixed and they got into the cement bags.

With regard to Motor tyres, from Ex. 165 it appears that orders for tyres were placed with a local firm of Vora & Co., although the difference in the rates was very great and the manufacturers had a direct agency in Bombay.

The following table will show the rates for two tyres :—

Tyre size.	Dunlop's rate for tyres.	Vora & Co's. rate for Dunlop tyres.	Difference.
160 x 850 ...	Rs. 450-0-0	Rs. 665-13-7	Rs. 215-13-7
160 x 720 ...	„ 490-10-0	„ 566-3-0	„ 76-7-0

Audit Officer and Finance Department raised objections but the matter was ultimately dropped on an assurance to place future orders with the High Commissioner and not locally.

Ex. 165 also contains two applications and Government Resolutions according sanction to the purchase of mild steel bars locally— one of them, for 50 tons 1/4" at Rs. 11-4 per cwt, is from the complainant himself, contradictory to his statement at page 63, "I placed no order locally." Ex. 148, produced during Mr. Sykes' cross-examination, was supposed to contain all applications for sanction; now it transpires these two at least were kept back till I called for them again. Still several applications for sanction are kept back, as per full list given by me as mentioned before in this Statement. These two included in Ex. 165, are also included in the list given by me thus proving the genuineness of my list.

But the most important part of Ex. 165 is an endorsement to the effect that the limit of Reserve Stock for mild steel bars was of Rs. 15,000/-, i. e., mild steel bars could be purchased in advance for the future work and kept in stock up to the value of Rs. 15,000/-. Under P. W. D. Code, it is necessary to have a limit of Reserve Stock.

Complainant, in order to explain away the enormous excess of 80,000 7/8" x 19' bars, stated these were ordered out to be kept in Reserve Stock for Dharavi and Flats, to be used when required two or three years hence. At page 47, he says, "These bars were stored as Reserve Stock. All that we needed is to have a sanction for a stock limit. We got a sanction for Reserve Stock." Ex. 165 is that sanction limiting the purchase upto Rs. 15,000/-, hence these 80,000 bars of the value of about Rs. 3 lacs could not have been ordered for Reserve Stock, as they far exceeded the sanctioned limit of Rs. 15,000/-.

Ex. 170, similarly subsequently produced, is the correspondence including India Office specification, justifying the issue rate of wire to Bombay Concrete Construction Co., at Rs. 200/- per ton although the actual bazaar rate for the same was Rs. 375/-. About eight months after the commencement of work, Major Parselle put in this claim that wire should be supplied to him at the rate of mild steel bars, i. e., Rs. 200/- per ton, instead of Rs. 375/-, although he had agreed to that rate in the original specification and had been paying at that rate for nearly eight months. Executive Engineer Hamid made an endorsement on it opposing the claim on the ground that the issue rate for wires with all contractors was Rs. 375/- and to reduce the rate to Rs. 200/- would cause great loss to the Department as the actual cost was Rs. 375/- per ton. Complainant at first agreed with this view of Mr. Hamid and apparently rejected the claim but shortly after, changed his view and recom-

mended this lower rate claimed by Major Parselle, and on his recommendation, a rebate at the rate of Rs. 175/- per ton was allowed to Major Parselle even on previous bills. This concession to Major Parselle was based on the India Office specification produced by complainant, Ex. 170, but on going through the same, it appears that the said specification directed that "round steel bars of 3/16" and above, will be supplied as rods" (i.e., at Rs. 200/- per ton) "Rods less than 3/16" in diameter should be demanded as wires," i.e. at Rs. 375/- per ton. 12 gauge wire of 1/8" supplied to Major Parselle, was less than 3/16" diameter; still complainant treated it as rods at Rs. 200/- when proper rate should have been Rs. 375/-, and allowed a rebate and subsequent reduction, going against his own departmental fixed issue rates. The total amount thus gained by Major Parselle was about Rs. 12,000/-, incurring that amount of loss to the Department, and an official specification is misquoted by him in support of his recommendation.

As regards Ex. 171, I submit that it is a typewritten extract and gives no reference to the records from which it is prepared. It gives a comparative statement of amount paid to B.C.C., and Gaya & Co., for super-structure, and shows that B.C.C., were paid Rs. 35,00/- less than Gaya & Co., and Rs. 6,000/- less than Chotani. The information called for was the total amount paid to each per whole chawl, including super-structure, piles, sanitary fittings and all extra works. The total amounts paid to B.C.C., and Gaya & Co., would show the comparative amounts paid to each, but instead of that, a typed statement is presented only showing the amounts per super-structure, nor is any reference given to official records from which the said statement is prepared to enable the defence to get sufficient data. The defence had no opportunity to cross examine the complainant on these figures, and this exhibit was put in along with several other admitted exhibits that went in by consent.

Under these circumstances, I do not admit the accuracy of these figures, and submit that they are very misleading and do not supply the full information called for.

But the most important document produced since the filing of the Written Statement, is the Final Bill of F.C.C. along with some other previous Bills. This Bill is dated 17th March, 1926. One of the items in the Bill—item No. 56—is for painting XPM fixed to window shutters or ventilators, with three coats of oil paint and the rate fixed was Rs. 4/- per 100 sq. ft. The total work of painting for 12 chawls is 3660 sq. ft. and according to the fixed rate, at previous column, the total amount due would be Rs. 146-8-0 for all the chawls. Instead of that, an amount of Rs. 14,642-2-0 was paid to F. C. C., on this item and that amount is shown as total

paid. Thus on this small item there is an over-payment of Rs. 14,400/- practically, a bogus payment not due to them at all.

According to the procedure, the details of these bills are prepared by the Housing District from measurement books or sheets and these bills are forwarded to the Audit Office for payment. The Bill of F. C. C., bears the signature of Mr. A. Hamid, but is closely scrutinised by complainant, who has made an endorsement and signed; and the effect of his endorsement is that the bill though, prepared on Final Form, should be treated as "running", as for certain items, adjustments are likely to be made for materials. Wherever the word "final" appears in the Bill, it is scored out by complainant, and the word "running" put instead.

Complainant in the course of his evidence, stated that he had nothing to do with the Bills and they never came to him, whereas this endorsement on a Bill with bogus payment, shows that not only did the bills go to him but he even closely scrutinised and adjusted payments.

When this document was called for by the defence and a Witness Summons was served on Audit Officer, the first day the officer did not even appear, but to mislead the defence, another bill was produced by the Audit Officer clerk—Witness Gaikwad Ex. 166.—That bill was for the amount of compensation separately paid to F. C. C. and had nothing to do with the Final Bill, and compliance with the Summons was attempted to be evaded under various pretexts. A Second Summons again specifying the documents needed, and was served, and then alone this Bill was produced, a mere inspection of which immediately disclosed the above facts.

Ex. 166, the Bill for compensation, is also signed by complainant as the disbursing officer, and is for much larger amount than stated by complainant in his evidence. This instance clearly shows that complainant's statement that he "had nothing to do with the bill" page 164, is not correct, and the bogus item in the Final Bill of F.C.C., clearly shows a payment of large amount of 14,400/- to F.C.C. not due to them at all and far in excess of the actual amount of Rs. 146/- due to them for the actual work done.

Your Worship will note that this is not an isolated instance of such payments only to his favourite contractors, but forms part of a series of similar payments to the same firm under various pretexts, noted above.

THE CONCLUDING APPEAL OF THE WRITTEN STATEMENT.

In view of the several instances submitted to the Court, I appeal to Your Worship to consider whether my demand before the Council or Committee, for an inquiry with a view to find out truth was justified and reasonable or not. The Prosecution with a view

to strengthen its position, has made repeated attempts to misrepresent the Defence, and create a wrong impression about him, although, I had made my position clear both in my Written Statement before the committee, as well as in my Council debates, at pages, 7 and 11, namely, that the materials were placed before the committee, because they were considered "prima facie" sufficient to start a public investigation, either to have them varified or falsified, with a view to enable an independent inquiry, to find out the truth and to take action, only, after sufficient materials are disclosed, against officer or officers after such inquiry. Thus it was made clear that at that stage there was no question of laying of specific charges against Mr. Harvey, or any other individual, but it was the initiative stage of a demand for an investigation on general allegations with a view to contemplate subsequent action; and again, I will refer to Your Worship to the invitation and the attitude of the Inquiry Committee, Exs. 30-31. According to these the committee wanted from the witnesses all the *information* in their possession and Mr. Bilimoria made it clear, Ex. 31, "If people who have information, can put forward..... why should they not boldly come forward and give out the information; if nobody were to give out clear information, how is the committee to proceed." Thus the demand of the committee from the witnesses was not for any specific proofs and instances submitted by in evidence, but merely information in their possession, regarding the subject with a view to enable them to carry on the investigation and prepare for grounds for subsequent action. Therefore, it was not necessary, nor was it intended at this stage, to levy any specific charges against any officers.

Again, I submit, in judging of a conduct of a public servant entrusted with public funds, and acting as a public trustee, the Court or the tribunal had not to look only to the Penal Code, and sections of bribery or corruption. Under the Government of India Act and Audit Rules framed thereunder, a very high standard of conduct is laid down for such officers. I will reproduce the concluding para of my Written Statement on the subject, Ex. 42, page 12.

"In connection with this Investigation, before closing my remarks, I may be permitted to refer to some of the sections and rules laid down in the Government of India Act that appear to me to be relevant and useful in fixing the responsibility. Under Auditor General's Powers, Part II, Duties and Powers as regards Audit the following cannons are laid down (page 147, Government of India Act, 1919) :—

10 (1) Every public officer should exercise the same vigilance in respect of expenditure incurred from Government revenues

as a person of ordinary prudence would exercise in respect of the expenditure of his own money.

- (4) Government revenues should not be utilized for the benefit of a particular person or section of the community.

Thus, the standard laid down to be observed by a public servant when dealing with public funds is very high. The question is whether the officers, from the highest to the lowest, concerned have exercised same vigilance as a person of ordinary prudence in respect of his own money. In view of the revelations and disclosures made before the Committee during the last few days, there would be only one reply to the above query."

The breach of either of the rules would be a great misconduct on the part of a public servant, and the fact while reproducing them before the Committee shows I had this borne in mind while submitting the Statement and not the section of the Penal Code. The action suggested in the last para of my Written Statement, Ex. 42, is not for bribery or corruption, under the particular section of the Penal Code, but under section 124, of the Government of India Act, for an inditement of misdemeanour, and the nature of that trust and duty of his office is defined in the Audit Rules, framed under the Government of India Act, referred to above.

"And further Section 124 of the same Act (Government of India Act) also defines certain Acts which constitute misdemeanours on the part of any person holding office under the Crown :—

- (2) If (except in case of necessity the burden of proving which shall be on him) he wilfully disobeys or wilfully omits, forbears or neglects to execute any orders or instructions of the Secretary of State; or
- (3) If he is guilty of any wilful breach of the trust and duty of his office."

Thus it was this section 124 of the Government of India Act, that I had desired to be enforced in connection with mal-administration of the Development Department. It is quite different from the section of bribery under the Penal Code. This Section is also to be read along with the conduct of public servants rules and resolutions on the subject. What may not be sufficient for a charge of bribery under the Penal Code, may still be enough to indite a public servant under section 124, of the Government of India Act, for the good conduct rules, for instances showing favouritism in course of official duties, to private friends by accepting their tenders at higher rates or recommending payments to them not legally due under the agreements and similar other acts of favouritism which resulted in loss of public funds and in Government Revenue being

utilised for the benefit of particular persons, may not be covered by the section of bribery under the Penal Code, but I submit, would come under the other wider section. I have deemed it necessary to elaborate this point before closing my Written Statement, because I have found in the course of the proceedings, the prosecution repeatedly requested the court to confine to only one point. The learned Counsel often stated "The only question is, did Mr. Harvey take any bribes?" And on that plea, the court upheld his several objections and disallowed many questions.

Whereas, from the concluding part of my Written Statement referred to above, the question with me was much wider. In order to prevent further disclosures, the prosecution naturally wanted to restrict and narrow down the inquiry to that question alone, as if in my Council debates or oral or written evidence, I had laid specific charge of bribery against Mr. Harvey alone and all the agitation was confined to that subject. All along, the expression used by me with regard to the Department as a whole were, MIS-CONDUCT, MAL-ADMINISTRATION, MIS-APPLICATION of Public Funds, FAVOURITISM, ETC., such as would constitute mis-demeanour, and therefore, I submit, the attempt of the Prosecution to serve its present purpose to narrow down the issue to one officer and one offence alone is not justified.

If a mere attempt on the part of the citizen to see that public servants holding high offices of trust and responsibility, observed the wholesome rules and sections of the Government of India Act, intended to protect and safeguard public funds, is to be construed as the offence under the Penal Code, the result would be to stifle public criticism and to gag opposition. I therefore, submit that this Prosecution from that point of view has far reaching effect. If the prosecution is successful in this case then the wholesome check of public criticism of administration of large public funds, will disappear, and the public servants will enjoy an immunity from public scrutiny, and it would be impossible to have any public inquiry into the conduct of public servants in future, as no witness would venture to come forward to give evidence. Such a result from a public point of view would be deplorable and apart from the personal considerations. It is to avoid such a disastrous result that I have struggled so hard and hope on the merits, to secure a verdict of not-guilty.

ANSWERS TO THE CHARGE. (Charges see Part I.)

With regard to the charge framed against me I deny the charge and plead not guilty. I deny that I defamed the Complainant Mr. Thomas Harvey on or about 21st August 1926 by making or publishing to the Back Bay Committee the imputations mentioned in the charge. I deny that the said imputations were imputa-

tions concerning the Complainant Mr. Thomas Harvey as alleged in the said charge. I deny that I intended to harm or knew or had reason to believe that such imputation would harm the reputation of the Complainant Mr. Thomas Harvey. I say that all the imputations and statements made by me and which are referred to in the said Charge were made of and concerning the Officers of the Development Department in general as above stated. There is no grammatical or syllogistic connection between the paragraph forming the subject matter of the charge and the previous paragraph in which the name of the Complainant is mentioned along with names of other Officers on the subject of their salaries. I submit that to sustain the charge of defamation under Section 499 of the Indian Penal Code, it is necessary to prove mens rea and to prove that the Complainant was the person meant or aimed at by the Accused. I submit that the Complainant has failed to prove that he was the person aimed at by me or that I intended or knew or had reason to believe that the imputation would harm the reputation of the Complainant.

I submit that the artificial rule of the English law of Torts (that in actions for damages for slander or libel, the Court has to consider, not whether the defendant aimed at the plaintiff, but only whether the plaintiff was actually hit) does not apply to prosecutions for defamation under the Penal Code, which requires proofs of such intention, knowledge or belief on the part of the Accused, as is mentioned in Section 499 of the Penal Code.

Without Prejudice to the above defence and in the event of Your Worship holding that I intended, knew, or had reason to believe, that the statements should or would harm the reputations of the Complainant, I answer the charges contained in items I to 9 of the Charge Sheet separately as follows:—

Item No. 1: I say that the said statements made by me were true. I say that it is true that there were ugly rumours in the City and the whole of the Presidency to the effect mentioned in the said statement. I submit that it has been sufficiently proved in this case that such ugly rumours did exist. I submit that I am not bound to prove in this case that the statements contained in such rumours were also true. I submit that if Your Worship is satisfied as to the existence of such ugly rumours Your Worship will hold that the statements made by me (as to the existence of such ugly rumours) were true and will acquit me. I submit that I have in this case conclusively proved the existence of the said rumours. I submit that it was for the public good that I should make the statements before the Council and before the Committee that such rumours did exist. It was for the public good that I should make the said statements in order that the truth or otherwise of the said rumours might be investigated into. If the rumours were found to be

true, adequate measures would be taken to protect the public funds and punish those who were in fault. If the rumours were found to be untrue a public inquiry and an official report declaring such rumours to be untrue would dissipate public mistrust and establish public confidence in the Department. I therefore submit that my statement being merely a statement as to the existence of certain rumours and that statement being true and being for the public good, the case falls within the first exception of Section 499 of the Indian Penal Code.

I beg to draw Your Worship's attention to the wording of this exception and to the Report of the framers of the Act. The words "bonafide" are advisedly omitted from this Section and it is expressly intended that if a statement is for the public good it should be made without fear. Suppose for instance there is a rumour which is known to be false which is calculated to do harm to the public or to Government. It is the duty of every citizen to bring such rumours to the notice of the proper Authorities and to fearlessly state the nature and substance of such rumours on all proper occasions and before all proper parties, though the person making the statement may himself actually believe that the rumours are false. Now it cannot be denied that my statements which were made in Council and before a Committee specially appointed for the purpose, were made on proper occasions and before the proper persons. In the present case however I honestly believed in the truth of the said rumours and I submit that upon the information I had, any reasonable man would have believed in the truth of these rumours. My information was of course much vaster than the facts which I was permitted by Your Worship to prove in this case, as Your Worship was anxious to confine this inquiry to the misdeeds and misconduct of the complainant alone, whereas my statements were generally against the Officers of the Department.

Further I also submit that according to the evidence in this case the truth of the imputations contained in the said rumours is also conclusively established, although it is not necessary to prove the same for the purpose of my defence. In this case it has been proved as stated in the rumours that "higher staff and Officers" were receiving secret commissions. I submit that it makes no difference whether the secret commission was received from Manufacturers or from Contractors or local dealers. I had further evidence to prove such secret commissions but owing to the limited scope given to me, I was not able to present it to Your Worship. I further submit that, although it is not necessary for me to prove receipt of secret commission by the complainant Mr. Thomas Harvey himself, I have in this case adduced sufficient evidence, if not, to prove the receipt of secret commission by Mr. Thomas Harvey, at all event, to justify

on the part of a reasonable man a suspicion, a belief, and an inference that Mr. Thomas Harvey did take secret commissions in the cases which I have enumerated above. No other credible explanation or theory has been put forward to explain either the proved misconduct and misdeeds of the complainant, or his attempts in this Court to give false versions of every incident. I submit that the contention which the Complainant's Counsel so often appeared to put forward, that for the purpose of my defence it is necessary for me to prove such facts as would lead up to the conviction of Mr. Thomas Harvey for illegal gratification under the Indian Penal Code, is entirely untenable.

Proceeding further with item No. 1 of the Charge, I submit that the statement that the department incurred a loss of three lacs of rupees has been proved to be true. This statement was also a part of the said rumours.

The statements that stores were indented in large quantities than was necessary and that stores that were not required were ordered out have also, I submit, been proved to be true. These statements were also part of the said rumours.

I further submit with regard to all the statements mentioned in item No. 1 of the charge, as well as all statements mentioned in items Nos. 2 to 9 of the said Charge as follows :—

- (a) That they were made by me in good faith respecting the conduct of public servants in the discharge of their public functions.
- (b) That they were accusations preferred by me in good faith against the Officers of the Development Department in general to the Mears' Committee which was appointed by the Government of India to investigate into the said statements and matters and had full authority over such Officers with respect to the subject matter of the Accusation.
- (c) That they were made by me in good faith for the protection of the interests of the rate-payers and for the public good.
- (d) That they were made by me in good faith by way of conveying a caution for the public good.

With regard to the question of good faith, I submit that as the occasion was admittedly privileged, good faith will be presumed, and that the burden of proving want of good faith is on the complainant. The prosecution has not even suggested any malice on my part nor have they adduced any facts to prove that my action was not bonafide. An attempt was made to make out a case of bad faith on the ground that I persisted in my statements though the Government gave me proper and truthful replies and explanations

to my inquiries. This contention has now been dropped as I have proved to the hilt that the replies and explanations of Government were untrue and misleading.

I therefore submit that my case falls within Exceptions 1, 2, 8, 9 and 10 of the Section 499 of the Indian Penal Code.

I further submit that under exceptions 2, 8, 9 and 10, it is not necessary to prove the truth of the statements, and that though the statements may not be true I am entitled to acquittal. But I do also submit that I have established and proved the truth of all the statements made by me.

Item No. 2: I submit that these statements are not defamatory at all. I further submit that these statements have been conclusively proved to be true. I submit that it has been proved that in one instance an Executive Engineer had prepared an indent to be forwarded to the Manufacturers at Home for a large quantity of mild steel bars for concrete piles and the size mentioned in the original indent by the Executive Engineer was 5/8". These are admitted facts.

I further submit that my statement that after the indent was prepared the figure was subsequently altered by the Superintending Engineer into 7/8", does not go as far as proved facts of this case would justify me in saying. I submit that matters were much worse. Instead of scoring out goods of 5/8" size and substituting in lieu thereof goods of 7/8" size, not only goods of 5/8" size were retained in the indent but additional large quantity of unnecessary bars of 7/8" size was ordered out.

I submit that the statement that the quantity was about 1,200 tons costing nearly three lacs of rupees, is substantially true, and the said statement does not constitute defamation at all.

I also submit that the statement that the indent thus prepared was sent by the Superintending Engineer to the Home firm and that the goods arrived of the size and dimension of 7/8" which were not required for the Works, is a statement which has been proved to be true. I further submit that the statement that these bars were deposited in the Matunga Surplus Depot, has also been proved to be true and I submit that the statement of the fact of the said deposit, does not constitute defamation.

With regard to the allegation that a fresh indent had to be sent with correct specifications and fresh consignments arrived, I submit the same has not been proved, but I submit that the said statement does not constitute defamation.

With regard to the statement that the amount of nearly three lacs of rupees was merely wasted, the statement has been proved to be true.

With regard to the statement that when a question was raised about it in the Council in the course of a debate, the Development Director admitted it but stated that the said alteration was due to a trifling error, I submit that the said statement is true and has been proved to be true.

With regard to the statement that no effort was made to explain how such trifling error could have occurred, I submit that the said statement is true and has been proved to be true. With regard to the statement that the statement had been correctly prepared by the Engineer I submit that the statement is true and has been proved to be true.

With regard to the statement that the indent was deliberately altered by the Superior, I submit that the said statement is true and is proved to be true. The complainant who was the Superior, admits that he altered and not by mistake. I submit that there was alteration and it is absolutely immaterial whether the alteration was by way of erasure of a figure in the indent and substitution of a new figure thereon, or by way of addition by means of a separate letter to the indent already prepared. I further submit that the alteration was deliberate as it is not contended that the alteration was by mistake or error.

With regard to the statement that no explanation was forthcoming, I submit that the said statement is true and has been proved to be true. In the Council and at the time when this statement was made, no explanation whatever was forthcoming. Even now after this case was filed the explanation offered by the Complainant is absolutely inconsistent, untrue and incredible.

I further submit that the said statements also fall within exceptions 1, 2, 8, 9 and 10 of the Section 499.

Item No. 3: The statement that the figure "5" was changed into "7" by the Superintending Engineer, though inaccurate, substantially states the facts. The fact that 7/8" bars were ordered not in substitution of 5/8" but by an additional order or that the bars were ordered not by a change of the size or figure in the indent, but by a separate and additional order of 7/8" does not in any way affect the case. I submit that statement No. 3 mentioned in the charge is not defamatory at all. I further submit that the said statements also fall within exceptions 1, 2, 8, 9 and 10 of Section 499.

Item No. 4: I submit that these statements are not at all defamatory. I further say that it is an expression of my opinion in reply to questions put by the Committee inviting expression of my opinion in the manner mentioned by me above. I further say that the statement is substantially true and is proved to be true. It has

been proved that there has been no mistake. It has been proved that it was not a mistake made in the original preparation of the Indent but it has also been proved that there was an alteration of the Indent, the alteration being by addition of other materials under a separate letter. I further submit that these statements also fall within the said Exceptions 1, 2, 8, 9 and 10.

Item No. 5: I submit that the said statement is not at all defamatory. I further submit that it was an expression of my opinion in reply to question put to me by the Committee asking me to state my opinion under the circumstances mentioned above. I further say that it is true and has been proved to be true that the alteration was intentional in as much as it was not and is not alleged even by the complainant to have been accidental or by mistake. I beg to point out to Your Worship that the original theory of mistake advanced in this case by the Complainant was given up at later stage when the Complainant was faced with facts. I further submit that the said statements are not at all defamatory and fall within exceptions 1, 2, 8, 9 and 10.

Item No. 6: I say that this statement was an expression of my opinion in reply to questions from the Committee inviting my opinion on the point. I further submit that no explanation having been given by the Government before this case and no explanation having been given by the Complainant after this case, except an explanation, which has been proved to be false and having regard to my information I was justified in expressing the opinion which I expressed before the Committee.

With regard to the statement "As far as I can see there is no other explanation, otherwise these stores would not have been ordered to be used as scrap iron," I submit that this was also an expression of my opinion which under the circumstances of the case was perfectly correct. I further submit that these statements fall within exceptions 1, 2, 8, 9 and 10.

Item No. 7: This statement is admitted by the Complainant to be true and it has been proved that the altered indent was so sent. I submit that an alteration can be made either by erasure, and inter-lineation in a document or by addition to it by another document. It is all the same an alteration. I further submit that this statement is not at all defamatory and that it falls within exceptions 1, 2, 8, 9 and 10.

Item No. 8: With regard to the statement that the indent was altered by the Superintending Engineer, it is now admitted that the indent was altered by the Superintending Engineer, namely, the Complainant himself. The letter altering the indent by a further order was signed by the Complainant himself. I further submit

that this statement is not at all defamatory and falls within exceptions 1, 2, 8, 9 and 10.

Item No. 9: Question by Mr. Billimoria: "Do you suggest any ulterior motive?"

Answer: Yes."

I submit that this is not a statement of fact but statement of opinion. A member of the Committee inquired of me whether I was suggesting any ulterior motive and in truthful response to the said question, I answered "Yes," that being my opinion. I further submit that I am not bound to prove that there were ulterior motives for the alteration of this indent, but I submit that the fact that I held the opinion that this was due to ulterior motives, justified me in expressing that opinion before the Committee. I further submit that my opinion was also justified, having regard to the evasive answers given to inquiries in the Council, the refusal to hold inquiry, the inconsistent answers from time to time given, the information I had of the misdeeds and the misconduct of the Officers of the Development Department in general, and, last but not least, the misdeeds and misconduct of the Officers including the Complainant himself, which have all been proved in this case.

I further submit that this statement also falls within exceptions 1, 2, 8, 9 and 10.

“ DEFENCE WITNESSES.”

SYNOPSIS OF EVIDENCE.

The most interesting part of the case from the public point of view was the 'Defence'. When the case had started the General impression was that, though the allegations made be true and the department, as was generally believed, may be corrupt, still the public apprehended that it would be extremely difficult to prove the same in a Court of Law. Charges and offences under the Penal Code, that of corruption and or bribery or of offering or receiving commissions by the Public Servants are most difficult to prove because under the Law, the giver as well as the receiver of a bribe, is held to be equally guilty and equally liable for punishment. Fraudulent transactions of this description are not expected to take place in a regular form, after preserving ordinary records, as is usually done in bona fide transactions. The giver as well as the receiver usually takes all precautions in his power, both to prevent detection as well as to destroy any trace of it, in case of any subsequent action. It is therefore, that a case of bribery or corruption has never been known to have been successfully launched by a private prosecution but, when a conviction is obtained in such cases it is only in the case of the CROWN PROSECUTION where Government, assisted by all resources at its disposal and its powerful machinery of the C. I D. is employed to collect the necessary materials and, above all, after Government issues a Resolution or a Press Note, granting indemnity and exemptions to all persons coming forward as Witnesses or informants, that a Crown prosecution is able to get conviction against an individual and that too in respect of a particular charge of specific instance of specific payments.

In this particular case none of these facilities were given to Mr. Nariman and moreover, it was not merely a case of proving of one specific instance or one particular charge of payment of bribery, but as an accused person a heavy burden was thrown on him in view of the defiant attitude taken up by him to prove that this important department of Government was corrupt not only so far as the petty officers were concerned but it was necessary to prove corruption on the part of "higher staff and officers." No doubt, in the course of his lengthy and pointed cross-examination sufficient materials had been adduced to show very grave irregularities, most outrageous neglect of duty, gross breaches of Rules and regulations and even of Government Resolutions, a good deal of favouritisms and profiteering of private firms and other individuals and such other materials as could naturally lead to a conclusion that the Department was on the whole corrupt, but in point of Law this was not

considered enough to establish the Defence because there was no direct proof of bribery adduced in cross-examination. The public interest was considerably enhanced when that memorable and historical written statement of 250 pages, all closely typewritten was produced and read by Mr. Nariman in his usual loud stantorian voice keeping a large crowd of spectators in court for nearly 5 days practically spell bound and wonder-struck, as instances after instances were read by Mr. Nariman showing the exhaustive nature of his Inquiry and to what extreme depth and details, his investigation had proceeded, ransacking every remote nook and corner of the Department, so much so that even the General Member who was supposed to be responsible Head in charge of the Department, was struck with surprise and had virtually to admit that although he had been at the head of the department for the last 5 years, several of the instances came to his knowledge only when published in the written statement.

The public had thought that the Defence had reached its climax when the written statement was adduced and that probably the case would soon terminate as the Defence was supposed to have gone as far as individual human efforts could carry it, and no-body had ever expected further bombshells that were flung at the prosecution, from almost in-exhaustive store in possession of the Defence. After about 10 witnesses were examined when Mr. Nariman was questioned as to how many more were to come, he in his humorous style remarked, that he would continue to produce witnesses for Defence till the Court and the Prosecution are compelled to admit this point that the Department was corrupt and unless and until both of them were satisfied he would go on adducing more and more witnesses. Though this statement was taken at the time as one of the usual jokes of Mr. Nariman but in course of time it turned out to be literally true and after about 22 or 23 witnesses had been examined, the prosecution Counsel practically gave up the show by refusing to cross examine the witnesses any more and the Court actually declared that it did not want to hear further proof of corruption on the part of 'Higher Staff and Officers' of the Department and some witnesses summoned by Mr. Nariman were not examined by the Court as their evidence was considered superfluous. This performance of the Defence was most marvellous and will ever be remembered as one of the greatest achievements of an individual, attained in course of a protracted trial in a Criminal Court; not only was there no assistance or aid of any kind from Government or C. I. D. in collecting these large materials affecting each and every branch of this gigantic Department and covering a large period of 4 to five years extending to dealings of crores of Rs. but what appeared as

most wonderful to the public was the fact that the Defence had been able to achieve all that, in spite of grave obstructions and serious oppositions from the Government, as well as officers and private individuals such as Contractors, Traders concerned.

Before, evidence for Defence commenced, Mr. Nariman applied for indemnity and exemption to his witnesses from subsequent prosecution or harassment in case they made any statement of bribery incriminating themselves. As stated above where Government launches prosecution against their Officers such an indemnity and guarantee from Prosecution is always given to witnesses and it is on that assurance alone that witnesses come forward to make incriminating statements. In spite of that in this particular case Government under one pretext or another refused to grant the usual indemnity and as will be seen from the correspondence on this subject hereunder reproduced, made a ridiculous suggestion whereby Mr. Nariman was asked to disclose all his evidence before Government, and be it said to the credit of Mr. Nariman, that he once again showed shrewdness and foresight by refusing to be ensnared, because it is not difficult to imagine as to what might have happened had Mr. Nariman disclosed his Defence beforehand to the Government. Another serious difficulty that considerably handicapped the Defence in collecting and adducing evidence was inordinately long delay. The allegations were first made in 1924/25 whereas Mr. Nariman was called upon to prove these in the year 1927/28, when one would naturally expect all parties concerned, whether Officials or non-officials, would take all possible precautions and safeguards so as to prevent production of any such materials before any Public Inquiry.

The first resolution for such an Inquiry was passed in the Council in October 1924, at the instance of Mr. Nariman; that resolution was very widely published as part of proceedings of the Council and the public had naturally expected that in course of time, pursuant to that resolution the Government would start an Inquiry though ultimately the Government did not give effect to that resolution.

The result was that frantic efforts were made by parties concerned to balk the anticipated Inquiry and as far as possible to destroy all materials and records throwing any light on the subject. Mr. Nariman had repeatedly warned the Government both in the Council debates as well as in the correspondence, that in order that his investigation may be effective, it must be started immediately after the allegations are made and that delays would be prejudicial and detrimental to such investigation, as was amply proved in the course of these proceedings, these apprehensions of Mr. Nariman were fully justified.

One characteristic feature of the case was that day after day as Defence proceeded, it was suddenly discovered that most of the material records both Official and private that would have thrown a good deal of light on the subject had mysteriously disappeared for some inexplicable reason or another. In case of official records sometimes most astounding admissions were made about the missing Documents and it revealed a state of affairs in the Department, which cost great reflection on its management and internal affairs. Sometimes even such important records as Stock Books or Registers or Measurement Books or Bill Books were admitted to be missing and curiously enough sometimes the whole file of a particular subject was missing and sometimes particular documents from their file had disappeared, and curiously enough all these documents were alleged to be missing when required for the Defence, whereas Documents and Vouchers required by the Prosecution were forth-coming without the slightest difficulty. Similarly private records when called for were not produced under some flimsy pretext or another such as in one case particular books of accounts were stolen just after the resolution for enquiry was passed. In another case even important records of 3 or 4 years such as books of accounts were alleged to be destroyed. Even Counter foils of Checkbooks had disappeared, although all other counter foils of the same period could be produced and cheques of very large amounts were withdrawn from the Banks and destroyed, but the culminating point to the mystery reached when an Important Bank Clerk, being summoned to produce the Bank account of a particular Merchant, who had large dealings, came in and made most astounding statement in the Court that a particular ledger containing accounts of that gentleman of 3—4 years old was missing from Bank and the explanation given was that by some error of the Clerk this New Ledger was given away along with other 'Old Waste Papers' to The Salvation Army. This will give an idea to the Reader of the difficulties and obstruction beset on all sides with which the Defence had to struggle and in view of all that, it was naturally apprehended that it would be almost superhuman to adduce direct evidence of corruption under such despondent circumstances; and any man with lesser calibre, perseverance or tenacity would have given up the task as almost impossible. But Mr. Nariman contrary to the public expectations, rose to the occasion and showed himself quite equal to the occasion and the task.

It must be stated that in such difficult and impossible task, what must be conceded as Providential help, though all interested parties had conspired to foist the Defence and wealthy merchants and contractors had made common cause with Government Officials concerned and spared no efforts to shut out materials and impor-

tant evidence, still, by the grace of God as his cause was just, most lucky accidents and coincidences happened enabling Mr. Nariman to collect necessary materials and thus foisting the combined efforts of his opponents.

Now coming to the defence witnesses, we will divide them into separate groups according to the nature of the evidence deposed by them.

(1) The group of Citizens were representing various commercial and professional interests and deposed from their personal experience as being closely connected with the Commercial circles in the City. As for the general reputation of the development Department and the prevalent ugly rumours in the City as alleged by Mr. Nariman in the Council as well as before the Committee. The effect of that piece of evidence was that in all the Commercial Circles including the Trades Associations as well as the different Bazars the impression in the minds of the Traders as well as the Merchants was that it was not possible to have any honest or straight dealings with the Development Department and no Trader or a Merchant had a chance of securing any orders or making any supplies unless he was prepared to accept the Terms laid down by the Departmental Officers. Some of the Traders openly complained in the Court that they were not even allowed to enter the Development Department premises and business could be secured only through some individual who acted as go between the Traders and the Department.

Another complaint of the Merchants was that although all other Government Department as well as the Public bodies always invited public tenders even for small supplies and although the Public Works Department required that orders and contracts should be placed by Public Tenders only, still, so far as the Development Department is concerned this rule was never observed and the orders for various articles to the extent of lakhs of rupees were placed with the few selected firms at rates much higher than those prevailed in the Market and at times with firms or shops that were not regular dealers in the particular Articles and commodities. Whenever a large supply was needed the most common thing would be to inquire about that particular article in the special Bazars or "Jathas" for these articles and to obtain at competitive rates, but the Development Department never made an effort to deal directly with large Traders. One or two special and glaring instances showing how and with whom these orders were placed came to light in the course of these proceedings which being interesting and exemplifying may be reproduced here.

There was a Company called "The Bombay Petrol and General Stores Supplying Company" having a small place of business at Lamington Road having a limited business in Petrol and Motor accessories and supply only received orders from the Development Department to the extent of Lakhs of Rupees for about 3 or 4 years for all sorts of articles or materials required for building purposes and also large contracts and special contracts for constructional works. They practically monopolised all supplies in the Housing Scheme and from the Bill-Books examined, it transpired that at times orders to them from only one branch of the Department went to the extent of 60000/- to 70000/- Rupees and in the course of 2 or 3 months they have received payments from the Department of nearly two lakhs. The extent of the Supplies could be imagined from the fact that this Petrol Company received orders, without public Tenders, for supply of such material as mild steel bars, coal, nuts and bolts, timber, piles, screws, Kerosine Oil, Bricks and every other conceivable articles or materials as well as the contracts for various items of construction in Chawl building, such as the supply of labour for building purposes, the supply of transport, that is Motor Lorries Etc., although the Department itself owns a number of costly lorries.

Further examination of other books revealed extraordinary state of affairs as it is disclosed that simultaneously with the regular accounts of the Department for the Supplies made, there were private accounts in the names of the Officers placing these orders and a number of other veiled accounts, mysteriously numbered, which also ultimately turned out to be private accounts of the Development Department Officers. These accounts showed that the said Petrol Company most lavishly and generously supplied and provided all the requirements of the officers of the Development Department including household and domestic articles, motor accessories and petrol, presentation articles etc., and a detailed closer examination, revealed not only successfully, the state of affairs but the state of affairs that caused also a good deal of excitement and interest in the public. Some of the amounts were sent by money orders to the relations and friends of some officers in upcountry and in two or three instances even Motor Cars were bought by the said Petrol Company and presented to the said officers. All the repairs for the Cars of several officers were done at the expense of this Petrol Company and a Repairer was actually produced in the Court with several such bills for the repairs of the Cars of the various officers paid for by the Company. Even uniforms including pairs of Boots and shoes were supplied to them by the Company at its own expense perhaps for the officers' servants.

In short the officers were practically maintained by the Company in addition to receiving large presents in sums of moneys and

valuable articles including Champaign, fruits, wines and liquors and other Christmas presents. These books were produced after a great deal of difficulty, trouble and expense because on account of certain disputes between partners of this Company the books were lodged with a firm of Solicitors with an undertaking given to the Court not to part with the same. Mr. Nariman having been able to secure this information served a process on the Solicitors to produce these books in the Court and inspite of strenuous efforts by the Petrol Company and having instructed expensive Counsels to prevent their production, Mr. Nariman ultimately succeeded in securing them, revealing the state of affairs as briefly stated above. Mr. Nariman rightly contended that this was only a typical instance showing the nature of the dealings of the department and if the Books of all the other Traders that had dealt with the Company were made available exactly similar state of affairs would be found shown in them. also, though this unimpeachable documentary evidence consisting of book-entries regularly made in the course of business some time ago were sufficient evidence to show the nature of the transactions and to prove the corruption in the Department; still Mr. Nariman did not stop at that alone but went further and even adduced oral evidence in corroboration of the documentary evidence already produced. It was really surprising as to how in a matter of such description when it is a common experience that it is extremely difficult to get evidence of that nature, Mr. Nariman succeeded in calling a number of witnesses who testified directly from their personal experience that payments and bribery were made to the various officers. So far as this Petrol Company was concerned one Mr. Jal J. Chichgar who was for some time a manager in the Company and later on acted as its agent, who had principally to deal with the Development Department officers on behalf of the Petrol Company, was produced in the Court as one of the most useful defence witnesses and as his evidence was considered to be very important and material, supplying the direct proof of corruption, the prosecution Council devoted a considerable time and labour in attempting to smash his evidence, but without success. He was cross examined for nearly three days continuously but he adhered firmly to the statements made by him and moreover he was further strengthened in his position because his oral testimony received the support and corroboration from the entries in the books of accounts of the Petrol Coy. According to him orders were invariably placed for all sorts of materials and works, with the Petrol Company at very high rates and the Petrol Company placed these orders with the regular dealers in these materials in the Market, at much lower rates and the margin in the rates between the market prices and the rates given by the Development Department were to be divided between the officers and the Company. He

also deposed that very often bills were made in duplicate or triplicate for one supply, so that payments were made twice or three times over, for the same order. Sometimes the supply was 50 per cent. less than the orders, although the payment was of the full indent and the Bill books seized from the Company, also supported such various statements as in several cases the same bills were found to be repaid twice or three times for which there was no explanation forthcoming.

He further deposed that he himself personally accompanied by one or two partners of the firm had paid various amounts to various officers and he caused some amusement in the Court by showing the measure of devices and the safeguards adopted by these Traders whilst making these payments. He said that at the time when the amounts were paid he usually carried in his pocket blank promissory notes for the amounts that were paid. The object being that in case of detection, explanation would be that the amount given was a loan to the officers and the blank promissory notes would be shown as support to that explanation. The signature on these promissory notes were never taken and they were intended to be merely as a precaution for the possible contingencies in case of detection. These witnesses also deposed of having given Christmas presents and other supplies including Cars and household requisites as were disclosed from their books of accounts.

Another evidence of a similar character proving direct payment of bribery by Contractors to the Officers and showing that a systematic corruption prevailed in most of the branches of the Development Department was furnished by the testimony of a Merchant named Mr. Jusab Hasham Japanwalla. He was the brother and partner of one Valli Mahomed Hasan who had contracts for some Chawls at Naigaum. That Contractor was dead, but several books of accounts seized under a search warrant from the custody of his brother were produced in the Court revealing almost similar state of affairs as the Books of accounts of the Petroleum Company, except that in the case of Petroleum Company's books of accounts several entries showing payments in cash and presentations appeared in the name of some officers themselves as well as in veiled accounts, whereas in these books the accounts were kept in the name of "Engineer" without any names. Mr. Jusab Hasam however gave evidence from his personal knowledge about these entries and accounts showing that the Officer in Charge of that particular district namely one Captain Carmaichal was practically maintained by the Contractor and all his requirements were supplied to him as well as several amounts were paid in cash. So in other books this account also showed the supply of household requisites such as Tins of Ghee, Kerosine Oil, silverware, furniture, pictures, etc., but

more scandalous than these regular accounts were instances in connection with Bills in respect of supply of certain articles. This Mr. Jusab Hasam stated that the usual practice was that 10 per cent out of the amounts of the bills paid, were to be given to the officers concerned and the accounts disclosed by him showed the payments made to that account of 10 per cent in excess of materials supplied by their firm. Very often, Captain Carmaichal, who was the Executive Engineer in charge, altered the amounts in the bills submitted by the firm, by enhancing it by large amounts on the understanding that the extra amounts paid on these bills should be divided between the officer and the Contractors. To illustrate this alterations in the Bills he actually produced a counterfoil from his original bill book showing that the original amount mentioned in the bill by the firm was about four or five thousand Rupees in that bill but at the instance of the officer the amount was enhanced by a thousand Rupees and he showed the other bills showing the enhanced amounts and also proved from the entries that the bills so enhanced were paid and the amounts were divided between them. His evidence further disclosed the heartless manner in which some of officers of the department were fleecing the Contractors as a result of which, instead of showing any profits the contractors always remained under a financial strain. He produced small diaries in which entries were made in the handwriting of his deceased brother, who had died some years ago showing the payments made to the officers concerned at the rate of 10 per cent on the bills. He further stated that after making such payments for about a year and half his brother and himself found that, in view of such large payments it was not possible to make any profits and on the contrary the business would result in loss, hence at the latter stage they pleaded with the officers and requested them to discontinue this precedent and promising to pay a lump sum at the close of the contract before the final bill was paid, but the Officers would not agree to any change in the original arrangement and insisted upon their receiving their pound of flesh so much so that on some occasions even when his brother was lying seriously ill the officers demanded the dues from him and the witness was so much disgusted, at last, by such heartless conduct that he, in consultation with his brother, decided to discontinue further payments. Upon this, the officers concerned, began to harass his brother in various ways, refusing to pass his work and delayed payments and cut down the bills, thus causing loss in various ways. They made complaint to the higher authorities but to no purpose. Ultimately the officers gave an ultimatum that unless the payments were recontinued his Contracts would be

stopped and in course of time actually carried out their threat, so that in the midst of the work when the Chawls were in the course of construction, the contracts were stopped at the instance of the Executive Engineer and the Superintending Engineer for various reasons, thus placing them in a very difficult position. Even after the stopping of the contract the final bill was not paid inspite of repeated demands and ultimately his brother had to file a suit in the High Court and was so much worried and broken down in health that he died during the pendency of the suit. Such was the tragic tale narrated by this witness showing the systematic fraud existing in the Department as well as the heartless manner in which some of the officers treated the Contractors.

Another important witness, who similarly testified the direct payment of bribery to the various officers of the Department, was Mr. Manekshaw Elavia. He was also a Merchant and some years ago, during the construction of the Chawl contracts, was connected with the firm of Messrs. A. A. Gaya & Co., building Contractors who had a contract for 21 chawls at Worli. It will be remembered from what has been stated above that according to the defence, this was a firm in which Mr. D. R. Vaidya the exofficer of the department was connected as a partner, though in partnership deed, nominally, the name of his minor son was entered. Luckily for the defence the books of accounts of this firm also accidentally happened to be produced in the Court for reasons similar to the case of the Contractor mentioned above. In spite of receiving such apparently lucrative contracts still, one of its partners had to seek the protection of the Insolvency Court and the large final bill was held up and they had to file a suit. On account of this circumstance some of the books of accounts of the firm were in the possession of the Official Assignee whereas the others were in the custody of a firm of Solicitors with an undertaking to the Court. Mr. Nariman having come to know of this, got a process of the Court served both on the Official Assignee and the firm of Solicitors and had their books produced. Mr. Maneksha Elavia, who came as a witness in the Court, was the constituted Attorney of the firm, and was managing the financial affairs on behalf of a partner Mr. Shambhu Bhaguji Hamman who had principally financed the firm. This witness stated that the firm was started because of the assurances of Mr. Vaidya, who was supposed to be influential because of his association with the department that the largest contracts of the 80 chawls of Worli would be given to them. It was on that assurance and relying upon Mr. Vaidya that his principal agreed to finance to the extent of a lakh and half Rupees, but contrary to their expectation that large contract for the 80 chawls, went to another friend of the Superin-

tending Engineer Major Parcelle who had started a similar firm namely "The Bombay Concrete Construction Company" and therefore the tenders of Messrs. Gaya & Co. although lower were rejected. Further more Mr. Vaidya exerted his influence and as compensation some special Contracts were created for the firm and some Chawls at Worli, which were originally intended to be constructed departmentally, were decided to be given on Contracts. These contracts for about 21 chawls, were specially created, were given to Messrs. Gaya & Co. This decision was taken on the recommendation of Superintending Engineer Mr. Harvey. According to Mr. Elavia's evidence the Contracts were given to their firm on the distinct understanding that 50 per cent of the profits should go to the Officers concerned and 50 per cent alone to be distributed amongst the partners and according to that arrangement payments were regularly made to the officers as soon as the firm received bills from the Department, and to corroborate this testimony, numerous entries from the books of accounts of Messrs. Gaya & Co. kept in the regular course of business were produced and put in evidence, which revealed interesting and curious state of affairs. Almost every month or at times twice or three times a month an entry appeared on the credit side showing a large amount received from the Department on account of their running monthly bills; almost on the same day or at times a day or two later an amount appeared on the debit side showing the sums paid out mentioned as to "Miscellaneous expenses" corresponding to the first credit entry showing an amount received from the Department on account of the bill, there appeared a debit entry on the same date, as follows:— "To Miscellaneous Expenses Account" at the rate of 12½ per cent" and these amounts on the debit side worked out exactly at the rate of 12½ per cent to the total amount of the bill received from the Department credited on the other side. Similarly on making calculations all the debit entries of the large amounts debited as "Miscellaneous Expenses Account" worked out exactly at 12½ per cent on the total amount of the bill received and credited and Mr. Manakshaw' Elavia explained this by stating that these debit entries of 12½ per cent of miscellaneous account represented the payments made to the Officers on the Bills received according to the arrangements mentioned above, because it was calculated that the profit of 25 per cent would be made and half of it was to go to the Officers. Several such entries both credit and debit were taken as illustrations and on calculation they tallied exactly at the rate of 12½ per cent thus directly corroborating the oral testimony of this witness. The witness further stated that after thus paying regularly for about a year and half the Company discovered that payments at that rate would not result in any profit to the firm and the firm would on the contrary suffer loss and hence an inter-

view was arranged between the Executive Engineer in Charge and the partners and the Officer was requested to reduce the percentage and towards the close of the Contract percentage was accordingly reduced to 7 or 8 per cent but some difficulty arose for the final bill which came to about two and a half or three lakhs of rupees. The usual system was that as soon as the Department paid the Bills, the accounts were made up and payments made according to 12½ per cent to the officers, and unless such payments were received the second monthly bill would not be passed for payment. Thus the officer had control so far as the running monthly bills were concerned but when it came to the payment of the final bill, as the Officer would have no more control upon the Contractors as there would be no further payments to be made, the arrangement was that the amount calculated was to be paid in advance to the officers and on such payment alone the final bills were passed and paid. However as Messrs. Gaya & Co. were in monetary difficulties and could not make the payment in Cash so 'the final bills' payment was withheld for some time. Ultimately through the intervention of a middle man an arrangement was arrived at whereby it was arranged that Messrs. Gaya & Co. should pass a bogus assignment for Rupees twenty five thousand rupees to the middle man so that on the payment of the final bill the sum of Rs. 25000/- would go to that middle man on behalf of the officers. However after the assignment was prepared there was some hitch and the arrangement did not mature and as in the meantime the Superintending Engineer went away on leave to England the final bill remained unpaid and Messrs. Gaya & Co. had to file a suit for the recovery which is still pending. Not only the entries, made above, in the books of accounts but the bogus assignment and the other documents connected with and showing these payments were produced and proved in Court and this witness Mr. Manakshaw Elavia's evidence created a great impression and though vigorously attacked by the prosecuting Counsel, was not shattered as luckily for the defence the oral testimony was completely corroborated by the regularly kept books of accounts and curious entries as stated above.

The defence in order to show that the corruption and fraud was practically universal in the whole department and was not common to any one branch of the Department also adduced evidence to show similar mal-practices prevailing on equally large scale in the Reclamation branch.

One witness Mr. Eruch Kapadia formerly a Coal Merchant was an important witness for the defence showing the universal nature of corruption in the regular systematic methods and fraud in the various Departments. This witness stated that shortly after the commencement of the Department as he had considerable

experience in Coal Business, being connected with Collieries in Bengal he started a firm in Bombay called "The Pioneer Coal Trading Company" in partnership with some well known Merchant. After starting the said business he approached the Secretary of the Development Department with a view to secure orders for the department but according to him, the then Secretary Mr. Moni stated that the Department would not have to purchase any Coal locally as it had entered into an arrangement with the Mining Engineer of the Government of India for the supply of all the Coal required by the Department. It appears that it was the function of this Official to arrange for the supply of good quality of coal at reasonable rates to all Departments of the Government including Railway by entering into direct arrangements with the different Coal Collieries. However as Mr. Kapadia came to know that inspite of that arrangement by the Department, preparations were being made for local supply also he again approached the Executive Engineer of the Material District with a view to secure some orders locally. That officer informed Mr. Kapadia that although an arrangement, as stated by the Secretary, did exist still, the Officers in charge of the various works insisted upon local supplies and very often rejected good quality of coal supplied through the Mining Engineer; as such direct arrangement would not afford the officers here any facility or opportunity for a private and individual profiteering as the local supplies would. Hence he was forced to place some such orders locally. Shortly after Mr. Kapadia began to receive orders for the supplies of Coal. He narrated his experience in dealing with the Department and stated that very shortly after the commencement of the business he was convinced that it was not possible to continue the dealings with the Department unless the dealers were prepared to carry out the terms dictated to by the officers. According to him, he first got orders for the supply in the Housing District and the arrangement dictated to by the Officers concerned was that 10 or 15 percent of the profits was to go to them and further they would arrange to give higher rates and also to receive 50 per cent of the supplies lesser than the orders and further they would also arrange to receive cheaper quality of coal and make the bills for the dearer and the better qualities, provided that illegal profits arising therefrom should be divided between the dealers and the officers. He gave several instances of such dealings and further stated that in case the dealers refused to abide by those terms, difficulties were placed in their way and practically business was not made possible so they had to submit to those terms. He also narrated that he similarly approached the Executive Engineer Mechanical District Mr. Caldwell and offered to

supply a large quality of Coke and he would agree to buy on similar understanding. Mr. Kapadia stated that he dealt in the Housing District for some time and on one occasion when he was harassed by the Assistant Engineer because he was not able to satisfy him completely, he complained to the Superintending Engineer but he took no notice of his complaint and remarked that Mr. Kapadia being a business man ought to know how to deal with them.

After some time Mr. Kapadia stated that he became nervous and apprehensive that such systematic methods of fraud so openly practised were liable to detection, and may launch him into difficulty ; so he discontinued the supply in the Housing District and requested the Executive Engineer in charge of the Material District to help him to secure some orders for the Reclamation branch, but found that the position there was equally bad and even worse than the Housing District. Narrating his experiences there, he said that he once offered to supply a quantity of good quality coal at reasonable rates but his supply was rejected by European High Officers in Charge, on the ground that it did not come up to the required standard, but at the same time he came across one other Contractor and Supplier named Mr. Balkisondas Seth who was considered to be favourite with the Officials and the said Balkisondas Seth took over the said quantity of coal from him at reduced rates and supplied the same in the same lorries to the same Officers at much higher rates than he had offered and were accepted by the same Officers though the rates were higher. In short his experience was that if he desired to deal with that branch of the Department, namely, Reclamation branch, it was not possible to secure any orders direct except through that favourite Contractor and Supplier namely Balkisondas Seth. He accordingly approached that gentleman and made a proposal and both himself and his other partners in Pioneer Company agreeing to take up Mr. Balkisondas Seth as their working partner, started a New firm namely B. Balfour and Company, where he and his other partners were to finance and Balkisondas Seth was to secure orders from Reclamation Branch. This Company with Mr. Kapadia and Balkisondas Seth working as Managing partners continued for some time and the witness narrated his experience of the dealings of this firm and he stated that Balkisondas Seth monopolised all the supplies as well as large contracts both for filling in and other works at the Reclamation branch without any tenders at exorbitant rates; very often he got blank order forms signed by the officers and he himself filled in the rates and the amounts, some times supplying half the quantity and receiving full payment, sometimes receiving payments on merely bogus bills and thus systematic fraud and corruption was going on in that branch. In return for these favours Balkis-

sondas Seth was very lavish in payments as well as making presents to several high European officers of that branch and he not only made large payments to them, but also gave presentations to the wives and daughters of the officers such as jewellery, rich Carpets & pieces of furniture. Even two or three Motor Cars were kept free for the use of these officers and daily Bazar articles were regularly supplied to them.

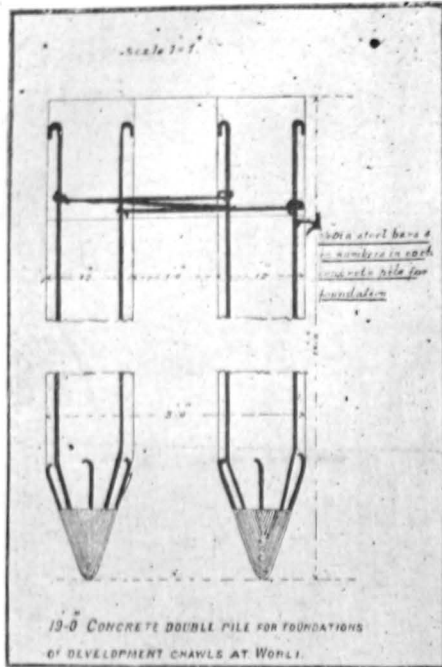
Coupled with this evidence of Mr. Kapadia on the same subject, may be considered the evidence of another witness Mr. J. Brooks, the only European Witness for the defence, who was formerly a supervisor in the Reclamation Branch of the Development Department, who had to leave the service on account of certain disagreements. He also corroborated the testimony of Mr. Kapadia with regard to the dealings of the Development Department, and particularly of Balkisondas Seth. As an instance of the enormous profits herein allowed to this favourite contractor it was stated that Balkisondas Seth traded in two different names, in the name of B. K. Seth as the Contractor and in the name of B. Balfour and Company as the Suppliers. This gentleman Balkisondas Seth had first got the contract for filling in the Reclamation branch without any Tenders at the rate of Rs. 10-8 per Truck. It was subsequently reduced to Rs. 6-8 and on account of the agitation raised by Mr. Nariman it was decided to invite Public Tenders, and the same work was taken up by the same Contractor on account of the competitive rates at Rs. 2-8 per Truck. This will give an idea of the extent of profit allowed to this favourite contractor. Besides he also got contract for painting Pontoon Bridges and he did the work for over one lakh of Rupees when the same work and better than the work done by the said Balkisondas Seth, was subsequently done by another firm of Messrs. William Jacks as a result of Public Tender, costing only about Rs. 20000 to Rs. 30000. These are only a few typical instances showing wastage of Public funds and the profiteering to the private individuals. This Witness Mr. Brooks also corroborated about the payments of the amounts by Balkisondas Seth to the various officers and he himself also admitted as a supervisor having received some amounts from him ; he also corroborated about the Bazar Supplies Etc. and other presents to Officers. Mr. Brooks further gave more interesting facts about the practice prevailing amongst the High European Officials of having their private supplies for domestic purposes, such as Coal, Kerosine Oil Etc., made from the Depot of the Department. He stated that the officers used to send chits to him when he was in charge of the Depot asking him to supply coal, Kerosine Oil Etc. from the Depot and he made such supplies for nearly two years to some of the officers. He produced some of the Chits in the handwriting of the officers

which he had preserved to explain that whenever supplies were made from the Depot for the Departmental purposes they were always issued on printed Slip Forms and only private supplies for domestic purposes for the officers were made on such handwritten slips. He further gave an illustration of the mentality of some of the High officers, who according to him punished poor coolies by inflicting fines on them for taking away a small piece of coal from the Depot, whereas they themselves got the free supplies of several tons for years together. Besides according to Mr. Brook's evidence the officers also employed the departmental labour for their private domestic purposes and some such services for their homes was maintained on Department's Muster Rolls. He stated that on one occasion, this fraud of a high officer was detected and with a view to prevent detection, that High European Officer directed him to destroy a particular department's Muster-sheets wherein private services were maintained on that Muster-Roll. He however did not destroy the said Muster Roll Sheets and, curious enough though the said documents were not allowed to be produced in the court and put in, at the time of the examination-in-chief of the said witness, they were however produced in the course of the cross examination of the prosecuting counsel. The evidence of this witness was most interesting and created a good deal of sensation and amusement in the court. He gave very clever retorts to the prosecuting counsel in the cross examination when being questioned about his public morals, as a public servant when he admitted having received bribes from Balkissondas Seth he retorted by saying that his morals were high before he joined the Department and they became debased and low after he joined the Development Department. That he had no compunctions in receiving the bribes because he saw every one else around him including the Barra Sabs were having it, so he thought it was a regular business and there was no objection in this Department. Further being questioned by the prosecuting counsel whether on account of certain misdeeds he was not afraid of being prosecuted and sent to jail he coolly retorted by saying that he was not apprehensive at all because he knew that if he were sent to Jail he would find his Barra Sabs and the superior officers in the very next cells. Though this witness was severely cross examined with regard to his character and it was adduced in cross examination that since the termination of his services, he was attempting to extort monies and very often succeeded in getting certain amounts from his Officers, and he described these as hush moneys paid to him because he knew of this secret fraudulent transaction. He admitted that on one occasion a high officer whose chits were in his possession had paid him Rs. 100 on his promising to destroy the chits but nevertheless he did not destroy them

because as he had admitted he thought that they would be of some use to him some day. Such was the testimony of this only European witness for the defence, who furnished a typical illustration of the nature of the transactions and some idea of the inner working of this Department. He also stated that when he was in charge of the Depot there was no account kept about the stock etc. In connection with the above testimony showing the dealings of Balkissondas Seth it may be stated that Balkissondas Seth was summoned to produce his books of accounts and also the counter foils of his cheque Books and other vouchers and record showing his dealings with the Department, and two or three banks were also summoned to produce the certified copies of his Bank accounts. However, Balkissondas Seth appeared with his counsel and filed an affidavit in the court to the effect that his books of accounts had mysteriously disappeared; according to him they were stolen from his office or home by some unknown persons and when being questioned by the court, he admitted having made no complaint of this theft to any body. When questioned about the counter foils of his cheque books he refused to produce them under a similar pretext. The Bank being summoned to produce the cheques drawn by him which were already cashed declared its inability to do so on the ground that the drawer had already withdrawn from the Banks, all the cheques which were cashed. His bank account showed large payments such as Rs. 10,000 Rs. 20,000, or Rs. 30,000 at one time but unfortunately there were no details about these cheques and in the absence of the counter foils as well as the original cheques and the books of accounts and the other records these payments could not be traced to particular individuals. However the defence went further and Mr. Nariman was able to trace and find out his clerk, named one Shankarrao Mukund who was acting as his correspondence and general clerk. He being summoned and questioned about the books of accounts admitted that his master Balkissondas Seth, shortly after the Resolution in the council, demanding enquiry, had taken away all the books of accounts vouchers documents and files at his place at Khar and soaked them in Kerosine Oil and had burnt them. He stated that he himself assisted his master in burning and destroying these books and documents. Thus although he was able to destroy the records still the defence managed by direct oral testimony to adduce sufficient evidence to throw light both as to the extent and the nature of his dealings with the officers of the Development Department.

There were other witnesses available such as furniture merchants who had supplied valuable pieces of furniture to the various high

Pile-plan & Pile bars.

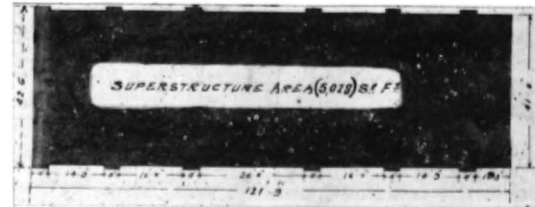


Pile - plan.

Difference in Chawl area.



Plan of Worli Chawl
Departmental Design.



Plan of Worli Chawl.
(B. C. C.) Contractor's Design.

B. C. C. Design 319 sq. ft. less in area than departmental. see pages 115-116 Part II.



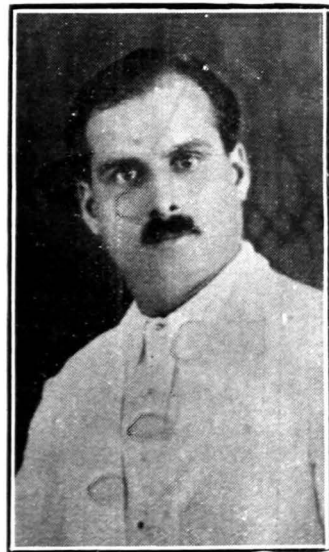
Mr. Burjor P. Sethna, Deputy
General Manager, Tata Hydro
Electric Company



Mr. G. B. Trivedi, ex-M. L. C., and
well-known Merchant.



Mr. Narayan Pai, one of the
important witnesses.



Mr. A. H. Kulkarni, one of the most
valuable co-workers of Nariman.

officers, for which the orders were placed and the bills paid by Balkisondas Seth but the court did not want any further evidence on that point. The defence also tendered evidence of a similar corruption and the systematic fraud with regard to the third important branch of this Development Department namely Kandivli Quarries because so far evidence was led about Housing District and Reclamation Branch. One Mr. Mahomed Umar a graduate of an English University had tendered to prove similar secret arrangements existing between the officers of that Branch and some contractors, particularly one Mr. Drake who was formerly a Foreman in the service of the Department, had resigned and became contractor for preparing cement blocks and he got orders for cement blocks for the department at very high rates on the understanding and arrangement similar to that mentioned with regard to other branches of the department but though this witness was tendered in the witness box and Mr. Nariman was prepared to take his evidence, the court did not want to hear further evidence on corruption in general in the Department. The other witnesses on the same point namely proving directly corrupt practices in the Department were Mr. Ardeshir Darnwalla, Mr. Narayan Rao Pai and Mr. M. A. Dhulla.

The first witness kept a shop for foreign Wines and spirits and deposed that at the instance of Contractors like the Bombay Petrol Company he supplied foreign wines and liquors including champagnes to the officers of the department particularly during the Christmas, the bills for which were paid by the Contractors.

Mr. Narayanrao Pai was a dealer and repairer in Motors and gave similar evidence of having repaired the cars, overhauled and painted cars of the various officers of the Development Department, the bills for which were paid by certain contractors and suppliers. He further deposed to the fact of having selected and purchased two cars at the instance of the Bombay Petrol Company to be presented by the said company to certain officers of the Department and the bills for which were paid by the said Petroleum Company; to corroborate the testimony of Mr. Narayanrao Pai, the defence had also summoned the Registers of Motor Cars kept by the Motor Vehicles Department of the Bombay Police showing the transfer of certain Motor Cars, the numbers of which were mentioned by Mr. Narayanrao Pai, from the names of the Contractors to the officers. Mr. Balkisondas Seth had also made a similar present of cars to certain officers.

Witness Mr. M. A. Dulla, who was also a supplier, deposed to the general practice prevailing of making payments of 5, 10, and 15 per cent to the officers on the bills paid by the department and stated having himself made such payments.

The only hostile witness for the defence was one Mr. Manekchand Jivraj, who was a dealer in old Iron and Steel and was known to be a receiver of Surplus Stores from the Development Department. The defence alleged that the department deliberately ordered out certain stores with the double objects, namely to earn the secret commission from the original sellers and they also made secret profits by disposing them off very cheap to the dealers as surplus to the local dealers. The defence alleged that a large stock of surplus mild steel bars due to the superfluous orders forming the subject matter of charge were sold at a very cheap rate to Manakchand Jivraj and the said firm of Manekchand Jivraj had paid consideration of a large sum of Rs. 5,000 for putting through this transaction. It transpired that though the mild steel bars were purchased only two or three years ago at the rate from Rs. 200 to Rs. 220 per ton still they were sold to this witness as surplus at a very low rate, namely Rs. 102/8 per ton; although the Department had fixed minimum rates at which the sale should be effected at about Rs. 130 to Rs. 140 per Ton. Several offers from the various dealers for the purchase of the said mild steel bars at the rates fixed by the department were rejected, whereas the offer of this witness though much lower was accepted. As a consequence of certain information received, Mr. Nariman accompanied by another lawyer and a Lawyer's clerk suddenly went to the shop of the said Manakchand Jivraj with a search warrant and after a great difficulty seized his books. On going through the said books of accounts he traced an entry of Rs. 5,000 debited to the account of the Development Department on account of Mild Steel Bars again to "Miscellaneous expenses" and the closer scrutiny showed that this entry turned out to be an entry of the payment of Rs. 5,000 as a secret commission for putting through this transaction.

From further enquiry it also appeared that, whereas for all the other payments to the Development Department, he produced official receipts, there was no receipt for this payment of Rs. 5,000/- nor was there a corresponding entry of the receipt even in the account book of the Department. Immediately after the books were seized Manakchand Jivraj confessed having made this payment to certain high officer in the Department and also agreed to come and testify to this effect in the Court provided protection was given to him, and he was assured that he himself would not come into trouble. Mr. Nariman accordingly had written to the Government asking for protection to the Witness. The same witness Manakchand Jivraj had also, whilst disposing off the surplus Bars which he had purchased and whilst fixing the rates of resale with the dealers, had taken into account certain percentage paid as commission, and some respectable dealers had come forward and stated to that effect, besides he had also confessed before the other merch-

ants about the said payment, still when he was put in the Witness box he hesitated and made various conflicting statements about this entry of Rs. 5,000/- changing his story for about five times, but ultimately he was so cornered that the said entry could not be explained on any other grounds except as stated above. It appeared from the examination of his Bank account, that shortly after his offer was accepted, he withdrew a sum of Rs. 5,000/- from the Bank, from his account and brought cash to his Pedhi. After that withdrawal from the Bank this payment of Rs. 5,000/- was made and when he was able to produce the counter foil of the other cheque books he had deliberately withheld the one counter foil in respect of this cheque of Rs. 5,000 alleging that one Counter foil was misplaced or missing. Coupled with these various other circumstances and his own admissions made to the various other respectable Merchants, the Court was unable to accept his explanation about this payment of Rs. 5,000 and upheld the contention of the defence that, that entry of Rs. 5,000 represented payment of the secret commission to the officers of Development Department for putting through this transaction of sale of surplus bars.

With regard to this witness, Mr. Manakchand Jivraj, the defence further contended that the circumstances were extremely suspicious with regard to the complainant himself because the Transaction of sale of surplus Bars was put through by him as the Superintending Engineer, and the offer of Manakchand Jivraj was accepted on the very day on which he returned from England, and the transaction that was pending for several months was completed within a few hours after his arrival. Further the offer of Mr. Manakchand Jivraj, for the same amount, was made some time previous, but the transaction was kept over by the Executive Engineer till the Complainant returned; though the evidence showed that the amount of Rs. 5,000 was alleged to have been paid to Mr. Caldwell who was the immediate assistant to the complainant.

Another typical witness directly from Iron Jatha was one Mr. Vanmalidas Pandya, who had a Pedhi as well as "Jatha" in the Iron Market and traded for several years in the name of B. Motiram & Company. He re-echoed the sentiments and feelings of the Iron Merchants principally with regard to the purchase of Mild Steel Bars and declared that there was a general impression in the Iron Market Jatha that no transaction could be done with D. D. without paying Commission. He stated that he himself had purchased the same stock of M. S. Bars from Manakchand Jivraj at a much higher rate, and his own offer to the D. D. to purchase the stock at the rate much higher than Manakchand Jivraj's was rejected. He also stated that several merchants approached Mr. Nariman, not only of the Iron Market but various other Markets and appealed to him as their representative in the Council

to have their grievances redressed, and he caused some amusement in the Court by stating that when Mr. Nariman came for canvassing his votes for election he promised his help and support, and he actually worked for him and procured votes on the distinct understanding that he would take up this matter in the Council.

The other witness of some importance was Mr. G. B. Trivedi who was formerly a member of the Council and he narrated the commencement of the agitation against the Development Department started by a group of critics including the witness and Mr. Nariman, and further stated that even before Mr. Nariman joined the Council he used to take great deal of interest in the affairs of the Development Department and go through the literature of the Council supplied by him. As a merchant connected with Iron Trade, he further deposed to the complaints of the regular Merchants and the Iron mongers in the Iron Jatha of Bombay, whose grievance was that the Development Department did not deal directly with the regular dealers in Jatha, although they offered them at lower rates but preferred to deal with persons who were not regular Traders in this particular line and who did not belong to the Iron Jatha such as Messrs. George Service & Co. and Messrs. Salebhoj Tyebji. He further stated that there was a belief in the Iron Jatha as well as in all the other Trading Circles in Bombay that no transactions could be put through with the Department unless the dealers were prepared to grease the palms of the officers and he also corroborated about the admissions made by Manakchand Jivraj to him in the presence of Mr. Nariman about the payment of Rs. 5000/—to the Executive Engineer for putting through the transaction of surplus Bars.

Similarly one other Merchant named Mr. Chhotalal Mehta, a brick and Cement Merchant, gave his experience in that line and he also stated that Merchants could not deal with the Development Department's officers and they could not venture to enter its precincts except through the mediums of certain go betweens, and the orders were not placed directly with them, but in the names of those intermediaries, at the rates much higher than Market rates. These intermediaries bought stock from the Market from the regular dealers at much lower rates and the difference in the rates, that is, the lower Market rates and the higher rates given by the Department, was shared by the officers and the said intermediaries, thus showing the regular system prevailing with regard to this Development Department's dealings.

Thus ample evidence was adduced by the defence to prove corruption on the part of high officers so much so, that as stated.

above further evidence on this point was not allowed to be led, although Mr. Nariman had some other witnesses to prove the same, as on the evidence produced, particularly with the corroboration found from the Books of Accounts, the Court felt fully satisfied on that point and though the prosecuting Counsel at an early stage attempted to contest the position by severely cross examining the witnesses but at the latter stage, practically gave up that position and did not even seriously cross examine the defence witnesses on this point.

The other witnesses called by the defence were with regard to the general reputation of the Department, and the prevalence of the rumours amongst the merchants and others with regard to the corrupt practices prevailing in this Department. It must be remembered that Mr. Nariman had stated, both in the Council and before the Committee, of the prevalence of the rumours in the City and the whole of the Presidency, and the defence not only established the existence of such rumours alone, but by numerous evidence and respectable oral testimony also proved the truth of these rumours. The very first witness with regard to the prevalence of the rumours was one Mr. B. D. Sethna holding a very high position and a respectable citizen and a member of the well known firm in Bombay. He deposed to the effect that in the course of his business his firm desired to purchase mild steel Bars from the D. D. but were unable to do so direct and attempted to buy them from Mr. Manakchand Jivraj who had purchased the surplus stores from the Department and whilst settling the rates through a broker, Manakchand Jivraj calculated a large sum, besides the original costs paid, as having been spent by him for payment of commission.

Again speaking about the reputation of the Department, he also stated that in the Commercial and business circles the Development Department had very bad reputation, and he himself had also heard rumours about the corruption in the Department, but one important statement made by him which was elicited in the cross-examination of the prosecuting Counsel, was to the effect that on one occasion a very high Government Official, namely the Controller of the Government Stores, had also complained that he could not sell the Government Surplus Stores direct to the Development Department as the officers of the Department desired to deal with the local dealers for certain reasons.

The defence had tendered only three or four witnesses representing certain trade interests and were prepared to tender further evidence on the similar nature, showing that the system prevailed

universal, with regard to all the articles and requisites and in all the Branches of the Department, but was not permitted to lead further evidence on the subject.

One more evidence to be noted was that of Mr. K. A. Kulkarni, which threw a good deal of light on the manner and method adopted by Mr. Nariman with regard to his agitation with the Development Department. This Mr. Kulkarni deposed that he acted as a Captain of a small group of Voluntary workers who had offered their free services to Mr. Nariman with regard to his Public activity, particularly with regard to his activity in the Development Department. That since 1921-22 from nearly about 2 or 3 years after the inception of the Development Department Mr. Nariman had started this work with a group of Volunteers, and that he narrated the system observed by Mr. Nariman and his workers with regard to his work. One day in every week was set apart specially for the Development Department work, when Mr. Nariman received complaints and informations from various quarters including the Merchants, Contractors, Suppliers and also members of the Staff. This information was recorded and kept in a Confidential File and on that information Mr. Nariman with the group of Workers started his own independent investigation and at times, visited various places in the suburbs including Thana, Kalyan and such other places at late hours in the night, carrying on investigation and confirming the information received. As a result of this investigation with the good deal of materials collected and after Mr. Nariman went into the Council, an enquiry into the affairs of the Development Department was demanded.

Thus defence had collected in all about over 20 witnesses, and when the defence evidence was being led the public interest was kept up at very high pitch as at each hearing, they expected some new revelations and sensational disclosures throwing new light on the dark affairs of the Development Department. Unfortunately owing to the limited time at his disposal Mr. Nariman had not the full opportunity of placing all the materials at his disposal, because this enquiry was limited according to Law to certain points alone, and in order to establish good faith, the Court could permit him to lead only some evidence for instance, an Assistant Engineer of the Development Department one Mr. B. G. Joshi who was tendered as a witness to depose that when he was in the Department working under the Superintending Engineer, Mr. Harvey and his subordinates Mr. Hamid and Mr. Guzder, he approached and put certain facts before the Superintending Engineer with regard to the shady transactions of his subordinates, when the Superintending Engineer instead of taking an action against the subordinates

reprimanded him for making a complaint against his superiors and removed a hitch from the way by transferring him to another Department and ultimately his position was made so difficult that he had to leave the department.

The evidence of such similar description, showing that the contention of the defence, that a sort of understanding between certain group of officers existed, was not allowed to be led. This completed the list of defence witnesses.

**APPLICATION FOR GRANTING INDEMNITY
TO DEFENCE WITNESSES.**

17TH SEPTEMBER 1927.

To,

The Secretary to the Government of Bombay,
Legal and Judicial Department.

SIR,

As you are aware the Prosecution for Defamation is pending against me in the Esplanade Police Court, at the instance of a Superintending Engineer, Development Department, Mr. T. Harvey. The said Prosecution is launched after sanction from the Government. The case for the Prosecution is nearly over, and shortly the Defence witnesses will have to be examined. Some witnesses for the Defence, before making their statements in Court, desire to be assured that as a result of any incriminating statement made by them in the course of their evidence they will not be subsequently harassed or troubled by a prosecution from the Government, because, in Law, person who offers bribes or illegal gratification is as much guilty as one who receives. In the interest of justice in order that the truth may be brought out in the course of proceedings unhampered, it is desirable that the witnesses should be granted that indemnity in order that they can speak out their minds freely without fear of future prosecution. I understand, under similar circumstances, with regard to other prosecutions launched by the Government against Public Servants or private individuals for offering or receiving illegal gratifications, it has been the practice to give such assurances to the witnesses in such cases. I hope that the Government will apply the same principle to this case also as, though it is a case for defamation, evidence for the Defence would be more or less of a similar nature.

I therefore hope that the Government will consider this application in the same light and grant the indemnity required to intending witnesses. This course will help the Court to find out

the truth, otherwise it will be extremely difficult in a case of this nature, to persuade the witnesses to come and make statements in Court, which might ultimately go to incriminate themselves.

I might also point out that interested parties are holding out threats to intending witnesses that in case of such admissions on their part, they themselves would come into trouble as the Government through the Police would institute proceedings against them, and thus the witnesses for the Defence are scared away. You will, therefore, please consider this application and issue a necessary declaration.

You will kindly have this matter expedited, as it is expected that the Defence witnesses will begin shortly.

Hoping to be excused for the trouble,

I have the honour to be,

Sir,

Your obedient servant,

(Sd.) K. F. NARIMAN.

Reply.

No. T.44.

HOME DEPARTMENT,

BOMBAY CASTLE, 10TH OCTOBER 1927.

FROM,

J. MONTEATH, Esquire,
Secretary to the Government of Bombay,
Home Department.

TO,

K. F. NARIMAN, Esquire, B.A., LL.B., M.L.C.,
Wadia House, Hughes Road, Chowpatty,
BOMBAY.

Subject :—Harvey-Nariman Case.

Application by Mr. Nariman for an indemnity for his witnesses.

SIR,

I am directed to reply to your letter dated the 17th September 1927, addressed to the Secretary to the Government of Bombay, Legal and Judicial Department, in which you ask for an indemnity for witnesses, who may be summoned on your behalf in the case in which Mr. T. Harvey is prosecuting you for defamation.

2. I am to point out that the application is extremely vague and indefinite in its scope. Mention is made of illegal gratifications, but it is not stated that the evidence to be offered will be confined to alleged instances of these. Nor is it stated whether the allegations are made against Mr. Harvey or against other parties. An indemnity in the terms suggested by you would enable any person appearing for the defence to make, with impunity, any kind of allegation against any other person, and it is clearly not in the interests of justice that this should be allowed. The granting of your application, in the terms in which it is made, would protect your witnesses even from the consequences of perjury.

3. Section 132 of the Indian Evidence Act provides that no answer, which a witness shall be compelled to give and which may criminate him, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer. If you consider that the protection afforded by this section is insufficient for any one or more of your witnesses, Government are prepared to consider your representation of the circumstances which would justify them in affording further protection to any witness, who gives true and relevant evidence in good faith, on your behalf in the present prosecution.

4. Obviously, however, Government cannot give a general indemnity to an indefinite number of unnamed persons for offences which are unspecified. The nature of the indemnity in each case should be specified. I am, therefore, to inform you that Government are prepared to consider your application if you will give the names of the parties for whom you request an indemnity, together with such information regarding the evidence which each is prepared to give, as will enable Government to define the indemnity for which you ask. I am to add that any indemnity which Government may give, will only be in respect of evidence which is both true and relevant.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd.) J. MONTEATH.

Secretary to the Government of Bombay,
Home Department.

Mr. NARIMAN'S DEFENCE ADDRESS.

"PROSECUTION—A GOD-SENT OPPORTUNITY?"

HIS AGITATION NOT A POLITICAL STUNT.

PROSECUTED FOR DOING WHAT GOVT. ASKED HIM TO DO.

Before addressing the Court, on the evidence adduced in the case, Mr. Nariman considered it his privilege to discuss one or two salient points which influenced the case.

SERIOUS ALLEGATION AGAINST NARIMAN.

He was very sorry the prosecution had introduced merely to prejudice the issues in the case a suggestion, which he resented and very strongly too. The prosecution had attributed that all the agitation that was carried on in the Council was to merely gain popular applause, and was a sort of a political stunt. Mr. Nariman took the earliest opportunity of repudiating this rather serious suggestion. It was a very serious allegation that could be made against a man, who had some responsibilities both as a member of the Council and as a humble servant of the public. Mr. Nariman repudiated it with all the earnestness and vehemence at his command. It was not a political stunt. If the Prosecution Counsel would take some little trouble to study the situation of that period, he would not fail to find that all eyes were rivetted on the development affairs. The Development Department agitated the minds not only of one party or the other, but it was a universal agitation. The subject had assumed very great public importance. The prosecution had levelled the charge that the agitation was the slogan of the Swaraj Party. No, it was not so.

What was it then that brought the subject to the forefront in the Council?

If anything predominated the minds of the Councillors and called for devotion, energy and a keen study, it was the annual budget, and the position of the budget brought about by the Development Department was this. The Presidency was reduced to a state of absolute financial bankruptcy. Every other Government Department was starved simply because the white elephant of the Development Department had to be fed. The most heavily taxed Bombay was most heavily burdened with a deficit. Mr. Nariman wanted the Court to take all this into consideration and judge whether the question was at all a one party question.

GOVERNMENT'S MENTALITY.

Mr. Nariman said that the same unfortunate mentality betrayed by the prosecution counsel on this point was also betrayed by the Government in the Council. Simply because the criticisms came from a member of the Opposition and a critic of the Government, motives were attributed to his criticism. Mr. Nariman wanted to take this opportunity to say that the Government went to the length of insulting him, and bearing personal hostility towards him simply for his crime of wanting the affairs of the Development Department to be merely investigated. That was the attitude which the Government took in regard to him.

All Mr. Nariman then wanted, was fair opportunity to prove his allegation.

A GOD-SENT OPPORTUNITY.

He was glad it had come to him though not through an Enquiry Committee, but through a judicial tribunal. He considered it a God—sent opportunity to justify his position not only before his opponents and the Court but his electorate also.

Proceeding, Mr. Nariman said that so far as the merits of the case were concerned, he wanted his worship to consider the difficulties in the way of the defence. He did not want any extra sympathy or that the rigor of the law should be relaxed in his case. He only appealed to the Court to view the case as any other ordinary case leaving aside all other considerations such as the prestige of the Government or the prestige of the officers concerned.

Referring to his evidence before the Back Bay Enquiry Committee, Mr. Nariman said that at the conclusion of his examination the Committee proposed placing the allegations made by him before the Government with a recommendation that an investigation should be started, and, if found necessary, prosecution should be launched against the officers concerned.

At that time there was absolutely no question of malice on his part or a defamation case being launched against him. But on the third day the whole position was reversed and the officers concerned applied to the committee to sanction the prosecution against Mr. Nariman. Mr. Nariman wanted his worship to consider how this happened. If they had given him an opportunity to prove his allegations, and having come to the conclusion that his allegations were false, had sanctioned the prosecution he would have no complaints at all. Mr. Nariman complained that before this prosecution was launched he was never given an opportunity to falsify or verify his allegation.

Simply because the officers denied the allegations, the prosecution was launched.

“PROSECUTION TO STIFLE CRITICISM.”

Mr. Nariman alleged the prosecution was launched against him to stifle criticism and as a counterblast to the intended prosecution of the officers concerned. He wanted to attribute motives deliberately and intentionally that the prosecution was not bona-fide. As far as the Mears' Committee was concerned, Mr. Nariman said three members of the Committee, were definitely opposed to sanctioning the prosecution. Sir Grimwood Mears had in fact declared that “it was monstrous to grant sanction in a case of this description.” Mr. Billimoria and Sir Visvesvaraya had not committed themselves to the sanction. There was only one member who, Mr. Nariman knew, was sitting on the Committee with a set purpose, and that was Sir Frederic Hopkinson. Whenever disclosures were made in regard to the Development Department, Mr. Nariman alleged, Sir Frederic made most spiteful and even insulting remarks to witnesses.

DIFFICULTIES IN WAY OF DEFENCE.

Mr. Nariman appealed to his Worship to appreciate the various other difficulties in the way of his defence. It was common experience that it was extremely difficult to persuade parties to give evidence in a Police Court case. And in a case of corruption of this description there was an additional difficulty because under the law both the giver and the taker of a bribe were guilty. Mr. Nariman said the lapse of considerable time in launching the prosecution had to a great extent prejudiced his case. He was asked to substantiate the allegation made in 1924, only in 1927 when the prosecution was launched.

The Government waited for nearly two years and had only now come forward with the prosecution, so much so, that the parties who were able to give evidence had as soon as the slightest hint was made about the prosecution either destroyed or kept back documents and account books, which were required by the defence to prove its allegations. Naturally documents after documents which were called for by the defence from the Government as well as from private individuals, had been reported to be missing.

MISSING ACCOUNT BOOKS.

When the account books of Messrs. Salebhoy Tyebji and Co. with Messrs. Thos. Cook and Sons were called for by the defence, the latter (Thos. Cook) on oath declared in the Court that the particular ledger was missing. Similarly Maneckchand Jivraj

could not find the counterfoil of a particular cheque for Rs. 5,000 while he flung at the Court all cheque books excepting the one that was wanted by the defence. The most amazing and curious thing of all was that certain documents which, when called for by the defence, were reported to be missing, were forthcoming when the prosecution wanted them for their own purpose.

As regards good faith, Mr. Nariman requested the Court to consider the attitude taken up by him in the Council. Since he had not referred to the details as regards corruptions in his Council speeches, the prosecution might urge that he was not in possession of details at the time he had made the allegations. But he wanted to make it clear that the time allowed to the mover of a resolution in the Council was limited to half an hour and it was on account of that he did not go into the details at the time.

Proceeding Mr. Nariman read out a number of his speeches and discussion in the Council regarding his allegations against the Bombay Development Department and his demand for an inquiry.

MILD STEEL BARS INCIDENT.

In regard to the mild steel bars incident, Mr. Nariman said that his allegations in the Council were that the original indent was changed and that the addition of the wrong size bars in it was intentional. According to the reply given by the General Member in the Council, the omission of 5/8 in. bars was found out by the Superintending Engineer, who instructed the Supervisor to make the addition, but the Supervisor wrongly included 7/8 in. bars. The error according to the General member was a trifling mistake and it was a "bona fide" mistake. Mr. Nariman accepted the statement that the addition was made by the Supervisor and not by the Superintending Engineer, but he challenged that part of the reply where it was stated that it was a "bona fide" mistake. He still maintained that it was an intentional addition. Further when the allegation was made by him, the person against whom it was made, was quite indefinite in his mind. As the words used by him were "higher staff of officers" it could only refer to either Superintending Engineer, Executive Engineer or Assistant Engineer. Mr. Nariman added that by the term "higher staff of officers" could only mean any one of the three above officers and not the Superintending Engineers alone.

DID WHAT GOVT. ASKED HIM TO DO.

Continuing Mr. Nariman said in the course of his correspondence with Government, in one of their letters, the Government had rebuked him by saying that though he seemed to be in posses-

sion of information of "criminal offence" relating to the B. D. D. he had not as a good citizen placed it before the proper authorities. Mr. Nariman said when he gave evidence before the Back Bay Committee, he had done nothing else but placed according to the advice of the Government whatever information he possessed whether true or false, before the Committee, leaving the responsibility of finding out the truth to them. He had only done what the Government had asked him to do and the Government prosecuted him for doing so.

Referring to the question of malice Mr. Nariman argued, that the prosecution had failed to prove any malice on his part, either in fact or in law. The case was based only on one circumstance which was characterised as malice, that he (Mr. Nariman) in spite of the explanation of the General Member in the Council persisted in repeating his allegations before the Back Bay Committee. It was admitted even by Mr. Harvey that at the time the allegations were made Mr. Nariman did not know him or other officer personally. Therefore personal malice was out of question.

In justification of his attitude, in not accepting the explanation of the General Member Mr. Nariman said "how can I accept them to be true when Mr. Harvey himself had admitted in this Court that certain replies given by the General Member before the Council were false and they were based on information given by himself (Mr. Harvey) ?

MR. NARIMAN JUSTIFIES HIS ALLEGATIONS.

NO MALICE AGAINST MR. HARVEY.

ONLY GENERAL ACCUSATION.

Discussing further on the point of malice, Mr. Nariman said that the prosecution was trying to make out that it was not within his (Nariman's) knowledge at the time he gave evidence before the Committee that certain statements made by the General Member and the Director of Development, both in the Council and before the Committee, were false. Speaking about mild steel bars, he stated, he had declared in the Council even in 1924 that he did not believe the reports published by the Development Department and circulated among the members of the Council, as they were misleading. He was convinced from the very beginning that it was not as a matter of policy, as Sir Lawless Hepper had put it, and to prevent a panic among the public, that correct information was withheld from the public, but it was with a view to prevent them from being put in an awkward position and to shirk answering further unpleasant questions, that the officers of the B. D. D. had all along followed a systematic policy of keeping back correct information.

GOVERNMENT'S "FALSE REPLIES."

It was with this primary object that the Government gave false replies to Mr. Trivedi's questions in the Council. To a question of Mr. Trivedi as to whether the records showed that any wrong size bars were ordered the answer was in the negative, whereas both in the Council and before the Committee, the officers of the Development Department had admitted that wrong size bars were ordered but that it was through a bona-fide mistake. This became more glaring and outrageous owing to the fact that Mr. Sykes himself, who was instrumental in giving the false answers to Mr. Trivedi's questions has corresponded on the incident of mild steel bars and knew full well when he gave the wrong reply that the wrong size bars were ordered in January 1923.

"TOO MANY 7/8" BARS"

Mr. Harvey in a memorandum to Government had asked for instructions for the disposal of the "too many 7/8" bars" ordered by mistake. Though Mr. Harvey had later on tried to give explanation of the statement as a "silly" one on his part Mr. Nariman submitted it was not so silly as Mr. Harvey would have it believed. It was only a statement which did not suit Mr. Harvey's purpose at this stage and so he was calling it silly. On this ground Mr. Nariman sought to justify his attitude in viewing the statements of the General Member in the Council with a suspicious eye: He therefore submitted that so far as the "malice in law" was concerned there was absolutely no ground for it and it was the only case made out by the prosecution.

WHOSE MISTAKE?

Relating to the Mild Steel bars incident, Mr. Nariman observed that four or five explanations had been elicited from officers of the B. D. D. As the case was in progress the prosecution had made out that it was the mistake of a supervisor. While giving evidence before the Committee, Sir Lawless Hepper and Mr. Harvey had attributed the blunder to either a "draughtsman or supervisor." Mr. Harvey's written statement had a different story to say that the "office superintendent added to the indent under the direction of the Executive Engineer." On another occasion it had been said that the addition was not made by the Superintending Engineer at all.

Mr. Nariman asked the Court to draw its conclusion from all the aforesaid conflicting and contradictory statements. "Do these show that the officers are making an honest statement of facts" he asked. Hitherto Mr. Harvey had tried to make out that it was under his verbal instructions that the Supervisor had made the

addition. Yet this was followed by a flat statement that the Superintending Engineer had nothing to do with the alteration at all. Mr. Nariman quoted another instance when Mr. Harvey said "but whether it was the Executive Engineer or myself who intimated the incorrect diameter of mild steel bars to the Supervisor or whether it was the Supervisor himself who added the wrong size bars in the indent, was very difficult to say."

GENERAL ACCUSATIONS.

Addressing on the subject matter of the complaint, Mr. Nariman repudiated the suggestion made by the prosecution that as Mr. Harvey was one of the higher officers, the allegations referred to him alone. Mr. Nariman read out a passage from Sir Lawless Hepper's evidence before the Committee. It said "Our difficulty had always been that these charges were always of a general nature, that it had been extraordinarily difficult for us to meet them." This clearly showed that Mr. Nariman had always made general allegations against the whole Department not mentioning a single personality. It could not, therefore, be said that the allegations he made, applied to Mr. Harvey alone. It would be more correct to say that they applied to all higher staff of officers inclusive of Mr. Harvey.

NO BAZAR GUPS.

Repudiating the suggestion that he had based all his allegations on mere "bazar gups" Mr. Nariman said, he had adduced sufficient evidence to show that he had received various complaints about the B. D. D. affairs from merchants, contractors and even employees of the Department. Several witnesses had confessed that they appealed to him, as a Member of the Council to put a stop to this "bleeding" and waste of public money by the Department. When he gave evidence before the Committee he thought that they were searching for the truth but instead of finding out the truth, they had sanctioned this prosecution. Mr. Nariman was convinced that this was not a "bona fide" prosecution but launched only with a view to stifle the charges made against the officers.

ONLY SUPPLIED INFORMATION.

Continuing Mr. Nariman said, when giving evidence before the Committee he had taken all reasonable care and caution and it was in perfect good faith that he placed whatever information he possessed at their disposal. He was only anxious to find out the truth or otherwise of the allegations and he gave the Committee material to start the investigation. He did not say that they were true. Neither did he want that anybody should be taken to task on those allegations.

PROSECUTION THEORY CHANGED.
STORY OF " SUPPRESSED DOCUMENTS. "

MR. NARIMAN ON MILD STEEL BARS TRANSACTION.

Confining himself to the main point of issue in the case namely, the mild steel bars incident, Mr. Nariman went on to discuss the different positions taken up by the prosecution at different stages of the case. Ever since 1924 a strong controversy about the M. S. bars had been raging between him and the Government. This was practically from the beginning when he entered the Council. Two different positions were taken by the Government and Mr. Nariman.

The Government shifted all the blame for ordering the surplus bars on the Supervisor.

" TO EXONERATE OFFICIALS. "

Mr. Nariman said that the Back Bay Enquiry Committee gave such wide publicity to the development affairs that the Department thought that something should be done to exonerate it from blame. In view of the startling disclosures made there were only two courses open to the officers. One was to face a departmental enquiry and the other was to obtain sanction for the prosecution of Mr. Nariman. The Back Bay Committee was applied to but it did not commit itself to launching a prosecution. Ultimately the sanction was obtained from the Government.

Continuing Mr. Nariman said that the prosecution case rested on his declaration that the mistake was not a ' bona fide ' one and that it was made with a view that certain manufacturers might make profit. He had also stated that there were ugly rumours afloat that the higher staff of officers were receiving commissions.

Mr. Nariman then went on to prove that the mistake was not a trifling one as put by the prosecution but that it was deliberate and intentional.

" NO MYSTERY AT ALL. "

He expressed surprise at the remark by the prosecution counsel that it was still a mystery as to who actually made the mistake in the indent. The mystery, Mr. Nariman thought, was of recent creation to get out of the plight in which the prosecution found themselves. It was indeed regrettable that Mr. Harvey " the boss of the whole show " should have come and told the Court that he did not know what size of bars were required for piles and that the mistake in the indent was a trifling one. Mr. Nariman declared that the statement was neither straightforward nor honest.

THE THEORY OF SLIP.

Regarding the theory of the slip prepared by Mr. Hamid and handed over to the Supervisor Mr. Nariman said that evidence did not support it. The slip itself had not been produced and Hamid denied having prepared any such slip. The theory of omission therefore was indefensible.

The prosecution now offered an explanation that Mr. Harvey wrongly thought there was an omission and made the order.

Mr. Nariman next drew the Court's attention to the delay in cancelling the order when it was discovered that wrong size bars were arriving. The order with Salebhoy Tyebji was said to have been cancelled by a phone message. That Mr. Nariman submitted was not true. Again the cable to England was sent a few days after the date the delivery began.

Mr. Nariman's submission to the Court was that there was no omission at all.

The order for 80,000 bars was deliberately sent and the theory of omission was raised when the questions were put in the Council which showed that the matter about wrong size bar had leaked out. The questions could not be avoided and when an answer was necessary the theory of omission was advanced.

That theory appeared to have slightly damaged in view of Mr. Hamid's evidence. Mr. Hamid appeared to have written to Mr. Harvey that the defence had access to the drawings and plans which would weaken the theory of omission.

Mr. Velinker : What are you referring to ?

Mr. Nariman : I am referring to something which would be the death warrant of the prosecution.

CHANGED PROSECUTION THEORY !

Mr. Nariman then referred to the change of theory on the part of the prosecution at a stage when the case had long begun. He said that the prosecution realised that their original theory, namely that 7/8" bars were wrongly ordered, could no longer sustain, on account of the drawings and plans which had come in his possession. They therefore substituted the new theory that 7/8" bars were required and correctly ordered.

Mr. Nariman said the evidence given by Hamid did not support the altered theory.

Referring to a letter written by Guzdar to Hamid to the effect that he (Guzdar) found that 5/8 in. bars were unsuitable and asking for permission to use 7/8 in. bars—which document had been put forward by the prosecution to support the new theory—Mr. Nariman said this letter was written after the arrival of the indented 7/8 in. bars and only sought to make use of the bars.

WANTED THE PLAN FOR PILES.

From the above Mr. Nariman said these documents were submitted simply as a blind and as a sort of an excuse to show that there was some justification to change the prosecution theory. The only document which would throw light on the subject as to whether 5/8 in. or 7/8 in. bars were used for piles at that time was the plan for piles. "Why has this document been suppressed by the prosecution?" asked Mr. Nariman. The few plans which had been obtained, Mr. Nariman said, were only produced by the prosecution after he himself had produced copies signed by the complainant himself. So also the pile manufacturing file was not produced by the prosecution, and that was an important and relevant document.

Mr. Nariman continuing said that the charges were framed against him on the basis of the first theory, which theory on the admission of the prosecution itself, had failed.

MILD STEEL BAR BUNGLE.

'DIFFERENT PROSECUTION THEORIES'

MR. NARIMAN'S CONTENTION.

Continuing his address on the point of mild steel bars incident Mr. Nariman said he relied on the evidence of Mr. Hamid in regard to the size of bars required for piles, not because he supported the new or the old theory, but because his evidence practically supported the case, so far as the allegations and charges were concerned. If his evidence was taken into considerations, Mr. Nariman practically met the charges against him.

From his evidence it was clear that the only size of bars that was required for piles was 5/8" and he had further said that these were fully provided and Mr. Nariman said there was no need to order out the enormous quantity of 80,000 bars. What Hamid said was merely an interpretation of the drawings and plans placed before him and his statements were based on facts and not merely imagination. Unless the prosecution challenged Hamid's evidence as not true, Mr. Nariman had conclusively met all the charges

against him. Mr. Hamid did not support both the theories and his evidence cut the feet of the prosecution from under the ground. Mr. Nariman requested His Worship to read and re-read Hamid's evidence before deciding the case, because Hamid's evidence was very important and was corroborated by a letter of the complainant himself.

QUESTION OF QUANTITY.

Equally important was the enormous quantity of bars ordered by the Department. It might be admitted that there was a mistake about the size, but how could any one believe that there was also a mistake about the quantity. An enormous quantity of 80,000 bars was ordered which Mr. Nariman said were not required for Worli. The actual requirement of Worli was only 12488 bars so that it became very difficult for a critic to understand why such a large quantity was at all ordered. While the prosecution had tried to explain away the mistake of size by shrouding it with technical mystery, they had not touched the question of quantity at all. Mr. Nariman asked His Worship to consider this point very seriously because in no other indent either for the Reclamation or Housing scheme such a large quantity of bars was ever ordered. The prosecution had not given any explanation in regard to this and had not anticipated the question at all.

Mr. Velinker here said that the 80,000 bars were not required for Worli alone but Dharavi and Flats also.

Mr. Nariman continuing, tried to show that the 80,000 bars were ordered out for piles at Worli only and that Dharavi and Flats were not in view at that time. He referred to the supplementary indent for 80,000 bars in which it was stated that the bars were required "for piles at Worli." Thirty thousand of them were to be delivered between October and December 1922 and the rest by October 1923. At this time, the Dharavi Scheme was not even contemplated. The complainant himself had said in his evidence that the Dharavi programme was considered in March 1924. There was no meaning in ordering out the bars so as to be delivered by October 1923 when the Dharavi scheme was not in existence and was only contemplated in 1924.

NO REFERENCE TO DHARAVI SCHEME.

During the debate in the Council on this question there was no reference to Dharavi or Flats. The replies given to questions related only to Worli.

When questioned as to what he meant by "for piles at Worli", the complainant had explained that what he meant by that was

that piles were to be manufactured at Worli and ultimately conveyed to Dharavi. Mr. Nariman submitted that explanation was absurd from the engineering point of view because of the cost and inconvenience of conveyance from Worli to Dharavi.

"But here is a clear proof as to what the complainant meant by 'for piles at Worli' said Mr. Nariman. He then read a passage in Mr. Harvey's complaint in which the bars were said to be "for the foundation of piles of the Worli Chawls." Does the prosecution still maintain that the bars were intended for Dharavi and Flats? asked Mr. Nariman. At least at the time, the complaint was made, Dharavi and Flats were not in the mind of the prosecution, he contended.

Mr. Nariman then went on to show that stocks of mild steel bars in excess of the sanctioned limit, were stored by the Executive Engineer.

MR. VELINKER EXPLAINS.

At this stage Mr. Velinker got up and said that the words "for piles at Worli" in the complaint were added by himself and Mr. Harvey was not responsible for it. When the plaint as drafted by the Solicitors came to him (Mr. Velinker) he added the words "for piles at Worli" as he understood the case then. Mr. Velinker said the responsibility for that particular statement was his and although Mr. Harvey was expected to have read it, he passed it on without properly noticing it.

Mr. Nariman retorted that the words must have been added under instructions from the complainant. And as the complaint had been accepted by him, he could not be absolved from responsibility for it.

The Court: I suppose the complainant has read and approved of the draft complaint.

Mr. Velinker: That is one of the legal fictions!

After relating to the sections of the P. W. D. Code and Government resolutions, etc., relating to the keeping of stock, Mr. Nariman said that at the time the 80,000 bars were ordered, they were not actually required, and at all events, when the question was raised before the Enquiry Committee, the explanation, that these bars were for Dharavi, and Flats not given.

"HOPELESS CONTRADICTION."

Mr. Nariman then referred to what he described as a "hopeless" contradiction in Mr. Harvey's evidence. At one time, the complainant said that the bars were not ordered out by mistake but

they were required and properly ordered out but when further questioned, he denied it and propounded the theory of mistake.

All these explanations that were now being advanced, Mr. Nariman continued, were not put forward before the Committee nor when replies were given to questions in the Council. So far as the charge of defamation was concerned, those explanations were adduced, because the complainant found himself in a nasty corner. In considering the case, the Court should look to the state of mind and the circumstances under which the alleged defamatory charges were made by Mr. Nariman. In the absence of the explanations that were now advanced, Mr. Nariman drew the only possible conclusion from the materials then at his disposal.

“ORDERED BY MISTAKE.”

Then again in one of the Government resolutions, the fact had been admitted that surplus 7/8" bars were ordered by mistake. Mr. Nariman had stated that very same fact before the Committee "I said exactly what the Government stated and yet they are charging me with defamation," said Mr. Nariman.

Mr. Nariman then referred to what he called the "deliberate and intentional suppression of documents" on the part of the prosecution. The failure on the part of Maneckchand Jivraj to produce certain account books and cheque books attached a great deal of suspicion to the transaction of the sale of surplus bars. The suspicion became all the more greater when a responsible bank like the Thos. Cook came forward saying that the ledger containing the accounts of Salebhoy Taybji for the particular period only, wanted by the defence, had been carried away by the Salvation Army people. This, Mr. Nariman submitted, added strength to the defence in regard to the allegations of "secret commissions" and very much weakened the prosecution case. These circumstances made one to think that there was really something behind the screen.

SECRET COMMISSIONS.

Referring further to the allegations of "ugly rumours about secret commissions," Mr. Nariman said, these were occasioned by the particular replies given by Hon. Cowasji Jehangir in the Council. It was because the Hon. Member gave false replies, which was now admitted by the prosecution—that provoked the criticism at the hands of Mr. Nariman. Had Sir Cowasji Jehangir given the true information that 7/8" bars were required and correctly ordered, Mr. Nariman said such remarks would not have been made by him.

“SHIFTING GROUNDS.”

Mr. Nariman requested the Court to judge the case on the charge framed against him. “Would it be a good precedent to allow the complainant to change the prosecution theory when the case has developed in a certain direction”? Mr. Nariman hoped His Worship would seriously consider this aspect of the case keeping in mind that he (Mr. Nariman) had maintained the same position and attitude throughout the case unlike the prosecution which shifted grounds according to convenience.

In view of all this, Mr. Nariman submitted that so far as the case of defamation was concerned, he had met all the charges, as far as they could be met in the peculiar circumstances he was placed, namely, the long delay in launching the case, disappearance of documents, disappearance of witnesses and the natural reluctance on the part of private merchants to come forward and help the case.

SALE OF SURPLUS BARS.

WHY OFFERS WERE KEPT WAITING.

THEORY OF ALLEGED SECRET COMMISSION.

Referring to the responsibility of ordering out the surplus bars Mr. Nariman after referring to passages in Mr. Harvey's evidence, maintained that the complainant had himself admitted responsibility for the size, diameter and quantity ordered. He particularly pointed out the following from Mr. Harvey's evidence “There was no mistake about the quantity. It was deliberately ordered after calculation.

With regard to the prosecution contention that the 80,000 surplus bars were not only required for Worli but also for Dharavi and Flats, Mr. Nariman said that Dharavi and Flats were mentioned only at this stage. When the complainant was asked if Sir Cowasji included in his reply Dharavi and Flats his Counsel replied in the affirmative. But in reply to another question Mr. Harvey had stated that he did not refer to or include Dharavi and Flats in the replies supplied by him. Mr. Harvey had clearly stated that he did not make any mention about Dharavi and Flats.

“SECRET COMMISSIONS.”

As regards the allegation of secret commission from manufacturers, which was one of the causes of complaint, Mr. Nariman submitted that the fact had been proved that commissions were received, if not from manufacturers, at any rate from local suppliers. He did not see what difference there was between commission from manufacturers and local suppliers.

Mr. Nariman then went on to show that the complainant could not maintain that he knew nothing of the local purchase of mild still bars and came to know of them only after the case was launched.

Mr. Nariman then produced several bills from the Petroleum Company for supply of mild steel bars to the Development Department. The bills showed different rates being quoted by the firm for the supply of the same material to different branches of the Department. There was found a difference of Rs. 40 and odd between the rates accepted for Worli and Matunga, the former being higher. These transactions took place in 1921-22. Sanctions for them were asked for by Mr. Harvey and he could by no means deny knowledge of local purchase of Mild Steel bars. The applications for some of those purchases were endorsed by Mr. Harvey and were gone through by him.

ALLEGATIONS BASED ON FACTS AND NOT BLUFF.

In regard to the prosecution theory that at the time he made the allegations of corruption against the B. D. D. he had actually no information on that subject, Mr. Nariman quoted passages from various defence witnesses who had admitted having seen him (Mr. Nariman) and complained to him about the B. D. D. so that the prosecution contention that he based all his allegations on mere bluff fell to the ground. The evidence, Mr. Nariman thought, did not favour prosecution argument and he hoped the Court would take the proper view of it. There was the positive evidence of 10 witnesses who gave evidence with regard to what was going on in the B. D. D. and there was no reason why they should have kept records of several years and come to the Court to favour the defence case.

Continuing, Mr. Nariman said the local purchase of the M. S. bars, at a time when there was sufficient stock of them, had resulted in an accumulation of surplus. That surplus was sought to be explained away by bringing in the "curtailment of the programme." That explanation, Mr. Nariman held, did not seem satisfactory in the light of the evidence adduced in the case.

Then coming to the sale of surplus bars, Mr. Nariman said that they were not sold by public auction. The only other way by which the sale could be effected was with the sanction or permission of the Superintending Engineer. It could therefore be assumed that the sales were effected with the permission or sanction of Mr. Harvey.

SALE OF SURPLUS BARS.

The sale of the surplus bars was announced and rates invited. Several offers were made for purchase in lot or parts, but they were all rejected as they did not come up to the minimum rates fixed by the Government which ranged between Rs. 117 and Rs. 141. Among such offers was the one made by Maneckchand Jivraj whose figure was Rs. 102-8-0. That offer was kept in abeyance till the return of Mr. Harvey, when it was renewed. It was not accepted by the Acting Superintending Engineer although he used to transact similar other transactions.

“Why was this offer put off for consideration till the return of Mr. Harvey on October 20, 1925” asked Mr. Nariman. “Perhaps the prosecution might be able to answer it better.”

HARVEY'S “CONTRADICTORY EVIDENCE.”

Mr. Nariman then showed that Maneckchand renewed his offer to Mr. Harvey on October 29, 1925, and that the offer was accepted by Mr. Harvey.

Here Mr. Nariman pointed out a statement of Mr. Harvey in which he denied all knowledge of the sale to Maneckchand. Such denials of knowledge of transactions which required to be investigated were often made by the complainant. The complainant's reply to such questions was that he knew nothing of it or had nothing to do with it. In that particular case Mr. Harvey had at first said that Hamid recommended the offer of Maneckchand. But when faced with the records and documents relating to the transactions he had to admit that he himself completed the sale and that Hamid had nothing to do with it. That, Mr. Nariman said, was a serious contradiction in the complainant's evidence.

Mr. Nariman submitted to the Court that from the various documents he had put in and from the evidence of Maneckchand Jivraj the fact had been proved that Maneckchand's offer at Rs. 102-8-0 per ton was accepted by Mr. Harvey in preference to offers at higher rates. It was also in the books of Maneckchand that Rs. 5,000 had been paid in October, 1925, in consideration of putting through his offer. The transaction with Maneckchand had resulted in a loss to the Department. “What were the considerations that influenced the acceptance of this offer which meant a loss in preference to offers at much higher rates,” queried Mr. Nariman.

ALLEGED ILLEGAL GRATIFICATION.**MR. NARIMAN'S CONTENTION.****WITNESS'S SIX EXPLANATIONS.**

—x—

Arguing further on the point of "secret commissions," Mr. Nariman referred to the transaction of M. S. bars with Maneckchand Jivraj. Considering all the circumstances, he had anticipated, that the prosecution would admit that the payment of Rs. 5,000 was made to the Department, if not to Mr. Harvey. But since they disputed even that, which was clear from the evidence and account books of Maneckchand, Mr. Nariman was forced to dwell on that point at length.

SIX DIFFERENT EXPLANATIONS.

Mr. Nariman then read certain passages from the evidence of Maneckchand Jivraj and said that there could be no doubt at least that the sum of Rs. 5,000 was paid as illegal gratification for putting through the transaction. He asked His Worship to consider the six different explanations given by Maneckchand in regard to the payment.

The witness in the first instance said that the amount was taken by him "uplak." Cross-examined further, he changed his statement and said that he took it as profit of M. S. bars transaction. Asked how he made the profit within 10 days when only 200 to 300 tons of bars from B. D. D. had been taken delivery of, the witness said he took it on account of profits. His fourth explanation was that he took only Rs. 2,500 out of that amount and the other he paid to Jivraj his partner.

When cross-examined by Mr. Velinker the witness had tried to make out a new story by introducing the word "Pagri" saying it was paid to him as "pagri" (gift) by Chotalal Keshavji whom he took in to partnership in the M. S. bars transaction. Again at the next moment he said, "Call it whatever you like "pagri or profit." Mr. Nariman held by all these different statements, that the witness was only trying to conceal from the Court the true facts about the payment of Rs. 5,000.

Referring to that entry in the book Mr. Nariman said that it was shown that the amount was spent "Haste Maneckchand" while the counterfoil of the cheque for Rs. 5,000 which was asked

the same day was not produced by the witness. All the other counter-foils were produced while only this one was missing. All these were suspicious circumstances, continued Mr. Nariman, and went only to support, the theory that the amount was paid as illegal gratification and the witness did not want to divulge that fact to the court.

“AN INTERESTED PARTY.”

Repudiating the prosecution suggestion that the price of Rs. 102/8 per ton obtained from Maneckchand Jivraj for the M. S. bars was reasonable, Mr. Nariman said the prosecution could not rely on the evidence of Mr. Trivedi in that respect. No doubt Mr. Trivedi had said it was a reasonable price, but Mr. Trivedi himself was a party in the transaction and was an interested party, and therefore his evidence on that point should be taken at a discount. Perhaps he did not want to tell the court that they made such a good bargain of the transaction. When Mr. Harvey came from England the appointment of selling agents, to sell the bars at minimum fixed rates was being contemplated and no explanation was forthcoming as to why such a reasonable arrangement was not carried out. On the other hand, within a day or two of Mr. Harvey's arrival, the transaction with Maneckchand was put through “Where was the necessity of such a hurry in putting through the transaction when it had already waited for so many months” asked Mr. Nariman.

Mr. Harvey in his evidence had said that he had nothing to do with Maneckchand. He only took the offer to Mr. Bell who already knew everything about it, and the offer was accepted, whereas Mr. Bell had said that he did not even know Mr. Maneckchand and he knew him for the first time through Mr. Harvey.

There was no doubt that the amount of Rs. 5,000 has been paid for putting through the transaction, but to whom it was paid Mr. Maneckchand would not say. “If it has been paid, am I not entitled to say it could not have been paid only to an officer who had nothing to do with the transaction (Mr. Caldwell but to the only officer who was in a position to put through the transaction.

“NOT DRIVING AT RANDOM.”

Continuing Mr. Nariman said that if he had known to whom the amount was paid, he would have directly launched a prosecution against him. It was because he had not sufficient material at his disposal that he placed the whole matter before the committee with

a request to enquire to find out the person concerned. If he had no information at all on this point how did he guess that it was Maneckchand Jivraj who paid the commission? Again, how did he obtain a search warrant for seizing the books of Maneckchand and how did he point out a particular entry of Rs. 5,000 in his books? All these facts clearly showed that Mr. Nariman was not driving at random but had some definite information in his possession.

MR. SYKE'S EVIDENCE.

Then coming to the evidence of Mr. Sykes, Mr. Nariman said, it was evident, that this witness tried to hoodwink the court, when asked whether he knew Mr. Kapoor, at first he replied that he did not know anybody by that name. Then he asked whether it was Kapoorchand a supervisor from Punjab, that Mr. Nariman was questioning about. And all these evasive replies he gave, knowing full well that he was being asked about Bishambarnath Kapoor, whom he had known for the last 13 years. Was it not quite possible that such a witness might even go to the length of giving false replies to the Council, when he was the acting S. E. thinking that nobody would go further into the matter, asked Mr. Nariman. Then again when the quotations were invited for the manufacture of bricks why was the lowest tender of Rs. 12/8 not accepted? Because, Mr. Sykes knew Mr. Kapoor and recommended him though he quoted Rs. 20 per thousand. Was that not favouritism? Mr. Nariman suggested that there was something more than favouritism between Mr. Sykes and Kapoor. When the latter's contract was terminated he put in a claim for Rs. 40,000 which was rejected three or four times both by Mr. Colabawalla and Mr. Harvey. Shortly afterwards, Mr. Sykes had three or four interviews with Mr. Harvey and the whole view of Mr. Harvey was changed and subsequently he sanctioned an amount of Rs. 16,500. When the Finance and Audit Department protested against this payment they put the whole blame on Mr. Colabawalla who had already left the B.D.D.

MR. BEEN'S REMARKS.

Then Mr. Nariman referred to the following remark made by Mr. Been, Audit Officer in 1923 in regard to the finances of the B. D. D. "As the position is becoming intolerable, I would respectfully request the Government to take some action in the matter." When same kind of remark came from critics like Mr. Nariman and others they were accused of perverse mentality, observed Mr. Nariman. Further he said that numerous other reports were made against the Development by the Financial Department but these were not placed before the Enquiry Committee.

Supporting his allegation that contractors could not get orders unless commissions were paid to officers, Mr. Nariman referred to a bill of Valimahomed Hussein, which he said clearly showed that a 10 p. c. commission was deducted from it, meant for officers. "I do say I have a legitimate grievance against the Government. They knew that some of my allegations were true and still merely to shield the Department or to save its prestige they have taken up an attitude not at all justifiable" said Mr. Nariman.

"SHADY TRANSACTIONS."

Mr. Nariman then dealt with what he described as 'shady transactions' of B. D. D. Before 1923 the firm of Gannon and Dunkerley could not get any contracts at all from the Department. But simultaneously with the inclusion of Mr. Owen, a personal friend of Mr. Harvey, as Managing Director of the firm, the B. D. D. came to think that the local sanitary fittings were unfit for their chawls and decided to use "Adam's patent" the Agency for which had been secured by Gannon.

Though locally made fittings were used largely by the Municipality, the Improvement Trust and the P. W. D. and though they were cheaper, the B. D. D. thought they were unfit for their purpose. And after having done such things, how could Mr. Harvey complain if his critics took such a view of his conduct as reasonable men would do.

In another instance when quotations were invited for tanks, Messrs. Gannon and Dunkerley quoted the lowest rates Rs. 90 per tank which was naturally accepted. If this contract had been put through they would have suffered a loss of Rs. 15,000. Later on for other tanks their rates of Rs. 125 were accepted and their previous contract at Rs. 90 was scrapped as not required. To what conclusion could a reasonable man come to except that Gannon and Dunkerley were asked to quote low for the first contract by the officers of B. D. D. on the understanding that they would not be compelled to execute their contract.

PREPARATION OF RECORD ROOM.

Then again in connection with the construction of the record room at the Head Office given to Vali Mahomed neither the original contract nor any other records in connection with the same had been produced. The only paper produced was some calculation made by Vali Mahomed which showed that 10 p. c. of the contract amount had been paid to an officer and that Rs. 100 had also been paid to Kishen Singh.

In another instance an officer of the Department asked Vali Mahomed to change the rates in one of his bills and increase it by about Rs 600 and that amount was taken by the officer. The prosecution however had not challenged but they had suggested that the officer concerned must have been Captain Carmichael, that he was a "Bengali convert and that he had even absconded with some Government money. But he turned out to be not a Bengalee convert, continued Mr. Nariman, but an Irishman. And even though he tried to run away with the Government money he had been shielded by the Department, and when a critic made an allegation against the Department he was said to be of perverted mentality.

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Mr. Nariman traced the "shady" relations which existed between Mr. Harvey and the B. C. C. and the F. C. C. in connection with chawl contracts. Major Parcelle, he declared, who was working with the complainant in the B. D. D. resigned his job at the moment when tenders were to be invited for 80 chawls, and joined the B. C. C. as a partner giving an undertaking that he would secure for them contracts to the extent of Rs. 80 lakhs within a year. The B. C. C. tendered for the 80 chawls and though their tender was Rs. 13,000 more per chawl than that of the lowest tenderer, Gaya and Co., it was accepted under the Guise of an alternative design.

The so-called alternative design of B. C. C., far from being an improvement on the departmental design, contended Mr. Nariman, was lesser in area by 319 square feet per floor and consequently the cost of construction per chawl was Rs. 5,600 less. If the benefit of the alternative design had been given to Gaya and Co., their rates would have been much lower than those of B. C. C. Yet in spite of this, the contract was given to the B. C. C. This attitude of favouritism towards the B. C. C. continued throughout their career. For sanitary constructions, according to Mr. Marker, the B. C. C. were given Rs. 13,000 per chawl whereas for the same kind of sanitary works Gaya and Co., were given only Rs. 5,600

OVERCHARGE FOR WIRES.

For wire supplied to the B. C. C. by the Department, they were charged at the rate of Rs. 375 per ton. For some time they paid at this rate but later on Major Parcelle wrote a letter complaining that they were overcharged for wire to the extent of Rs.

175 per ton. Mr. Hamid held an inquiry into the matter and strongly protested against the B. C. C. being charged only Rs. 200 per ton for wire holding that Rs. 375 was the proper charge. Mr. Harvey agreed with him. A month later the matter was again revived when Mr. Harvey took a complete somersault and made a recommendation which was diametrically opposite to his previous attitude, that the B. C. C. should only be charged at Rs. 200 and that credit should be given to them for previous overpayments. Mr. Harvey's reasons for doing this, Mr. Nariman contended, could be nothing else than to fill the pockets of Major Parcellé who was his friend.

Shortly after getting the contract for 80 chawls, Major Parcellé required Rs. 1,00,000 and he got it from Mr. Marker who was taken as a partner. The amount was transferred to England and Major Parcellé went to England at the same time when the complainant also went home. What transpired there between them nobody knew. This transaction was shrouded in mystery which could not be lifted simply because the jurisdiction of the Court could not reach all the places the defence wished it to reach, said Mr. Nariman. The attitude adopted by Mr. Harvey was not only noticeable in the case of Major Parcellé but in all contracts in which the complainant's friends were concerned. These incidents could not be mere mistakes or errors of judgment as the prosecution had suggested but they were practices and methods systematically adopted right through by Mr. Harvey so that his friends might profit,

PRESENTATION OF PURSES.

In the case of the Sewri chawls, the lowest tender of Marsland Price and Co. was rejected in favour of F. C. C. with which Mr. Cervello a friend of Mr. Harvey was connected. In this case also Mr. Harvey had made several attempts to get large sums of bogus claims paid to the F. C. C. Mr. Nariman characterised this practice as nothing short of presentation of purses to his private friends by Mr. Harvey out of public money which did not belong to him.

When the Sewri programme was curtailed by 4 chawls, though the F. C. C. were not entitled to any compensation according to the contract, the complainant himself suggested to them to put in a claim. The firm accordingly claimed Rs. 42,000 compensation. Mr. Colabawalla rightly made an adverse report on the claim protesting against the payments and there the matter rested for ten months. After that the firm submitted a "revised" claim for Rs. 56,000 and the complainant allowed it to the extent of Rs. 36,000

but at the time of payment they were paid Rs. 42,000. The most interesting point of all was, Mr. Nariman said, that shortly after this Mr. Harvey and Mr. Cervello together sailed for Venice and other places. As usual, the protest of the Deputy Financial Adviser to Government against the payment of the claim was a voice in the wilderness. He had in his report even gone to the length of saying that he considered it to be a fraudulent and a false claim calling for an inquiry. That report was withheld from the Court.

ALLEGED FAVOURITISM.

Mr. Nariman then enumerated the dealings of the B. D. D. with Gaya and Company and commented on the alleged favouritism shown to Mr. D. R. Vaidya, by Mr. Harvey and on the commission alleged to have been paid by the firm to the engineers of the B. D. D. in respect of chawl contracts.

Concluding his address Mr. Nariman asked the Court to consider the insinuations which the complainant himself had made against his subordinate officers including Mr. Mehta, Mr. Colabawalla and others without any justification whatever. He expressed his sense of gratitude for the patience with which the Court had devoted its time and attention in hearing this important case. A conviction or an acquittal so far as he was concerned did not matter. He said so in all earnestness without any defiance or bluster. The result of a conviction in this case, he concluded, apart from personal considerations, was bound to be disastrous so far as the public administration and public morality were concerned.

PROSECUTION ADDRESS.

CAMPAIGN OF VILIFICATION.

Mr. S. G. Velinkar in opening his address on behalf of the prosecution, declared that the case was an unprecedented one in the annals of the Court in so far as it had occupied 62 hearings, 18 hearings of which were occupied in the cross-examination of the complainant. On behalf of the defence 276 exhibits had been put in, some of them running to 30 and 40 pages of which only to about 60 Mr. Nariman had referred in the course of his address. He had never attended a case in which such vilification and vituperation, quibbling and sophistry, intense suspicion and mistrust of all officers of the Development Department, however high they might be, had been indulged in.

Mr. Velinkar proceeding declared that Mr. Nariman's unbounded vanity and desire to please his electorate specially, and incidentally to play to the gallery, accounted for the fact of his having introduced matters which were irrelevant to the issues and points for determination in the case. His object was to induce the Court to make a fishing and roving inquiry into the general administration of the Development Department from its very inception, a thing for which he had been clamouring. That was the reason for the extraordinary protraction of these proceedings. Mr. Nariman having cherished an unquestionable and deep rooted prejudice against the Department as a whole suspected corruption everywhere and imputed motives of dishonesty, favouritism, misconduct and embezzlement even in the most innocent acts of higher officers. He had magnified and exaggerated the most trivial incidents attributing to them corruption and dishonesty. His speeches in the Council and his evidence before the Mears Committee breathed the same spirit. The mentality which Mr. Nariman had displayed was highly reprehensible and unbecoming of a public citizen.

VINDICATION OF MR. HARVEY.

From his point of view as counsel for Mr. Harvey, Mr. Velinkar thought that although the trial had been so prolonged the trouble the Court had taken would not have been wasted if at the end of all things, as he hoped his Worship would do, the Court would come to the conclusion, that not an iota of evidence had been led against Mr. Harvey personally and that the trial had resulted in a complete vindication of Mr. Harvey's honour, character and reputation. The fact that despite the latitude given to him by the Court Mr. Nariman had not succeeded in pointing a single instance of corruption against Mr. Harvey was itself an eloquent testimony to the character and honour of Mr. Harvey.

The purpose of this inquiry, submitted Counsel, was not to go into the question of the internal management of the Development Department. If the Court did not keep that point in its mind, the real issues in the case would be obscured and clouded and it would find it difficult to go through the bewildering mass of evidence that had been adduced. This was an inquiry in which the Court was not entitled to judge the policy of Government or to sit in judgment on the orders passed in various matters by Government. The internal administration of the Department was absolutely irrelevant to the inquiry except the instances on which Mr. Nariman relied for the purpose of proving good faith.

CHARGES READ.

Mr. Velinkar then read the first charge namely that Mr. Nariman on August 21, 1926 published the following imputation against Mr. Harvey. "I may tell the Government quite frankly and openly that there are ugly rumours in the city and the whole of the Presidency that the higher staff of officers have been receiving secret commissions from the manufacturers and that is the reason why that in this instance the department has incurred a loss of Rs. 3 lakhs. That is also the reason why stores are indented in larger quantities than were necessary and stores that were not required were also ordered out."

Counsel framed the following three issues on the above charges:- (1) Did the accused publish these imputations of and concerning Mr. Harvey (2) did the accused intend to harm, or know, or had reason to believe that they will harm the reputation of Mr. Harvey and (3) is the accused protected by any one of the exceptions under the relevant section in the Penal Code. Counsel's submission was that the words uttered by Mr. Nariman and published by him meant and would be understood to mean by those who either read or heard them that Mr. Harvey received secret commissions from manufacturers and ordered Rs. 3 lakhs worth of stores which were not required at all. In the sweeping allegations that Mr. Nariman had made he did not directly or indirectly mean to exclude a single one of the higher staff of officers of the Development Department.

Proceeding Mr. Velinkar said that Mr. Nariman had alleged that there had been maladministration of public funds in the Department and it was in this connection that he had said that there had been ugly rumours that higher staff of officers had been receiving secret commission.

RUMOURS NOT EXCUSABLE.

Here Mr. Velinkar cited authorities wherein it was held that repetition of rumours, however prevalent, was not excusable under law. Further counsel stated that Mr. Nariman when he repeated the rumours before the Committee did not use the words that he did not believe them to be true. If he had said so, perhaps he would have been protected. The defamation in this particular case consisted of an imputation concerning a collection of persons as such and that particular collection of persons was identifiable. The collection was narrowed down when he said he did not mean "higher staff and officers." Therefore counsel submitted that the imputation was

against a whole class and not against certain unidentifiable persons. It was no excuse that Mr. Nariman after re-echoing the ugly rumour qualified his sweeping charge by saying that it was not his desire to cast any aspersions against any individuals of the Department, but primarily his view was to enable the Committee to start an independent inquiry to find out the truth of the allegations. Counsel added that Mr. Nariman's sweeping condemnation involved, by necessary implication, Mr. Harvey also. To prove that Mr. Nariman had the Superintending Engineer, Mr. Harvey, in mind at the time he made his charge, Mr. Velinkar read portions of his evidence before the Committee and quoted the following question and reply:—
 Mr. Billimoria: And you are not in a position to mention his name?" Mr. Nariman replying said: I have already mentioned the name of the Superintending Engineer. Mr. Velinkar emphasised that "the Superintending Engineer" could only refer to Mr. Harvey as throughout his evidence Mr. Nariman had referred only to one Superintending Engineer and that was Mr. Harvey. Mr. Velinkar added that even if the Court held that Mr. Nariman had not Mr. Harvey in mind at the time, it did not matter at all in law.

"PERSISTENT LIBELLOUS ASSERTIONS."

Counsel for the prosecution, argued that if in making a defamatory statement a person used language which was applicable to the complainant (in this case Mr. Harvey), he could not escape his liability by saying that he intended the language to apply to some one else. Counsel's point was that either Mr. Nariman made inquiries or that he did not make any inquiries. If he made inquiries in regard to the surplus bars, his informants must have told him who was the Executive Engineer and who was the Superintending Engineer responsible for sending the indent. If he did make inquiries, it must be assumed that he must have received information as to who the Superintending Engineer was. It was evident from the very conduct of the case that Mr. Nariman had repeatedly asserted that Mr. Harvey was corrupt.

LACK OF GOOD FAITH.

He had persisted in the libel, which indicated a lack of good faith on his part. More than one opportunity was given to him of stating to the Court openly and publicly that he did not charge Mr. Harvey as one of the higher staff of officers with having received secret commissions from manufacturers. Not only did he not avail himself of any one of those opportunities but he went a good deal

further and stated openly that he was going to prove that Sykes, Hamid and Harvey were all in a conspiracy and had received secret commissions.

Mr. Nariman, from the very beginning had flouted the warning that Counsel gave him that he was aggravating the offence by persisting in the allegations and imputations against Mr. Harvey. And now that at the end he was quibbling and stated that he intended to hit the whole Department.

POINT IN A NUTSHELL.

Mr. Velinkar proceeding stated that the point in a nutshell was this: If the Court was prepared to hold that the imputation made by Mr. Nariman in the first charge concerned the complainant—that was the way in which an unprejudiced reader would understand it—then the outstanding questions were whether Mr. Nariman had proved that imputation was true and whether he had proved any good faith or had reasons to believe the truth of the imputations. As regards the second charge, counsel submitted that it contained 26 statements of facts. The statement the mild steel bars were required for foundation piles for the Reclamation Scheme was false. Mr. Nariman knew that these bars were required not for the Reclamation Scheme but for the Housing scheme, and was told so in October 1924 by the General Member in the Council. Counsel declared that Mr. Nariman deliberately and craftily made this false statement in order to reopen the matter and get the Mears Committee to go into it.

“STING IN THE CHARGE”

MR. VELINKER'S DETERMINING POINTS.

Mr. Velinkar said the charge could be divided into twenty-six statements of facts, out of which he submitted fourteen were entirely false. The statement that the Superintending Engineer changed the 5/8 in. into 7/8 in. and that the first consignment of bars to the value of Rs. 3 lakhs was purely wasted, were entirely false as the figure 5 was never changed into 7, as out of the consignment of 80,000 bars about 46,000 bars were actually used up in work and only the remaining bars were deposited as surplus.

MR. NARIMAN'S INFERENCE.

The statement that 5/8 in. were required but 7/8 in. were ordered was only Mr. Nariman's contention or inference. The

prosecution was still doubtful on that point and was not still sure as to whether 5/8 in. or 7/8 in. bars were actually required. If the statement that "these surplus stores were ordered in order that some manufacturers might make some earnings out of it" was a statement of fact, then Mr. Velinker submitted that the statement was false. If on the other hand it was only an inference of Mr. Nariman, then it was not justifiable and not drawn in 'good faith'. That the altered indent was sent to the Home manufacturers by the Superintending Engineer had also been proved to be untrue. That the indent was altered with an ulterior motive was equally false and unjustifiable.

EFFECT OF STATEMENT.

Further Mr. Velinker submitted that the impression in the mind of any reader, who read this statement would be that the superior of the Executive Engineer, namely, the Superintending Engineer, knowing that 7/8 in. bars were not required and that 5/8 in. were required, altered the 5 into 7 and sent the indent to a home manufacturer who presumably was in league with him in order that the manufacturer might benefit and incidentally he himself (S. E.) might derive a secret commission from him.

Construed in that light, it was an imputation against the complainant which lowered his character in respect of his calling as well as his moral character. The points that arose for determination on this charge were 1. Did Mr. Nariman make or publish these imputations concerning Mr. Harvey? 2. Are they defamatory and if so are they protected under any of the exceptions under the relevant section?

CHANGE IN FIRST THEORY.

Arguing on these two issues, Mr. Velinker contended, that it was perfectly clear that Mr. Nariman believed when he made these statements and he maintained even now as did Mr. Harvey himself on April 9, 1927, when he discovered certain documents, that 5/8 in. bars were required but 7/8 in. were ordered. It was equally true that since discovery of those documents Mr. Harvey had very candidly stated that there was ground or reason to change his first theory. From the point of view of the prosecution the gravamen of the charge was that Mr. Harvey deliberately altered the figure 5 into 7 knowing that 7/8 in. bars were not required with the ulterior motive that he might draw an illicit gain. In other words, the sting in the charge was that Mr. Harvey who drew a large salary and held high office instead of looking after the interests of the Department, looked after the interests of his own friends, the home manufacturers with a view to line his own purse.

NECESSITIES OF HEAVY PROGRAMME.

The programme of the Housing District for a period of 8 years from 1921-1929, originally consisted of the constructions of the 625 chawls or 50,000 tenements. This was both an intensive and a vast programme and the one objective of the officers who were concerned with the scheme, including Mr. Harvey, was to get on with the work and finish it as early as possible. To carry this programme through, successfully, a good deal of prudence and forethought were required and it was necessary often to place large forward orders for bars and other materials in order that sufficient stock might be at hand in time of contingencies. Though Mr. Harvey did not get any technical sanction for such order he had obtained the general administrative sanction for the whole scheme of 50,000 tenements. Out of this programme of 625 chawls only 207 chawls were completed and the balance of the programme was curtailed. Mr. Velinker declared that if the whole programme had been carried out, not only all the bars that had been ordered would have been used up but an additional 12 or 14 thousand tons of bars would have been required.

NATURE OF HAMID'S REPLIES.

Proceeding counsel said that evidence for the prosecution was led on the basis that $5/8$ in. was the correct size and that on account of somebody's mistake $7/8$ in. got to be put in. Mr. Harvey was not still in a position to say whether $5/8$ in. or $7/8$ in. or both were being used.

Magistrate: But against your uncertain statement there is the positive statement on oath of Mr. Hamid that $5/8$ in. bars were used. Why should I not accept it?

Mr. Velinker: From his behaviour in the witness box, you will see how cautious Mr. Hamid was and what sort of non-committal answers he gave. He did not want to be bound down in any way and his whole point in the cross-examination was not to admit anything that would reflect carelessness, negligence, inefficiency ect., on himself. In other words he did not want to say one word which would implicate him and bring to light his incompetency, inefficiency, negligence or general unfitness for the job he held.

NON-COMMITTAL ANSWERS.

And this man who had been put down as a witness for the prosecution, continued Mr. Velinker, had not denied having written the slip containing the size $7/8$ in. by 19 ft. to Mr. Harvey.

He had only given a non-committal answer that he did not remember anything. And that slip had unfortunately disappeared from Mr. Harvey's files. But still another bit of evidence was in the possession of the prosecution to show that it was Mr. Hamid who gave the size as $7/8$ in. to Mr. Harvey. And Mr. Harvey's evidence on this point had been corroborated in the main by Mr. Palnitkar, the Office Superintendent of Mr. Harvey. The defence had argued that such a slip did not exist at all. And it was for the court to decide whether according to the sworn testimony of Mr. Harvey and other witnesses, such a slip existed or not and Mr. Velinker hoped that the Court would not come to the unfortunate conclusion that the slip did not exist and consequently Mr. Harvey had perjured himself in the witness-box.

MR. NARIMAN'S LANGUAGE.

Mr. Velinker continuing, argued that the language used by Mr. Nariman implied that Mr. Harvey dishonestly scored out the figure 5 and inserted 7 in its place. He had adhered to such a gross libel which was bound to ruin the career of an administrative officer. The mistake should have been admitted and an apology tendered and Mr. Nariman's failure to do so was such that his defence of good faith had received a rude shock. In October 1924 no dishonesty or corruption was imputed to the Superintending Engineer and Mr. Nariman's aim and object then was to find out whether any action was taken against that officer for intentionally ordering out unserviceable goods. The imputation of corruption and dishonesty was a later development.

"LACK OF GOOD FAITH."

PROSECUTION COUNSEL'S CONTENTION.

DISAPPEARANCE OF DOCUMENTS EXPLAINED.

Counsel was willing to concede without hesitation that on the facts, Mr. Nariman was entitled to come to the conclusion that $7/8$ in. bars were wrongly ordered. His information at the time was that $5/8$ in. bars were being used for piles at the time and hence his conclusion that $7/8$ in. bars were wrongly ordered was perfectly correct. But bars could be wrongly ordered for various reasons, owing to incompetency, carelessness, negligence or error of judgment or even ulterior corrupt motives on the part of the man who ordered it. These were the four possibilities amongst others which would suggest themselves to a man who applied his mind to the study

of the question. Mr. Nariman leaving aside all the first three possibilities chose the last one and in doing so, Counsel submitted Mr. Nariman showed lack of good faith on his part.

THE ALTERED THEORY.

Continuing Counsel said that it was in evidence that in December 1921 3/4 in. bars were being used for piles and in September 1922 5/8 in. bars were used. Later on Mr. Harvey, from some documents he discovered, inferred that 7/8 in. bars were being used and that accounted for his altered theory. That was an inference on the part of Mr. Harvey which the court was bound to accept.

The three important documents namely, the pile register for the relevant period, Mr. Palnitkar's draft of the letter to Mr. Sykes asking him to make the addition in the consolidated indent, and Mr. Hamid's slip to Harvey, which would have revealed this mystery about these bars had disappeared. Mr. Nariman's contention was that the prosecution had deliberately suppressed these documents. Counsel submitted that it could not be so, as it would not serve any purpose to the prosecution to suppress them.

DISAPPEARANCE OF DOCUMENTS.

Explaining the prosecution theory about the disappearance of these documents, Mr. Velinkar submitted that it appeared that Hamid had originally included in his indent his requirement of 5/8 in. bars for piles. But when Mr. Harvey pointed out to him that he had omitted bars for piles, he at once agreed and by sending a subsequent slip included 7/8 in. bars. But later on, to his great disgust he found out that he had already included 5/8 in bars for piles and that the 7/8 in. bars were not required by him. Finding himself faced with this situation, Mr. Velinkar suggested, that Mr. Hamid instead of going straight to Mr. Harvey and admitting the whole truth, decided to quietly wait and see the developments and allowed time to pass. And later on, when an opportunity presented itself, he removed most of the documents which would lay the fault at his door, and most probably when he was acting as Superintendent Engineer in Mr. Harvey's absence. That was the only way in which the disappearance of the documents could be explained, and the defence story that Mr. Harvey deliberately suppressed them was not correct.

GROUPING OF OFFICERS.

Relating to the suggestion and insinuation made by Mr. Nariman in regard to the "grouping of officers" in B. D. D. counsel submitted that Mr. Harvey did not apply for the job of Superintendent Engineer.

Counsel repudiated the suggestion that Mr. Harvey and Mehta could not pull together.

Counsel here added "And I am afraid Mr. Mehta has been the evil genius of Mr. Nariman.

Nariman : There is no evidence to show that.

Counsel : That is my suggestion.

Nariman : That is another theory.

Mr. Velinkar continuing, argued that Mr. Nariman had built up the suggestion of favouritism in regard to the contracts given to Gannon and Dunkerley and the sanitary fittings connected with the Adam's patent, on slender materials. Mr. Harvey had sworn that the local materials were not satisfactory and had repelled Mr. Nariman's suggestion that the sanitary District was especially created to facilitate Gannon and Company as being libellous.

On the question of good faith, counsel submitted, the points to be borne in mind, were that Sir Cowasji Jehangir had requested Mr. Nariman in March 1925 to give him even privately the name of one officer who took commissions so that action might be taken. Secondly an opportunity was offered to Mr. Nariman to prove his allegations through a judicial inquiry. This he declined as being abhorrant to his sense of self-respect. It was not within the province of the court to pronounce on the action of Government, as to whether the inquiry offered by Government to Nariman was proper or not. The outstanding fact so far as Mr. Nariman's conduct was concerned, was that he put considerations of self above those of the public for whom he was now crying so loud, "and declined to come out into the open."

Mr. Nariman: You mean the department to come out into the open ?

Mr. Velinkar: No; you declined to come out.

The inference which counsel drew from this was that it was probably due to the fact that at the time Mr. Nariman had not in his possession sufficient materials to substantiate his insinuations. Knowing full well that the scope of the Back Bay Inquiry Committee was limited to reclamation alone Mr. Nariman deliberately and with an ulterior object introduced the question of mild steel bars, though informed by the General Member that the bars were for Housing scheme and not for reclamation. Then why did he try to reopen it ? asked Counsel.

Magistrate: Why did the Committee allow it ?

Counsel : I am not in a position to state that. What I can say is this : Mr. Nariman distinctly knew in October 1924 that the bars had nothing to do with reclamation.

A "WICKED SUGGESTION."

Mr. Velinkar said that so far back as October 1924, Mr. Harvey took upon himself the responsibility for the mistake in the indent for mild steel bars. Counsel submitted it was a wicked suggestion made by Mr. Nariman in the court that Mr. Harvey wanted to shift the responsibility from his own shoulders to the shoulders of his "Indian" subordinates. That suggestion of racial bias was entirely unworthy of Mr. Nariman and was as mean as it was reprehensive.

ALLEGED FAVOURITISM.

Regarding the alleged favouritism shown to the B. C. C. Counsel submitted it was all based on straw. Major Parcelle was not in the service of the B. D. D. at all as suggested by Mr. Nariman. He was working with the Military Land Scheme and had much experience in R. C. C. works and in order to better his prospects he resigned his job and joined the B. C. C. as a partner. Therefore, Mr. Nariman's inference that Major Parcelle resigned his job because somebody told him that he would get the contract for 80 chawls from the B. D. D. was not correct. Regarding the disbursements of large sums of money found in Major Parcelle's Bank account, Mr. Velinkar submitted that Marker's evidence was quite clear on the point. The amounts were paid to Mr. Marker as share of Major Parcelle's profits and not as illegal gratification to officers of the B. D. D. as Mr. Nariman insinuated.

"NOTHING BUT A CLERICAL MISTAKE"

ALLEGED OVERPAYMENT TO F. C. C.

MR. VELINKAR CHALLENGES.

MR. NARIMAN'S BONA FIDES.

Mr. Velinkar, referred to the transactions of the B. D. D. with B. C. C. and F. C. C. He contended that no fair-minded man would see any dishonesty in them unless he was deeply prejudiced against the department.

Examining the documents that were put in, in connection with F. C. C. contracts, Counsel said that Mr. Harvey was on leave when Mr. Cervello resigned from the Improvement Trust in June 1923. The original contract with F. C. C. was for 16 chawls but on account of the blasting of a hill near the site, the programme had to be reduced to 12 chawls. The F. C. C. on account of this curtailment put in a compensation claim for Rs 56,000 out of which Mr. Harvey recommended Rs. 36,000. The Deputy Financial Adviser to Government objected to this recommendation on the ground that the contract was on K2 form. Harvey had said in his evidence that the Financial Adviser lost sight of the fact that the original contract was for 16 chawls. And the amount of Rs. 36,000 was paid to the F. C. C. after considerable correspondence in March 1926. In reply as to why the contract was given to F. C. C. Counsel said it was common knowledge that Mr. Cervello was a gentleman having vast experience in construction work, and his connection with the F. C. C. undoubtedly actuated the Department to give the contract to them.

“NOTHING BUT A CLERICAL MISTAKE.”

Then referring to the over payment of Rs. 14,000 to the F.C.C. for painting of windows, of which Counsel said Mr. Nariman was making so much, the whole thing was nothing but a clerical mistake. That it was a 'bona fide' mistake was clear from the fact that though this bill went through the hands of four clerks, it was not discovered. This was an exceedingly eloquent instance of how mistakes would creep in even in the best regulated departments. When the mistake was discovered, Mr. Cervello's attention was drawn to it and the excess amount was made good to Government. Counsel submitted that this mistake could not have any bearing at all on the questions or points of determination in this case whatever effect this so-called successful discovery of the mistake might create on the reading public.

As to why Mr. Harvey wrote a letter to the F.C.C. asking them to submit their claim for compensation, Counsel said Mr. Harvey had made it clear in his evidence that his object was to make them commit to something in order to prevent them from putting in a very exaggerated claim later on. Counsel could see nothing in these things except an honest and straightforward way of dealing with a claim that had been pending since 1923. Curiously enough by a mere accident Mr. Harvey and Cervello sailed together and on this flimsy ground, counsel, added, Mr. Nariman had based all his allegations of favouritism and corruption.

SALEBHOY'S TENDERS.

In regard to the tender of Salebhoy Tyebji for the supply of 30,000 bars, Counsel submitted that six tenders were received in this connection. The order was placed owing to urgency and the fact that the firm was fined Rs. 6,000 for late delivery was sufficient to show that there could not have been any sort of collusion between the Department and Salebhoy's and especially between Mr. Harvey and the firm. The most, one could say about the tender was that it was not good judgment to place the order locally before telegraphing to the High Commissioner, enquiring the prevailing rates. To read into this contract dishonesty or corruption or a desire to earn secret commission, Counsel submitted, clearly proved lack of good faith on the part of the person who did so.

Relating to the entries found in Gaya and Company's books, which Mr. Nariman construed as showing 12½ per cent. bribes paid to certain officers, Counsel said Mr. Gaya himself had not come forward to give evidence on that point. If as alleged the bribes were paid, there was nothing to show that Harvey was in any way concerned in it and whether Mr. Hamid or Mr. Guzdar received the bribe this was not the purpose of the case to unearth. The only relevant point was whether Mr. Nariman had this information at the time he made the sweeping allegations against the Department? Counsel submitted he had not.

Then Counsel said that some firms in this country kept two sets of account books and who could say that the books of Gaya and Co., produced by Mr. Nariman were the duplicate ones or not?

Mr. Nariman: I don't know what the learned counsel suggests. If he thinks that some more books that are with the solicitors are same as produced in the Court he is very much mistaken. They refer to a different period.

SALE OF SURPLUS BARS.

Mr. Velinker repudiated the suggestions that Mr. Harvey was in league with Mr. Hamid and Mr. Gazdar in receiving secret commissions. The fact that the final claim of Rs. 2 lakhs passed by Mr. Hamid was mercilessly cut down to Rs. 35,000 and the evidence of Jal J. Chichgar, strongly refuted the insinuation. Coming then to the sale of surplus bars to Maneckchand Jivraj, counsel submitted Mr. Nariman's suggestion was that it was brought about by a payment of secret commission of Rs. 5,000 to Mr. Caldwell but this did not involve Mr. Harvey's name in

that transaction. Again from Mr. Bell's evidence it was clear that Mr. Harvey did not know what the state of affairs regarding the whole transaction was and it was Mr. Bell who accepted the offer. Mr. Nariman tried to read into this transaction some corrupt understanding between Mr. Harvey and Maneckchand Jivraj, but the latter in his evidence did not support that theory. Counsel submitted that the court should not at all concern with this point as it was not trying Mr. Caldwell. Counsel declared under the circumstances Mr. Nariman had absolutely no justification for making a sweeping suggestion as sweeping and as universal as that contained in the first charge without indicating that he wanted to exclude even a single high officer from it.

In regard to the transactions between the B. D. D. and the Petrol Company, Counsel submitted whatever Mr. Hamid or Guzder had to do with them, Mr. Harvey was entirely unconcerned in that affair. It might be remarked in fairness to the defence, that this matter if it was within the knowledge of Mr. Nariman at the time he gave evidence before the Committee, would afford some ground, and might be taken into consideration in his favour on the question of good faith so far as Hamid and Guzder were concerned. But there was no justification to hold that Mr. Harvey had anything to do with these matters and Counsel submitted that the Court should honourably acquit Mr. Harvey on these points so that his honour might be vindicated and his character which had been defamed might be rehabilitated.

Mr. Velinker submitted, that Mr. Trivedi was a sort of a partisan witness of rather doubtful veracity. Being a confirmed critic of the B. D. D. he believed anything that was poured in his ears. He had admitted he had nothing at all to do directly with the Department and as for his statement in regard to what his brother told him in connection with the conversation with Maneckchand Jivraj, Counsel held such evidence was inadmissible and, therefore asked the Court not to take it into account.

ALLEGATIONS AGAINST DEFENCE WITNESS.

Coming to Joseph Brooks, Counsel submitted that no language which he could use would be too strong in commenting upon his evidence. He was a most disreputable person, a discharged employee of the Department whose one object was to seek vendetta. He was impecunious and an unrepentant gambler. He misappropriated Government money from the sale of tins, though afterwards he made it good under threat of prosecution. He admitted that he took bribes and was not ashamed to do so. His evidence, therefore, that Mr. Anderson took coal from the Department without paying for it was utterly untrue and should not be believed.

CHICHGAR'S EVIDENCE.

As for the evidence of Jal J. Chichgar, counsel submitted he was an insolvent impecunious and at present unemployed person. His demeanour in the witness box showed at times that he was over zealous towards Mr. Nariman. His evidence was contradictory at every step.

Maneckchand Jivraj was thrown overboard by Mr. Nariman, whose witness he was and was allowed to be cross-examined by him. The real explanation of the entry of Rs. 5,000 found in his books seemed still to be shrouded in mystery. But this had nothing to do so far as the issues in this case were concerned.

THE SUMMING UP.

Finally, summing up his remarks, counsel said that he had no doubt that His Worship in considering the arguments that had been urged by both sides would bestow the greatest care on his part. If on the one hand the interest of public citizens like Mr. Nariman regarding public matters had to be protected, the interests of public servants equally required to be guarded. For a public citizen like Mr. Nariman the press was open for vindicating his honour, but a public servant was without that advantage. If in the heat of the moment, Mr. Nariman carelessly made use of language which was far more reaching in its interpretation, he should not complain if a public servant who felt aggrieved by such language came to a Court of Law to get his honour vindicated. Counsel felt sure that His Worship would not allow any consideration other than the consideration of strict justice according to law to prevail on him in the disposal of the case.

After expressing his thanks to His Worship for the great attention and courtesy shown to all those concerned in the case Mr. Velinker concluded his address.



PART III.
JUDGMENT

PART III.

Thomas Harvey *Complainant.*

vs.

K. F. Nariman *Accused.*

Charge :—Defamation S. 500 I. P. Code.

JUDGMENT.

ACCUSED PLEADS NOT GUILTY.

The facts giving rise to the present case are these :—

In the year 1920, Lord Lloyd (then Sir George Lloyd) announced the decision of the Government of Bombay to reclaim a portion of the Back Bay and created a department, known as the Bombay Development Department to carry out this scheme and any other reclamation scheme which may be found necessary in or near Bombay.

The idea of reclamation of a portion of Bombay had been exercising the mind of the Public and the Government of Bombay for a considerable number of years. But it was not till after the War, when owing to a rise in the price of all commodities there followed a boom in land prices and rents rose so high, that there was a general outcry against the land owners and an insistent demand arose for more land and cheaper houses particularly for the Industrial population of Bombay.

Government deemed it a favourable opportunity of launching this scheme. The object was to reclaim a portion of the Back Bay and to erect chawls in and around Bombay to alleviate the distress of the poorer class of population.

The latter scheme known as the Industrial Housing Scheme provided for the building or erection of 625 chawls, consisting of about 50,000 tenements and was spread over a period of 8 years.

It was originally contemplated, that of the 50,000 tenements to be constructed, about 35,000 could be built on land in possession of the Improvement Trust at Worli, Naigaum, De Lisle Road or easily obtainable.

It was a vast and intensive programme and if it was to alleviate the distress caused by the phenomenal rise in rents it had to be executed expeditiously and with as little delay as possible. Government, therefore, deemed it advisable to create a special Department under a Special Act and it was made one of the reserved subjects.

The scheme did not meet with universal support and was bitterly criticised by some. Among them was the accused Mr. Nariman.

He is a B. A., LL. B., and a pleader practising in Bombay. He is an M. L. C. and belongs to the Swaraj Party but at the time of the formation of the Development Department he was not in the Council. He was a member of the Municipal Corporation and as such lost no opportunity of criticising the scheme whenever the subject came before the Corporation and he also made contributions in the Press. He kept himself in touch with certain members of the Council and agitated in the Council through his friends, particularly by Mr. G. B. Trivedi for the abolition of the Directorate or to make it a transferred subject and sought to expose certain alleged grievances which came to his notice. Mr. Trivedi was then a member of the Council and a dealer in Hardware and doing Import and Export business. Mr. Trivedi would discuss matters with Mr. Nariman and others and try to elicit certain information from the Government by putting certain questions in the Council, regarding the working, management and administration of the Development Directorate.

In 1923 Mr. Nariman was elected a member of the Council and he did not miss any opportunity of attacking the Directorate. He moved various Resolutions for the abolition of the Directorate as a Reserved subject and the appointment of a Committee to inquire into the administration and working of the D. D. and made several charges of "serious maladministration and wasting of public funds."

In the October Session of 1924 Mr. Nariman put certain questions with regard to the indent of certain bars or rods used for foundation piles for the construction of chawls.

Sir Cowasji Jehangir, the General Member gave certain replies to those questions. Mr. Nariman, however, was not satisfied with the replies given and in a speech made in the Council on 3rd March 1925 he referred to certain "ugly rumours in the City and in the whole of the Presidency that the higher staff of officers had been receiving secret commissions from the manufacturers."

He also moved a Resolution for the appointment of a Committee consisting of 12 non-official and elected members to inquire into the whole administration and working of the D. D. with certain powers.

The Resolution was opposed by the Government but it was carried by 39 against 35.

The Government did not appoint a Committee in terms of this Resolution but invited Mr. Nariman and 3 others to join an Advisory Committee presided by a high Judicial Officer. Government

intimated that they were prepared to extend to Mr. Nariman "the same facilities as are given to Government servants, who may be *incriminated*, viz. permission to be present when evidence is recorded, to cross examine witnesses, and to see documents which are admitted as exhibits by the inquiring officer."

This offer was rejected by Mr. Nariman as he could not understand "what Government meant by proposing to reduce his position to that of an *accused person* when all along he had been demanding a full investigation into the charges of corruption and fraud and general maladministration of public funds". He made certain counter proposals but they were not accepted by Government.

Agitation continued to be carried on, both in and outside the Council, and the Reclamation Scheme far from turning out a huge success, as anticipated evoked strongest criticism and was regarded by many as a public disaster from a financial point of view.

There was a great public clamour for an inquiry as to the advisability of going on with the scheme. On 29th July 1926 the Government of India in exercise of the powers of superintendence direction and control and with the approval of the Secretary of State appointed a Committee consisting of Sir Girmwood Mears, Chief Justice, Allahabad, and 3 others, firstly to enquire into the history of the inception and conduct of the Back Bay Reclamation Scheme ; and secondly to make recommendations as regards future operations. (Vide Ext. Z/77).

The Committee commenced its sittings in Bombay in August 1926 and invited the Public to give evidence before it.

The Secretary of the Committee wrote to Mr. Nariman requesting him to give evidence before the Committee and requested him to furnish the "names of officers of the D. D. who received secret commissions and short particulars of contracts and the names of the manufacturers giving such commissions, the amount so given and any other details" in his possession. What the Committee wanted was the *information upon which he based his speech of March 3rd 1925* in the Legislative Council and any further information of a like nature which he might have obtained since that date (Vide Ext. 30).

In response to this invitation Mr. Nariman submitted a written statement treating the subject under three heads *viz* the constitutional aspect, the financial and the general, including administration and management.

In his written statement Mr. Nariman dealt with all the activities of the Development Directorate and did not confine himself to the activities of that body relating only to the Reclamation of the Back Bay.

The reason for doing so is alleged by Mr. Nariman to be that he got a Resolution passed by the Corporation requesting the Government of India to enlarge the terms of the scope of the Inquiry. No reply was received by the Corporation to their above request upto the time Mr. Nariman's evidence was recorded by the Committee. As a matter of fact the Government of India did not deem it fit to enlarge the scope of the inquiry.

Accordingly certain passages from the written statement of Mr. Nariman were omitted on the ground that they related to matters outside the Committee's terms of reference. This appears from the note made at page 379 of Ext. C. and of Nariman's written statement page 385 lines 39 to 41.

This also appears from the questions put to Mr. Nariman by Sir M. Visweswaraiya.

Q :—You refer to “criticism on internal administration or rather on maladministration and the internal working of the scheme ?

A :—Yes.

Q :—Are your contentions confined to the Back Bay Scheme ?

A :—That would be covered by the 3 instances I have given. I have referred to a number of others but as they do not come within the scope of the Committee they may be left out.

In the course of his written statement Mr. Nariman quoted a passage from his speech made in the Council in March 1925 where he said that:—

“Without any reserve, with all the responsibility that I can command I openly make a charge that there has been a serious mal-administration of public funds and there has been a serious wasting of public funds. There have been instances which I can go to the length of calling frauds and I make this charge on behalf of the public and on behalf of investors of Bombay who have invested nearly 20 crores in this work. I say that if Government shirk an inquiry, suspicion in the public minds will be confirmed. I further stated I only want to know what is being done of the Public funds: I want to know whether these funds are honestly and legitimately applied or whether they are mis-applied. I may tell the Government quite frankly and openly that there are ugly rumours in the city and the whole of the Presidency that higher staff and officers have been receiving secret commissions from manufacturers and this is the reason why in this instance the department has incurred a loss of Rs. 3 lakhs. That is the reason why stores are indented in large quantities than are necessary and stores that are not required are also ordered out. If you go to the Surplus Depot, stores worth Rs. 6 lakhs or more are lying undis-

posed of. The last statement was re-echoing the ugly rumours that were prevalent throughout the city. As stated above if Government had conceded the public demand and started an immediate and prompt inquiry, there and then perhaps most sensational revelations might have been disclosed. But even at this stage I can place before the Committee all the materials that I have been able to collect not with a view or desire to cast any aspersion against any individuals of the department, but primarily with a view to enable an independent investigation to find out the truth, and if sufficient materials are disclosed, to take such action as the Committee thinks proper. All along my appeal to Government has always been for an investigation of certain allegations to find out the truth and in connection with this, as my statements in the Council and in public refer to the activities of the whole Development Directorate and not only to the Reclamation alone, the Committee will permit me to place all the materials before it in order to enable it to judge for itself whether I was justified or not in demanding a public investigation."

Mr. Nariman then dwelt upon certain alleged scandals and stated that "similar scandals existed with regard to purchase of stores, and I will give some of the instances that have come to my knowledge. In the course of proceedings, the Committee has already elicited a good deal of information on this subject which supports my allegations made in the Council that superfluous stores and plants costing lakhs of rupees were ordered out and which were not required and not capable of being of use, such as huge and costly navies, cranes etc.

"In one instance, an Executive Engineer had prepared an indent to be forwarded to Manufacturers at Home for a large quantity of mild steel bars for concrete piles for the reclamation work and the size mentioned in the original indent by the Executive Engineer was 5/8." This figure was subsequently altered after the indent was prepared but before it was despatched by the Superintending Engineer into 7/8." The quantity required was about 1,200 tons, costing nearly three lakhs of rupees. The indent thus altered was sent by the Superintending Engineer to the Home firm and the bars arrived of the size and dimensions of 7/8" which were not required for the works. They were deposited in Matunga Surplus Depot and a fresh indent had to be sent with correct specifications and fresh consignment arrived, and the amount of nearly Rs. 3 lakhs of the first consignment was purely wasted. When a question was raised about it in the Council, in the course of debate, the Development Director admitted it but stated that the said alteration was due to a trifling error. No effort was made to explain how such "trifling error" could have occurred, particularly when the indent was originally correctly prepared by one

Engineer and deliberately altered by the superior and no explanation was forthcoming. (Vide Council Report dated 24th October 1924 page 86.)

“Further, in order to pacify the Council and to show that this trifling error had not cost any loss, the Director stated that there was no loss to Government and he gave the Council to understand that they were utilised in some other works and had caused actually a saving. As I knew that these bars which were recently indented were still lying in the Matunga Depot I caused enquiries to be made some months after the statement was made and sent an intending purchaser to make enquiries from the Matunga Depot, as the result of which, the Executive Engineer, Housing District, wrote back offering these and other steel bars for sale and inviting the purchaser to the Depot to have an inspection of the same. At the same time, the Stores Department also supplied the said purchaser with a list of the bars available for sale and in which list were also included some bars in question of 7/8". This letter of the Executive Engineer inviting the purchaser for an inspection is dated Matunga 26th January 1925. Further comments on such an attitude are needless, and I leave it to the Committee to draw its own conclusions.”

Mr. Nariman was examined on the same day. The following are the Questions put and the answers given by Mr. Nariman.

Q :—Are your contentions confined to the Back Bay Scheme?

A :—That would be covered by the 3 instances I have given. I have referred to a number of others but as they do not come within the scope of the committee they may be left out.

Q :—You cannot escape from what you have put down ?

A :—I do not wish to escape.

Q :—What are the three instances ?

A :—First is about favouring a contractor, Balkison Seth, second is about mild steel bars when the indent was changed, and the third about the cement contract.

Q :—About No. 1, do you wish to add anything to what you have already stated in your written statement ?

A :—I have nothing more to add to that statement and I have drawn my conclusions on that. The second is about the alteration in the indent which was also admitted in the Council.

Sir Frederick Hopkinson :—I have read your document and perhaps all it implies is that a mistake was made by somebody in ordering 5/8" bars instead of 7/8". What would you say ?

A :—I cannot take it as mistake, I take it as unnecessary superfluous order which was not required.

Q :—What do you suggest it was ordered for ?

A :—They were ordered to be dumped in Matunga Stores Depot. Five eighths bars were required but 5 was changed into 7 by the Superintending Engineer and 7/8" bars arrived which were not of course required and were dumped into the depot and a fresh indent was sent for 5/8" bars.

Q :—But I suggest that a mistake was made ?

A :—I do not agree that a mistake was made. It was not made in the original preparation of the indent but in a properly prepared indent figures were altered subsequently.

Q :—But even that may be a mistake because it is not a difficult thing to write 7/8 instead of 5/8 and the Superintending Engineer had nothing to do with the indent ?

A :—The Executive Engineer prepared it and it was submitted to the Superintending Engineer who altered it.

Q :—Again that might have been a mistake ? Do not you make mistakes ? Have you never made a mistake ?

A :—Not of this description which is unaccountable which has cost so much, and I shall never make a mistake of this kind.

Q :—You do not say it was intentional ?

A :—I say it is intentional. From the circumstances I can say that it was not a mistake.

Q :—We wish to get at the bottom and would like to know why he should make such an intentional mistake ?

A :—These surplus stores were ordered in order that certain manufacturers might make some earning out of this order. As far as I can see, there is no other explanation, otherwise these stores would not have been ordered to be used as scrap iron. When I asked a question in Council they said there was no loss, those bars were either disposed of or used otherwise. In order to verify the statement I found a bogus purchaser who wrote a letter to the Matunga Depot officer. The Executive Engineer in reply wrote on the 25th January 1925 "In reply to your letter of the 24th inst. I write to inform you that your representative can obtain information on any week days from my Asst. Engineer of Stores whose office is also at Matunga. The mild steel bars can also be inspected at Matunga." He also received a list of mild steel bars available for sale to the value of 4½ lakhs and amongst it were included these bars which were ordered by mistake and were supposed to have been used by the Department and no loss was caused.

Mr. Billimoria:—You have stated in your statement that some of the mild steel bars were indented for by the Executive Engineer to which year you refer?

A:—This was in 1921.

Sir Frederick Hopkinson :—Perhaps this might be for Housing Contracts?

A:—Well, Sir, it was meant for housing contracts or for the Development Directorate, but the instance is there.

Q:—You say that this was altered, by whom was it altered? By the Superintending Engineer?

A:—That is for the department to answer.

Sir M. Visweswaraya :—Will you please give the date of that letter?

A:—The letter is dated 26th January 1925.

Mr. Billimoria :—How do you know that he altered the indent? It might be a slight error?

A:—My charge in the Council was that an indent prepared by an Executive Engineer to be forwarded to Manufacturers at Home for a large quantity of mild steel bars for concrete piles for the reclamation work and size mentioned in the original indent by the Executive Engineer was 5/8" which was subsequently altered after the indent was prepared but before it was despatched by the Superintending Engineer into 7/8". The quantity required was about 1200 tons costing nearly three lakhs of rupees. The altered indent was sent to the Home manufacturers by the Superintending Engineer and the bars arrived of the size and dimensions of 7/8" which were totally useless for the work.

Q:—But there can't be any dishonest motive, it might be a slight error of judgment?

A:—Whatever that might be, Sir, but it's for the Committee to decide whether this was a waste of the public funds or not.

Q:—By whom was the indent altered?

A:—The Superintending Engineer.

Sir Frederick Hopkinson:—Have you seen that altered indent?

A:—How can we? We were not shown that.

Mr. Billimoria:—Do you suggest any ulterior motive?

A:—Yes.

Q:—And you are not in a position to give the name of the gentleman?

A:—I have mentioned the name of the Superintending Engineer.

Q:—Was he alone or several others were associated with him, or any particular party?

A:—Well, that is very easy for the Committee to find out. If you will refer to the Development Department they will tell you.

Sir M. Viswesvaraya:—Can you give us any idea of the magnitude of loss caused by this transaction?

A:—This one transaction alone caused according to the information given to us a loss of about 2 lakhs as the original indent was based for 2,50,000 which we came to know only in January 1925.

Q:—This is said to be due to a clerical error?

A:—Whether it is due to error or at anybody's intention, but the public moneys were wasted and it is for you to decide.

Mr. Billimoria:—Perhaps they would not have required this afterwards?

A:—Well, it is for them to explain.

The charges against Mr. Nariman are with reference to the above statements made by him both in his written statement and during the course of his oral evidence.

The charges formulated against him are as follows:—

That before the Back Bay Enquiry Committee amongst other statements you made the following statements.

1. "I may tell Government quite frankly and openly that there are ugly rumours in the city and the whole of the Presidency that higher staff and officers have been receiving secret commissions from manufacturers and this is the reason why in this instance the Department has incurred a loss of 3 lacs of rupees. That is the reason why stores are indented in large quantities than are necessary and stores that are not required are also ordered out.

2. In one instance an Executive Engineer had prepared an indent to be forwarded to manufacturers at Home for a large quantity of mild steel bars for concrete piles for the reclamation work and the size mentioned in the original indent by the Executive Engineer was 5/8". This figure was subsequently altered after the indent was prepared but before it was despatched by the Superintending Engineer into 7/8". The quantity required was about 1200 tons costing nearly three lacs of rupees. The indent thus altered was sent by the Superintending Engineer to the Home Firm and the bars arrived of the size and dimensions of 7/8" which were not required for the work. They were deposited in Matunga Surplus Depot and a fresh indent had to be sent with correct specifications

and fresh consignment arrived and the amount of nearly 3 lacs of the first consignment was purely wasted. When a question was raised about it in the Council in the course of a debate the Development Director admitted it but stated that the said alteration was due to a trifling error. No effort was made to explain how such a "trifling error" could have occurred particularly when the indent was originally correctly prepared by the Engineer and deliberately altered by the superior and no explanation was forthcoming.

3. Five-eighths bars were required but 5 was changed into 7 by the Superintending Engineer.

4. I do not agree that a mistake was made. It was not made in the original preparation of the indent but in a properly prepared indent, figures are altered subsequently.

5. I say it is intentional. From the circumstances I can say it was not a mistake.

6. These surplus stores were ordered in order that certain manufacturers might make some earning out of this order. As far as I can see there is no other explanation. Otherwise these stores would not have been ordered to be used as scrap iron.

7. The altered indent was sent to the Home Manufacturers by the Superintending Engineer.

8. The indent was altered by the Superintending Engineer.

9. Question by Mr. Billimoria :—Do you suggest any ulterior motive?

A :—Yes.

and you thereby committed an offence under Section 500 Indian Penal Code and within my cognizance.

The facts leading to the indent of these 7/8" bars are as follows :—

The Complainant Mr. Harvey was the Superintending Engineer of the Housing Scheme. The original programme provided for the building of 625 chawls at Naigaon, DeLisle Rd., Worli, Matunga, Dharavi Flats at Haines Road and at Sewri Wadala.

In the beginning of 1921/1922 the only lands available for building were the sites at Worli, Naigaon and DeLisle Road.

There were two Project Divisions Housing Scheme. Project Division I, comprised the chawls to be erected at De Lisle Road and Naigaon. The Worli chawls came under Project Division II.

One Mr. Mehta was the Executive Engineer in charge of Project Division I, while Mr. Hamid was the Executive Engineer in charge of Project Division No. II.

As the financial year commenced from April the complainant wrote a letter on 10/2/22 to Hamid and Mehta asking them to

submit a list showing what quantities of steel of all diameters and lengths they had in stock and what additional quantities of all diameters and length would be required month by month for this work during the financial year 1922-23. They were asked to base the figures on a construction programme of 25 chawls per district. (Vide Ex. D.) Hamid sent 2 lists Ext. E/1. These required alterations and were sent back to Hamid to be revised. Hamid sent in a revised statement (Ext. F/1). This was on 23/5/22, giving particulars of quantities that were required urgently and which were to be ordered locally and those which were to be ordered through the High Commissioner. Mehta did not send in his requirements till May 1922.

About the end of June the design for all chawls, including Nai-gaon, DeLisle Road and Worli, was altered, and on 1st July a memo was sent by the complainant for revised statements. Reminders were sent to both the Executive Engineers on 10th July. Hamid sent in his requirements as per Ext. I/1 on the 15th July. Mehta sent in his statements as per Ext. K/1 and L/1 on 24th and 31st July 1922.

The complainant scrutinized these indents and made certain alterations. He then ordered a consolidated statement to be prepared of Ext. I/1, K/1 and L/1 and sent it to Sykes, the Superintending Engineer IV Division. Ext. M/1 is that consolidated statement.

Sykes was the Superintending Engineer in charge of Materials Division and it was his duty to order out the goods through the High Commissioner and to purchase them locally if urgently required. Ext. M/1 bears the date 5th August '22.

On 8th August the complainant wrote to Sykes requesting him to make certain additions to the list sent to him. In that letter he writes "I have the honour to inform you that in addition to the number of bars as shown in the list sent to you with the letter under reference I shall require for piles at Worli, 30,000, 7/8" X 19' rods upto 31st December 1922 and 50,000 rods of the same dimensions between 31st December 1922 and 1st October 1923 weighing approximately 520.18 and 866.96 tons respectively." Ext. P/1 is that letter. It is signed by the complainant.

S. E. IV on receiving this letter made an endorsement on it as follows "Add these to the 2 amounts".

Accordingly 30,000 and 50,000 bars of 7/8" X 19' were added by S. E. IV's office as shown in Ext. M/2. 30,000 were to be purchased locally and 50,000 were to be indented from England through the High Commissioner.

Tenders were invited from Local dealers for the 30,000 bars and others of other sizes. There were 6 tenders received for the supply

of all these bars. They were forwarded by the Development Director to S. E. IV. for remarks.

S. E. IV submitted his report on those tenders and recommended the acceptance of a tender made by Messrs. Salebhoy Tyabji and Sons.

A resolution was passed accepting their rates and reference was made to the Secretary of State in respect of the acceptance of this tender asking for his sanction. Ext. R. is that resolution dated 12th September 1922.

The bars began to arrive from Salebhoy Tyabjee about the end of the month of October. It was discovered some time after that these bars were not wanted for piles. This was brought to the notice of the complainant, who asked S. E. IV to see if he could cancel Salebhoy Tyabjee's further supplies and he also asked S. E. IV to cable to the High Commissioner to cancel the order for 7/8". But it was too late to do so and the 7/8" bars arrived in due course. The cost of these 80,000 bars was approximately Rs. 2,50,000.

The complainant with a view to rectify the error redesigned certain parts of the chawl and substituted 7/8" bars for 5/8" wherever possible. By this manipulation the Department was able to make use of 47,370 bars out of the 80,000. The rest were transferred to the surplus stores and eventually sold.

The complainant denies that he ordered out these bars because "he received a secret commission" or in order that "certain manufacturers might make some earning out of this order."

The accused has put in a long written statement, consisting of about 250 typed pages wherein he has raised several defences.

He denies that when he made the statement before the Back Bay Enquiry Committee, he intended to defame the complainant. He bore the complainant no malice and he did not even know him. He denies that the complainant is an aggrieved person as he never mentioned him by name. He further contends that if the statements be held to be applicable to the complainant the allegations are true in fact. Failing this, he also contends that he preferred the charges in good faith and therefore the case falls under one of the Exceptions to Section 499 I. P. Code and he is thus entitled to an acquittal.

These are the main defences raised by the accused, and though some of them appear inconsistent with others he is entitled in Law to set up every defence available to him.

The first question for determination is whether the complainant is an aggrieved person and whether the fact that the accused bore no malice to the complainant is a good defence.

There is no doubt that when Mr. Nariman made his speech in the Council it was on an absolutely privileged occasion and no liability of any kind attached to him.

He is not charged with regard to any of his statements made in the Council. The charges are in reference to his written statement and oral evidence given by him before the Back Bay Enquiry Committee.

The Committee was a duly constituted body authorised by the Government of India to hold an Inquiry into the history of the inception and conduct of the Back Bay Reclamation Scheme and to make recommendations as regards future operations.

They were *inter alia* authorised to examine all persons who could throw any light on the subject to receive and record evidence oral as well as documentary and to report on the conduct of such of the officers of Department who in their opinion were deserving of censure. It was a quasi judicial body and the accused had thus all the rights and privileges attaching to a person making statements before such a body.

In India so far as Criminal Courts are concerned, Law of defamation is comprised in Section 499 of the Indian Penal Code. Criminal law of defamation with regard to the privileged attaching to statements of witnesses and parties depends upon the construction of Section 499 and if the statements are defamatory *per se* it is for the accused to establish that the case falls within one of the exceptions mentioned in the section. 22 All. 234; 23 Bom. L. R. I; 48 Cal. 388.

In 23 Bom. L. R. it was held that defamatory statements on oath or otherwise by a party to a Judicial Proceeding fall within Section 499 of the Indian Penal Code and is not absolutely privileged.

This was a Full Bench Decision of our Courts and is binding in this Presidency.

The decision followed 48 Cal. 388 in which it was held that the Civil Law for defamation in India does not stand on the same basis as the Criminal Law and a suit for damages for a defamatory statement made on oath or oral evidence by a party to a Judicial Proceeding, in the absence of Statutory rules on the subject is governed by principles of Justice, Equity and good conscience which according to the large preponderance of judicial opinion are identical with the corresponding rules of English Common Law.

But the preamble of the Penal Code and Sections 1 and 2 read with Section 5 prescribe that all acts or omissions contrary to the provisions of the code or of special or Local Law and none others

are punishable as offences. The Court must administer the Law as prescribed by the Legislature and neither enlarge it nor restrict its scope.

Similarly it was held by the Privy Council in Arnolds Case (41 Cal. 1023) that the Criminal Law of this country depends upon the construction of Section 499 I. P. Code and not what may be the English Law on the same subject.

So that the English cases cited by the accused on the question of "malice" are inapplicable to the present case. In Civil Law "malice" has to be proved but in criminal cases, courts are to be guided by the words of Section 499 of the Code. And if the statements are defamatory *per se* or held to be defamatory then under the provisions of the Evidence Act and of the Penal Code the accused has to prove facts which bring his case within one of the exceptions.

The English cases cited by the accused would not, therefore, be a proper guide in determining the liability of an accused person under Section 499 of the Indian Penal Code. But they may have to be considered in deciding the question of "good faith" which is equivalent to want of "malice" required under the English Law and which the accused has to prove in order to bring the case under all the exceptions to the Section save the first, which seeks to justify the libel on the ground of truth and for the public good.

Of course the foregoing observations cannot apply to the allegations made by the accused in his speeches in the Council. For they are made absolutely privileged by Special Law. The complainant does not charge the accused with regard to the allegations made in the Council. The subject matter of these proceedings are the statements of the accused made by him before the Back Bay Enquiry Committee.

The next question is whether the accused intended to defame the complainant or not. He contends that in his speech in the Council as well as in his written statement in which he reproduced portions of his speech made by him in the Council, the words used are "higher staff of officers."

I may observe here that Mr. Nariman stated that though in the Back Bay Enquiry Committee Report the words are "Higher staff and officers" the words he used in the Council were "Higher staff of officers" and that is how it appears in the Report of the Bombay Legislative Council Debates. (Vide volume XIV February-March 1925) I will, therefore throughout this judgment treat the words used as being "Higher Staff of Officers."

The accused contends that the words "higher staff of officers" are too vague and cannot be deemed to be applicable

to the complainant. He also denies that there was any publication on his part because his speech in the Council was already before the Committee, it being one of the documents produced before the Committee by Mr. Mackie, the then Deputy Director, Development Department. For this purpose he relies on the evidence of Mr. Mackie who produced all the pages and reports of debates in the Council. (Vide Ext. 28, page 2, lines 50 to 60 of Ext. C.)

In my opinion there cannot be any doubt on this point. A repetition may amount to fresh publication. A man is not justified in repeating a rumour if it is defamatory.

Apart from this, the very question put by the Chairman shows that "there was a fresh publication by Mr. Nariman when he referred to his written statement and gave evidence. The Chairman says, "Of course the documents which are put into the possession of the Members of the Committee are definitely privileged and could not under any circumstances be communicated to any outsider, but every document that is read or referred to in this room will naturally be printed in the press and no privilege can attach to it."

There was thus a publication by Mr. Nariman to persons other than the members of the Committee.

It is not denied that the allegations made against the "higher staff of officers" are defamatory and so also are the statements, made by the accused in his oral evidence about the order of these stores defamatory.

It cannot be denied that the complainant is one of the members of the "higher staff of officers." The complainant was the S. E. in charge of the Housing Scheme on a salary of Rs. 2,000/- per month.

Mr. Nariman did not mention Mr. Harvey's name either in his speech made in the Council or in the passage put in as Ext. C/1 in which he refers to the "ugly rumours" about the "higher staff of officers receiving secret commissions."

But in construing a statement or a speech it must be borne in mind that the court has to construe the speech or the statement as a whole to determine the intention of the writer or the speaker and to ascertain whether a particular individual was meant to be defamed or not.

It is not necessary that the individual should be named. It is sufficient if the allegations made are of such a nature that persons acquainted with the complainant would take them or understand them as being allegations made about the complainant. So also when a defamation is published of a group or class of persons every person who comes within that group or class is entitled to complain provided that the class is "identifiable" and not "too vague." For instance, if a person alleges that all lawyers are thieves, the allega-

tion is too vague and unidentifiable but if the allegation be made of a group of lawyers practising in a particular court, it would be open for anyone of such lawyers to make a complaint.

English and Indian Law on this point is the same.

Explanation 2 to Section 499 I. P. Code enacts that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. But if the libel relates to a general body or class of individuals, as distinct from any of the individuals composing that body, then nobody falling within that class or body has a grievance and the right to complain.

When the accused said that Scorton Nunnery was a brothel of prostitution it was held "that in doing so the accused was attacking the individual characters of the body of whom the Scorton Nunnery consisted and that as such his words were indictable". (Per Alderson B in Gathercole, Law C. C. 254.)

So also in the case of Gopabandu (1 Pat. 414) it was held that imputation against a class of persons jointly made may amount to defamation but it must be an imputation capable of being brought home to a particular individual or collection of individuals as such. It is unnecessary that a person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed against a particular person or persons who can be identified.

Reading the passages Ext. C/1, C/2 and C/3 I don't think there could be much doubt that the allegations made by the accused are definite and can be applicable to the complainant.

Apart from this a careful reading of the oral evidence and Exts. C/1, C/2 and C/3 and Ext. No. 37 shows that the accused must have meant Mr. Harvey as "one of those corrupt officers."

In C/1 he speaks about the ugly rumours that "higher staff of officers" have been receiving secret commissions from the manufacturers and he says this is the reason why in this instance (viz. the indent for these 80,000 bars) the department has incurred a loss of Rs. 3 lakhs.

In C/2 he speaks of "similar scandals" existing with regard to purchase of stores and gives as an instance the preparation and subsequent alteration of this indent. In C/2 he mentions the Executive Engineer and the Superintending Engineer. He refers to the preparation of an indent by the Executive Engineer in which the figure 5/8" was altered to 7/8" by the S. E. and says "no effort was made to explain how such a "trifling error" could have occurred, particularly when the indent was originally correctly prepared by one Engineer and deliberately altered by the superior and no explanation was forthcoming."

In C/3 he strenuously maintains that the alteration was not due to a mistake and asserts that it was intentional. "The Executive Engineer prepared it ; it was submitted to the S. E. who altered it."

" Q :—But there can't be any dishonest motive in it, might be a slight error of judgment ?

" A :—Whatever that might be, Sir, but it's for the Committee to decide whether this was a public waste of funds or not.

" Q :—By whom was the indent altered ?

" A :—The Superintending Engineer.

" Q :—Do you suggest any ulterior motive ?

" A :—Yes.

" Q :—And you are not in a position to give the name of the gentleman ?

" A :—*I have mentioned the name of the Superintending Engineer.*

The only person named by the accused as the Superintending Engineer in his written statement is Mr. Harvey. It is true that the complainant's name occurs along with others in the passage in which he deals with the high salaries paid to certain officers.

He says in Ext. No. 37 "It is stated that Mr. Harvey, the S. Engineer, was formerly getting only Rs. 900 at Delhi and Messrs. Sykes and Lewis and one Mr. Lowell came from the same place and at the same time.....Deputy Chief Engineer Mr. O'Rooke,.....Executive Engineer Mr. Gardner.....
.....one Mr. Roberts etc."

From this passage it appears that the accused knows that Mr. Harvey is the S. Engineer. He describes him as the S. Engineer. None of the other officials except Mr. Sykes was a Superintending Engineer. Mr. Sykes was Superintending Engineer of the Materials Department. But Mr. Nariman does not designate him as Superintending Engineer. So that when he states "I have mentioned the name of the Superintending Engineer" it is clear he must have referred to Mr. Harvey.

In addition to all this it must be remembered that the accused's case all along has been that he was in possession of certain facts and was prepared to substantiate most of his allegations if an opportunity had been given to him. His case is that whenever he received complaints against the Department, he took measures to investigate into the truth of these allegations and even men from the department used to give him certain information and he took due care before he made the charges. His defence even now is justification. All this can hardly be consistent with his contention that he did not mean Mr. Harvey.

But, as stated above, even if it be held that the accused did not then mean the complainant the facts appearing and set out in the written statement and in the oral answers given by him to questions are sufficient to lead persons acquainted with the complainant and his position in the Department to infer that the complainant was referred to by the accused, as one of the corrupt members of the "higher staff of officers."

The remaining issues on this point are whether the accused has proved the plea of justification and secondly failing this, whether he made these allegations in good faith.

The allegations being defamatory *per se* it lies with the accused to prove facts which bring his case under one of the exceptions.

When a plea of justification is set up the accused must prove that each and every fact stated by him is true in fact. This he may establish by actual proof of facts or by adducing evidence of such a nature that the only and irresistible inference which one would draw would be that the facts were as stated by the accused.

From the facts stated by me in the early part of my judgment and from the evidence led in the case it is evident that there are several inaccurate statements made by the accused. But except the statement which forms the subject matter of the 3rd head of charge viz 5/8" were required but 5 was changed into 7 by the Superintending Engineer" the other inaccuracies are not of vital importance.

The main gravamen of the charge is that the alteration of 5/8" into 7/8" was made deliberately by the Superintending Engineer in the indent prepared by the Executive Engineer out of corrupt and ulterior motives.

From Exts. I/1, M/1, M/2 and P/1 and from the evidence of the complainant and Hamid it is evident that the statement made by the accused that "5" was changed into "7" by the Superintending Engineer is incorrect. It is not now denied by the accused that the statement is incorrect.

From Ext. P/1 it appears that an addition was subsequently made to the indent prepared by Hamid at the instance or at the request of the complainant, and orders for the purchase of 80000 bars of 7/8"x 19' were placed by S. E. IV locally and through the High Commissioner.

The point for consideration, however, is whether the complainant did so with a corrupt or dishonest motive.

Upto the 9th of April of last year the Prosecution case all along was that 5/8" bars were required for foundation piles but by mistake 7/8" bars were ordered. On the 12th April the complainant while

he was still under cross examination stated to the Court that he wished to give certain explanation as regards the ordering out of these bars. His evidence was as follows:—"Since I gave evidence on 9th (April) I have spent a great deal of time in looking up the remaining documents and I have arrived at the correct explanation about these bars. My previous information was based on what I was told by my establishment and from documents then placed before me. I now have got certain documents which show who has committed the mistake. He then referred to Exts. Z/3, Z/4, Z/5 and Z/6 and stated that his case was that 7/8" bars should have been ordered. So that the ordering of 7/8" bars was not a mistake".

The only other person who could throw light on this indent is Hamid but he does not corroborate the complainant on this point.

Mr. Velinker, in commenting on this aspect of the case in his final address, frankly admitted that it was a perfect mystery to him, even at that stage, whether 7/8" bars were or were not ordered. He did not and could not state as a fact whether 5/8" or 7/8" or both sizes were used. He could not say which size was then used, for the foundation piles. All that he could say was that the complainant inferred since 9th April 1927 not that 7/8" bars were used but that 7/8" bars were required and were rightly ordered and he said that it was not necessary for the determination of the case to find out whether 7/8" bars or 5/8" bars were used for foundation piles.

In my opinion it is very material to ascertain what bars were used for the foundation piles. For if 5/8" bars were used and 7/8" were ordered that would give rise to certain presumptions, while if on the other hand 7/8" bars were used then 7/8" were rightly used and no presumption adverse to the complainant could arise.

If as Mr. Velinker contends it is not possible to state at this interval of time what size of bars were used for the foundation piles the accused would be entitled to ask the court to presume that 5/8" bars were used.

But it does not rest upon mere conjecture or presumption only.

There is a mass of relevant evidence on the point both oral and documentary, which, in my opinion militates against the later suggestion made by the complainant that 7/8" bars were used for foundation piles and were therefore rightly ordered.

The first document bearing on the subject in order of date is Z/3. It is dated 6/9/22 and written by H. Gazdar to Hamid who was then acting as Superintending Engineer in the place of the complainant.

In that letter he writes "S. E.'s drawing number 23 of 8/12/21 was passed on to workshop for Pile Manufacturing. This provided 3/4" rods for piles. The result is that 3/4" rods have been used all

along in 16' piles manufactured till date absorbing all our balances shown in the statement of rods sent to S. E. This was found out when I was checking balance stock sheet of stores.

"I have given orders to use only 5/8" in future. This is for your information and orders if any".

Noted. Filed.
Sd/-A. H. 6/9/22.

Sd/-H. Gazdar.
6/9/22.

From this letter it appears that 3/4" rods were provided for the use of piles in the complainant's drawing No. 23 of 8/12/21. Upto September 1922 these bars were used and since then 5/8" were used. Hamid notes it and orders the letter to be filed.

The indents of Hamid and Mehta were in July-August and the letter Ext. P/1 written by the complainant to Sykes ordering out the 80000 bars of 7/8" is dated 8th August. The order was placed with Salebhoy Tyabji on 12th September and the bars began to arrive at the end of October or in the beginning of November.

If 7/8" bars were required as stated by the complainant Gazdar would not have issued orders "to use only 5/8" bars in future."

Hamid's endorsement on it shows that he was aware of the contents of the documents. If 7/8" bars were ordered by him for piles he would have written to Gazdar about it.

The next document in order of date is Ext. S dated 3/1/23. The complainant says that when the bars began to arrive from Salebhoy Tyabji "the mistake (i. e. of wrong sized bars) was discovered. In due course it was brought to his notice. He spoke to Sykes on the phone and asked him if the order with Shalebhoy Tyabji for 7/8" bars could be cancelled or if a telegram could be sent to the Secretary of State asking him to substitute 5/8" bars for 7/8" ordered. On 3rd January Sykes sent a U. O. R. viz Ext. S. In that U. O. R. Sykes writes "Please refer to your 337' of 8/8/22. The 30000 of 7/8" bars have already been arranged for. As regards the 50000 I propose to ask the Director to cable to the High Commissioner either (1) to cancel this portion of the Indent (2) to substitute for 7/8", 5/8" which of these alternatives would be right? I should be glad of an early reply." On the same date the complainant writes "Kindly arrange to have the order for 50000 Nos. 7/8" altered to 50000 nos. of 5/8."

So that within two or three months of the ordering of these 7/8" bars the mistake was discovered and attempts made to rectify the mistake by cancelling the order placed with Salebhoy Tyabji and by cabling to the High Commissioner to substitute 5/8" for 7/8". If 7/8" were really required there would have been no reason for getting the order cancelled or cabling

to the High Commissioner to substitute 5/8" for 7/8". Ext. W is the cable to the High Commissioner and the reply from him stating that the order for 7/8" had been completed.

We then have Ext. Z/5 dated 28/6/1923. It is a letter from Gazdar to Hamid, who was then the Ag. S. Engineer. In that letter Gazdar writes that the first proposal was to manufacture piles with 7/8" bars but subsequently it was changed to 5/8" diameter bars for the sake of economy but as these bars were not found strong and during the handling cracks were developed he requested Hamid to grant permission to use 7/8" bars. Hamid writes on 9/7/23 that he saw the Director and the latter had agreed to allow 7/8" bars," in the piles *now to be made*". There is a note attached to it which reads thus: "To note:—*Current indents* have been corrected by elimination of 5/8".

These letters are relied upon by Harvey for his latter theory set up by him that 7/8" bars were required. I fail to see how it supports the complainant's suggestion that 7/8" bars were rightly ordered. Exts. S. & W. are absolutely inconsistent with this part of his case and even Gazdar's letter shows that 5/8" were used upto then. Gazdar found 5/8" not strong and he requests permission to use 7/8". If 7/8" bars were used or required for foundation piles there would be no necessity to obtain such permission. Hamid too has to obtain the permission for the use of 5/8" bars from the Director and he gets the permission on 9th July 1923. And the letter and the note also show that current indents were corrected by elimination of 5/8". So that even in the current indent at first 5/8" were ordered for the use of the piles.

Gazdar's letter only shows that there was "*first a proposal* to manufacture piles with 7/8". But that was only a proposal. It does not mean that 7/8" bars were actually used for piles. The letter does not say when that proposal was. But from his own letter Z/3 dated 6/9/22 it is clear that 3/4" bars were used for piles first as per S. E.'s drawing of 8/12/21 and from that date 5/8" were used. If there was an order to use and a drawing providing for the use of 7/8" bars prior 1/9/22 and after 8/12/21 Gazdar would not have "*sero motu*" "given orders to use only 5/8" in future." He would have had to obtain S. E.'s permission just as he does so in Z/5. Z/3 mentions not a word of request for permission to use 5/8." On the contrary Gazdar writes in Z/3 "This is for your *information* and orders if any Hamid endorses noted File."

Harvey admits he has no document to show that 7/8" were in use for foundation piles in 1922 when the indents were sent. Z/5 is in 1923.

The next document we have is Harvey's letter to the Deputy Director dated 25/1/24 (Ext. No. 54). It is headed "Excess of 7/8" ordered for Worli." It opens with this sentence.

"By a *mistake* when last ordering steel from the High Commissioner too many 7/8" diameter bars were ordered with the result that in the ordinary course they cannot be *used up in the work for some years* and consequently might depreciate to some extent. The question of using up these bars has been gone into and it is found that by substituting them for the 1/2," 5/8" and 3/4" of main beams and columns and by reducing the proportion of *cement* in the concrete no loss will occur etc.

This also shows that the complainant in January 1924 considered the ordering of these bars a mistake.

The next document is Ext. A. It contains Questions put by Nariman in the Council in the October 1924 session. It is important to note the language used in the replies given to Nariman by Sir Cowasji Jehangir. Ext. A. is as follows :—

Mr. K.F. Nariman M.L.C. (Bombay City South) asked :—

The Hon'ble Mr. Cowasji Jehangir (Jr) C.J.E., O.B.E.

14. (a) Will the Hon'ble the General Member be pleased to state whether it is a fact that

Indent for mild steel bars, Development Directorate about two years ago an indent for 1,200 tons mild steel bars for concrete piles

for the size 5/8" and of the value of about Rs. 2,50,000 was made by the Executive Engineer in charge and that in the said indent the size of the said bars was altered by the Superintending Engineer to 7/8"?

14. (a). The facts are not as stated but are as follows :—

The Executive Engineer sent in his indent for steel which the Superintending Engineer scrutinized. He discovered that the Executive Engineer had omitted from his indent the bars necessary for making piles.

The matter was discussed with the Executive Engineer with the result that the bars required for piles were added to the Executive Engineer's indent by the Superintending Engineer's office supervisor apparently on the verbal instructions of the Superintending Engineer who has accepted responsibility in the matter.

The diameter of bars added to the Executive Engineer's indent was 7/8" whereas bars of 5/8" diameter were actually in use at the time.

(b) If so, will the Honourable the General Member in charge be pleased to state whether it is a fact that on account of this alteration in the indent mild steel bars of the size 7/8" arrived in Bombay, whereas the requirement of the Directorate was for 5/8" and that the said large quantity of bars of the value of nearly Rs. 2,50,000 are thus lying unserviceable in the stores of the Development Directorate, which they have been unable to re-sell in spite of public advertisement?

(c) Will the Hon'ble the General Member in charge be pleased to state whether it is a fact that a second indent with the correct size required namely 5/8" had to be sent?

(d) If the reply to (a) and (b) be in the affirmative, will the Hon'ble the General Member in charge be pleased to state whether any action has been taken in the matter?

It is admitted that the replies were furnished by Harvey. The reply to question (a) makes it distinctly clear that the S. Engineer scrutinized the indent sent in by the Executive Engineer, and that the Superintending Engineer discovered that the Executive Engineer had omitted from his indent the bars necessary for making piles. The matter was discussed with the Executive Engineer with the result that the bars required for piles were added to the Executive Engineer's indent by Superintending Engineer's supervisor apparently on the verbal instructions of the Superintending Engineer. The

(b) It is not a fact that the bars are lying unserviceable.

When the error was discovered, the piles and framework of chawls at Worli were re-designed utilising 7/8" instead of 5/8" bars without loss to Government. The 7/8" bars so far thus used up amount to over 800 tons. It is not possible at this stage to state what bars, if any, will be surplus to the Department as this depends on whether the chawl construction programme is to proceed after the chawls now under construction are completed. If any bars remain over, it will be due to the curtailment of the original programme for which the steel was necessarily ordered in advance. If it is found necessary to dispose of the bars at any time, Government anticipate that there will be no loss on the transaction.

(c) This is not a fact. On the other hand only a sufficient number of 5/8" bars to make an economical re-arrangement of reinforcements was ordered in the succeeding indent for steel.

(d) No action was considered necessary.

diameter of the bars added to the Executive Engineer's indent was 7/8" whereas bars of 5/8" were actually in use at the time."

Nothing could be more definite than the words "actually in use at the time." When questions are put in the Council the questions are sent to the individual or the Head of the Deptt. concerned, who has to give careful and truthful replies after making all proper and due inquiries, and after going through all the relevant documents in the case. If any plans and drawings were then available the complainant must have gone through them. He admits that there is a great duty attached to the Head of the Deptt. to supply correct information to the Council. It was his duty, he says, as the Head of the Deptt. when information was called for by the General Member to examine all records and give correct information. He admits his case was then and at the beginning of this trial that Hamid made an omission in his indent.

Next documentary evidence in order of date bearing on this subject are the speeches of Sir Lawless Hepper and Sir Cowasji Jehangir in the Council debates of October 1924 and March 1925. They call it a "trifling mistake" made much of by the accused. The trifling mistake was the writing of the figure 7/8" instead of 5/8" in ordering out the bars for piles.

We then have the evidence given by Sir Lawless Hepper before the Back Bay Enquiry Committee on the 24th August 1926. The complainant was present then and the Chairman of the Committee intimated to Sir Lawless Hepper that the officers (meaning Harvey, Eilgee and Thomas) who were present then "will be giving evidence along" with him.

Sir Lawless Hepper at page 454 of Ext. C explains how the bars of 7/8" diameter came to be ordered. It is true that that is a statement made by Sir Lawless Hepper and not by the complainant. But the complainant was present and he does not contradict or try to correct any of the statement made by Sir Lawless Hepper. The lines 20 to 22 of page 454 Sir Lawless Hepper states "The piles had been designed to be made with 5/8" bars," but by some mistake, either of the draftsman or supervisor 7/8" was entered instead of 5/8." It has not been possible to prove who made the mistake.....after the bars were ordered the mistake was discovered and an attempt was made to stop the supply but it was too late. It was then decided to redesign the piles making use of 7/8" bars instead of 5/8" and that was done".

Harvey in his written statement at Page 469 of Ext. C. at lines 24 to 32 says that after the consolidated statement had been sent to S. E. IV it was discovered that the Executive Engineer's indent did not include bars required for foundation piles.

"The matter was verbally discussed in this (S. E.'s) office with the Executive Engineer whereupon that officer worked out the number of bars required and on his statement this office supervisor was directed to add the bars required to the consolidated statement, which he did, but unfortunately 7/8" bars were entered instead of 5/8" bars. The Superintending Engineer IV was notified of the addition under the letter (Ext. P/1).

Then comes his complaint and his oral evidence before the court, where the same explanation about the mistake is adhered to. These are all statements made on oath. Hamid's oral evidence is also to the effect that 5/8" bars were used for piles and that there was no omission of bars for piles in his indent.

Lastly there is a letter (Ext. 140) written by Harvey to Hamid sometime between 18th March and 4th April 1927.

Therein he writes thus:—"I have been looking up all papers about the reinforcements and cannot find an answer as to why so many 5/8" X 19' bars were ordered in your first list unless they were ordered for the piles. A certain number of 19' would have been economical but not all that were ordered."

In view of all these documentary and oral evidence I can not accept the complainant's later suggestion or inference as Mr. Velinker puts it that 7/8" bars were used for piles or were required.

The reasons and documents referred to by the complainant in support of this theory are not convincing by any means. The complainant relies on documents Z/3 to Z/6 and Q. in support of his statement.

I have already commented on these documents and shown that they do not imply that 7/8" bars were in use. Z/3 shows that 3/4" rods were mentioned in the drawing of the Superintending Engineer of 8/12/21 and that after using up all the 3/4" rods up to date, Gazdar proposed to use 5/8."

Z/5 is *Long after* the indent Ext. I/1 was prepared. It is dated 28th June 1923 and in that letter Gazdar requests Hamid's permission to use 7/8." It does not mean that 7/8" were in use. On the contrary it distinctly implies that it was proposed at one time it is not mentioned when, to use 7/8" but that proposal was scrapped and it was changed to 5/8." It cannot be regarded as any kind of proof that about August 1922 7/8" were in use. Hamid in his cross examination says "From looking at the plans (Ext. Z) I now say that the bars for pile were included in my indent Ext. I/1. I don't remember whether the original idea was to use 7/8" bars for piles. There was some talk of single pile system in the beginning, but I don't remember of what diameter. This was changed into double pile system. I believe it was in early 1922. We actually began

constructing on double pile system. I believe it was in early 1922 that we started preparing the double pile system. We were using 5/8" for double piles.....I was always under the impression that 5/8" bars were omitted from the indent. It turns out to be a wrong impression now.....5/8" X 19' are not for beams and columns but for piles..... We took no action on the idea of using 7/8" for single piles. We did not prepare any single pile. I don't exactly remember whether the original idea was to use 7/8" or 3/4." When we decided to use double pile system we proposed to use 5/8." And then he says that when the 7/8" bars arrived Colabawalla told him about them and said that he was not receiving any indents for them. "He told me this sometime after the bars arrived. I told him that I did not require them. I told him I wanted 5/8" for piles. I took it that they must have ordered them for some other work and not for my work" ... "These 80,000 bars were not required for the foundation of the piles at Worli. 5/8" were required for foundation piles and so 7/8" would not be required for Worli chawls". When asked about the later theory of Harvey he says "The present theory I understand, as put forward by the complainant is that 5/8" bars ordered by me in Ext. I/1 was a mistake and that 7/8" were required and they were (rightly) ordered. It is not my statement. I don't agree with it. I do not know as to how they came to be ordered. I had nothing to do with the ordering of the 80,000 bars of 7/8". I came to know of it only from Colabawalla after they arrived" and speaking of Z/3 he says "Z/3 does not show that 7/8" bars were used for piles Z/4 shows that 3/4" bars were used for piles. Z/3 shows that 5/8" were to be used for piles."

And as to Z/5 he says "The date (of it) is some time after the wrong size 7/8" arrived.....With a view to utilise these bars and to make the piles stronger.

"Q:—Do you agree that Exts. Z/3, Z/5, Z/6 and 54 support the present altered theory?

"A:—No. I don't think they support it. On the contrary they support the first theory that 5/8" bars were used for piles."

The only other document which refers to 7/8" is Ext. Q. On the back of it are certain figures in pencil. They read thus

$$\begin{array}{r}
 50 \times 30 \text{ is equal to } 1500 \\
 \phantom{50 \times 30 \text{ is equal to }} 4 \\
 \hline
 \phantom{50 \times 30 \text{ is equal to }} 6,000 \\
 6,000 \times 19 \times 7/8" \\
 18,000 \\
 \hline
 60,000.
 \end{array}$$

These figures are in Hamid's handwriting. Hamid admits they are in his handwriting but he cannot make out anything of it.

It cannot mean that 7/8" bars were used for piles. If 7/8" bars were really used for piles there would be no reason for Harvey to phone to Sykes and to write to him to cancel the orders placed with Salebhoy Tyabji and through the High Commissioner. Even if as he alleges, we found Hamid's slip missing still there was no necessity to cancel these orders. If 7/8" bars were used why should Hamid tell Colabawalla, he did not want them, and why should Harvey try to get the orders cancelled. It can't be alleged that he would not be able to find out if 7/8" were really wanted or not. This was a very large order costing about 2½ lacs of rupees placed with Salebhoy Tyabji and through the High Commissioner. Harvey's duty was to ask Hamid about the slip and if the slip was missing or even if Hamid had given some false or unsatisfactory explanation his clear duty was to go and inspect the pile manufacturing register, or go to the place and make inquiries or ask Hamid's subordinates about it. Any one of these persons, or even a casual visit to the place would have shown him whether 7/8" were used for piles or not.

Again if 7/8" were used there would be absolutely no reason for anyone whether it be Hamid or his subordinates to say that he did not want 7/8" bars. If they were used there is no reason why they should not have been indented by the Worli office. The subsequent conduct of Harvey and his explanations in the Council and before the Back Bay Inquiry Committee as well as Ext. 140 are absolutely inconsistent with this theory. If 7/8" were used Harvey has misled the General Member and the Council, he misled the Director and he misled the Committee and his statements on oath made before me in his complaint and in his examination in chief are also untrue.

His evidence before me on 12th of April when he propounded this new theory is so vague and halting and inconsistent with the facts proved that I cannot accept it as true.

He says "My previous information was based on what I was told by my establishment and from the documents placed before me."

Pausing here for a moment can this statement be true? Hamid denies that Harvey asked any explanation from him and he says that he was not even consulted when replies were furnished to the General Member. Harvey does not say that he asked Hamid about these bars or whether 7/8" or 5/8" were in use. But supposing that Hamid's statement be untrue and he was asked by Harvey. If 7/8" were really in use would Hamid have told Harvey that 5/8" were in use and 7/8" were wrongly ordered or ordered by mistake? Why should Hamid or any of his establishment have done so?

There would be no reason nor any motive for any one to state that 7/8" were wrongly ordered or were not required. Harvey then speaks of the documents "what documents would be before me."

Z/5 could not have been before him then. The only document would be the Indents and Ext. P/1. Hamid's slip he admits was not before him. If he had Ext. P./1 and if he recollected the conversation he had with Hamid and if Hamid's slip was then in existence it could not have led him to suppose that 7/8" were wrongly ordered. He would not have tried to cancel the orders for 7/8" on these documents alone, without asking Hamid and others about it. If he did not ask Hamid but merely relied on these documents one would infer that he would come to the conclusion that 7/8" were rightly ordered. For according to his own statement he says that the reason for asking Hamid if he had included orders for piles was the fact that he found Mehta's and Hamid's indents contained exactly the same number of identical sizes of bars of all diameter for their respective chawls. And Mehta did not require bars for foundation piles.

As Mehta's indent and Hamid's indent both showed 5/8" x 19' bars the complainant inferred that these bars could not be for piles. And he states in his evidence that "They were principally for beams and that they could be used for columns as well". If then he did not consult Hamid the documents would lead him to infer that 7/8" were the correct size of bars for foundation piles and not 5/8". If so he would not have attempted to get the orders cancelled.

The complainant is thus on the horns of dilemma. Either he asked his subordinates or he did not ask his subordinates. If he asked his subordinates including Hamid, and if 7/8" were rightly ordered there would be no reason for the establishment to tell him that 7/8" were wrongly ordered. If he did not ask his subordinates the documents especially Ext. P/1 and the identical indents of Mehta and Hamid would lead him to infer that 5/8" were not used for piles but 7/8." If so he would not have asked Sykes to wire to the High Commissioner to try and get 5/8" substituted for 7/8" bars ordered by mistake.

If the Register of Pile Manufacturers was before him then he would have definitely known what size was needed for piles. Harvey does not say whether this document was then before him. He does not even know what bars were used for piles. The most important documents bearing on this point are missing and nobody has given any evidence or is in a position to state as to what they contained and how they came to be missing.

He then says "The information given to the Council turns out to be inaccurate. My case in the beginning was that Hamid

had made an omission in his indent when asking for bars for piles. I don't adhere to that statement now."

Q:—Did Hamid omit from his indent bars for piles or did he not?

A:—There are sufficient 5/8" bars in the indent to cover the bars required for piles.

Q:—In other words he did not omit?

A:—I don't know what was in his mind. I don't know whether Hamid included or omitted bars for piles in his indent.....I also stated that 5/8"x19' bars which are provided in Hamid's indent are not for piles. 5/8" bars are required for beams column and piles. At the time of the indent 5/8" bars were not necessary for piles.....I did not say that 7/8" bars were in use before the date of the indent but I say that 7/8" bars were required for piles and there was no mistake in ordering them out."

This is somewhat different statement from the first statement made. But even this statement cannot be true.

In his evidence in chief he says "In Ext. I/1 there is an item of 5/8"X19' bars. They are principally for beams and they could be used for columns as well. No mention is made of any bars required for foundation piles. A chawl ordinarily has 104 foundation piles. In each pile there are 4 vertical bars. According to the then design each of these bars was 5/8"X19'.....In the original design it was contemplated to use only one pile with 7/8"X19' bars. The design was changed subsequently and we used two foundation piles with a cap for a column using half the quantity for vertical reinforcement in each and for that we used bars 5/8"X19.' The original intention to use 7/8" was scrapped and the idea of using two 5/8" bars was substituted. This idea continued till 7/8"X19' bars arrived from England.....and the 7/8" bars which were ordered we utilised for the beams.....The 7/8" bars arrived in due course. They were unsuitable for foundation piles. I redesigned the columns beams and other parts of the chawl and I substituted these 7/8" bars for 5/8" and 1/2" bars wherever possible and used the 5/8" bars with foundation piles."

Thus on the evidence of the complainant himself 7/8" bars were unsuitable for piles and 5/8" bars were used till the 7/8" bars arrived from England when he redesigned and other parts of the chawl and substituted 7/8" for 5/8" wherever possible.

Hamid in his cross examinations says "The omission of 7/8" bars in Ext. I/1 was intentionally made by me after calculation. According to him 7/8"X19' bars were not required.

Harvey's later suggestion or theory is in my opinion not warranted by the facts deposed to in the oral evidence of the witnesses both before me and the Committee, and is inconsistent with his subsequent conduct and the documents, already referred to by me.

It is equally untrue to say that these wrong size bars were ordered on account of the mistake of the draftsman or supervisor or of some other person in putting down $7/8$ " instead of $5/8$ ". The orders for these bars were placed by Sykes on his receiving instruction from Harvey as per Ext. P/1. The statement of Nariman that the original indent was altered by changing 5 into 7 is not correct. There was no alteration in the indent itself but there was an addition made to Hamid's indent by Harvey subsequent to the sending in of the consolidated statement by means of the letter Ext. P/1 dated 8/8/22.

The next question for decision is whether this alteration or addition to the indent was made by Harvey deliberately out of corrupt or ulterior motives.

The accused's contention on this point is that these bars were wrongly ordered, and far in excess of any actual requirement for any purpose and with a view that manufacturers should make a profit in order that Harvey may get secret commission. It is also accused's case that Harvey and other officers formed a group or an association of persons who took secret commissions from merchants and contractors.

In order to arrive at a decision on the above point it will have to be determined whether the number of bars ordered were in excess, and whether the complainant in asking Sykes to place orders for these bars for their purchase locally and from Home Manufacturers did it out of corrupt motive. In other words whether the accused has proved the truth of the allegations made by him against the complainant.

Where in a case of defamation the accused pleads justification the onus lies heavily on the accused to prove the truth of the facts as set out by him. The truth must extend to the entire libel. It is not sufficient if only a part of the libel is true. But the truth of all allegation need not be literally proved if they are proved in substance. (Labouchere 14 Cal 4 19; Wakely v Cooke and Healy 19 L J Ex. 91, Bishop v Latuner 4 L. T. 775 and Arnolds case 4 Cal 1023)

Existence of a rumour is not a proof at all. The exception contemplates the truth of a statement and not its persistency. The fact that there is or was a rumour to that effect is no proof of the truth of it. (Rassan v Budge 1893 I. Q. B. 571 Mcpherson a Danieals 10 B & C 263; Brumridge v Latimer 12 W.R. 878.)

The allegation by Nariman that there were ugly rumours in the city as well as in the Presidency that higher staff of officers have been receiving secret commission has been proved by Nariman and the complainant admits that he too had heard of such rumours. I do not think that the Prosecution counsel denied the existence of such rumours. The evidence of the several defence witnesses and particularly of Sethna and Trivedi, prove that such rumours did exist.

That, however, can not entitle the accused to repeat it, though it will have to be considered hereafter in discussing the question of "good faith". The existence of rumour is no proof at all of the truth of the statement contained therein.

It cannot be denied that 7/8" bars were not required for piles and yet they were ordered. The allegation therefore that stores not needed were ordered is proved, though it may be that subsequently, owing to the skill of the complainant a great portion of it was utilised by redesigning certain plans for beams columns etc.

Whether the order for these bars was due to an ulterior motive or because the complainant received secret commission depends on the question whether the bars were ordered in excessive quantity and whether that was done on purpose; and if so by whom.

The complainant's narrative is that after he discovered that there was an omission of the bars for piles in the Indent of Hamid, after the consolidated statement was sent. That is to say, between 5th and 8th August 1922, as appears from Ext. M/1 and Ext. P/1.

He inferred that there was an omission from the fact that Hamid's indent was identical with the indent sent by Mehta per chawl. It is a fact that Mehta did not require bars for piles.

It is not possible to say how Mehta's and Hamid's indents came to be identical as regard bars of various diameters per chawl nor can one say whether Hamid's office copied it from Mehta's or vice versa. The complainant therefore asked Hamid at one of the interviews if he had included the necessary steel bars for piles in his indent. He considered for a few moments and said he had forgotten to enter the bars for piles. The complainant and Hamid then proceeded to work out how many bars would be required for the year and for a part of the succeeding year i.e., up to about December 1923. The question then arose as to how many bars he had in stock at Worli or how many piles he had manufactured. Hamid was instructed to go to Worli and inspect the stock and then to let the complainant know of his requirements. Hamid either brought in or sent a slip of paper containing the number of the bars the length, and diameter. The complainant gave it to Palnitkar the supervisor who drafted a letter and a typed copy of

that letter which is Ext. P/1 was sent to Sykes. The complainant thus acted on Hamid's representation as contained in that slip of paper.

Nariman contends that the story of the slip of paper written by Hamid is not true. On the evidence before me I must hold that this part of the Complainant's statement is true. Hamid does not in his examination in chief state anything about this slip of paper. In his cross examination however, he gives very evasive replies. "My statement is that I do not remember whether I gave the slip or whether I made any calculations in this case. I say I don't remember if I went and calculated the stock and gave the slip. I cannot say if the complainant's statement on this point is correct or not. The complainant's statement may be correct. It is possible for us both to be correct."

At a later stage he says, "I have a hazy recollection that we discussed something about making a provision for mild steel bars with regard to other schemes at that interview. In the interview when Harvey told me there was an omission I told him if there was an omission it might be added.....I believe Harvey told me that my indent did not contain bars for piles."

Ext. Q bears the figure in pencil $6000 \times 7/8'' \times 19'$. The paper is sent by the store keeper and bears the date 31/7. That is to say just 5 to 8 days before the interview. It shows that Hamid had at least something in his mind about bars of $7/8'' \times 19'$ and made some calculations with regard to these bars.

The evidence of Palnitkar is that when the consolidated statement was ready Harvey called him and gave him a slip of paper on which certain quantity of $7/8''$ bars was written. He was asked to put that in the consolidated statement and the statement was to be sent to Sykes. He gave back the statement (i. e. slip of paper) to Harvey. He then says "I think that writing on the slip of paper was in Hamid's handwriting. I know Hamid's handwriting.

Q:—Then why do you say I think it was in Hamid's handwriting?

A:—I will say then it is in Hamid's handwriting."

In his cross examination he says "when the consolidated statement was ready Harvey gave me a note received from Hamid and asked me to put in 30,000 bars of $7/8''$ diameter."

There is no reason why Palnitkar should say that he was given a slip of paper written by Hamid if that be not so, nor is there any reason for the complainant to say so if it be not a fact. This story of the slip of paper could not be an afterthought. For Hamid admits that he was asked by the Solicitor before he gave his evidence in court about the slip of paper. He did not mention anything

about the slip in his first statement nor when he went to Solicitor's office. His answers in court were evasive and noncommittal. I accept the evidence of Harvey and Palnitkar on this point and I hold that Hamid did write the note and that Harvey therefore, in ordering out the number of bars, acted on Hamid's note.

As to the question whether the bars ordered out were in excess, even if $7/8$ " were believed to be required, it requires careful consideration.

According to Harvey in ordering out bars for chawls, the quantity ordered out would be for "equivalent" of the number of chawls required to be built for a particular period. That equivalent would be roughly about $2\frac{1}{2}$ times the actual number. Hamid seems to be blissfully ignorant of this. If the number of bars were arrived at by Hamid then the theory of "equivalent" can not be supported. For Hamid has always ordered for "actuals" and not for "equivalents." Even if Harvey had to admit that indents I/1, K/1 and the consolidated statements M/1 and M/2 being for actuals were wrong.

If the calculation of the number of bars were made by Harvey himself or in conjunction with Hamid, Harvey might have taken the equivalents.

Harvey denies that superfluous bars in excess were ordered. According to him the bars ordered were for "equivalents" and not for "actuals" and says that they were wanted also for the Dharavi chawls and for chawls and the Flats.

If the bars were actually ordered out for Dharavi and the Flats they would not have been in excess. The reason why so many bars became surplus according to Harvey was due to the curtailment of the programme.

This is a possible explanation, but in my opinion there was then no necessity at all for ordering out these bars. According to Harvey about 48,000 bars would be required for Dharavi and the Flats. The Dharavi scheme was never launched at all. The original programme was to build 625 chawls in all. It was spread over a period of 8 years 1921-1929. Ext. 55 gives the programme for each financial year.

According to Hamid and Harvey the procedure was as follows. There has first to be acquisition of land, then the general plans and the lay out scheme is drawn up. From the general plans detailed plans and drawings are made out with a view to estimate the requirements and ascertain the approximate cost. Then the estimates are prepared and sanction obtained. For each year there was a definite programme. There was a budget amount fixed for the year's programme. The idea was not to exceed the amount provided for.

Harvey admits that the provisions of the P. W. D. Code are binding on him. Section 253 provides: "It is a fundamental rule that no work shall be commenced unless a properly detailed design and estimate have been sanctioned, allotment of funds made, and orders for its commencement issued by competent authority. Permission granted by Government in orders on a budget estimate for the retention of an entry of proposed expenditure during the year on a work conveys no authority for the commencement of an outlay. Such permission is granted on the implied understanding that, before any expenditure is incurred the above conditions will have been fulfilled. No liability may be incurred in connection with any work until an assurance has been received from the authority competent to provide funds that such funds will be allotted before the liability matures. Ext. 104 which is a Government circular also states that materials which are not actually required for any sanctioned works should not be purchased in anticipation of future requirements."

Section 261 provides that no work should be commenced on land which has not been duly made over by the responsible civil officers.

These indents were for the year 1922 upto October 1923. The Dharavi scheme was not launched that year at all. According to the complainant "Dharavi was in programme of March 1924 assuming that to be so the complainant violated the clear and distinct provision of the P. W. D. Code.

Exts. I/1, K/1, L/1, and M/1 are only for Worli, DeLisle Road and Naigaum chawls. Harvey admits that not a single pile was manufactured for Dharavi. "With the moulds at their disposal all their time was absorbed in making piles for the chawls 121 built at Worli and they used these bars at Worli."

Then again Ext. 54 is a U. O. R. dated 25-1-24 addressed by Harvey to the Deputy Director. In that U. O. R. he writes, "By mistake when I last ordered steel from the High Commissioner too many 7/8" diameter bars were ordered with the result that they cannot be used up in the work for some years and consequently might depreciate to some extent." He then proposes to utilise the bars by redesigning columns etc., and asks for Government sanction.

In reply (Ext. 57) Government give him the sanction to alter the specification of concrete....."till such time as the excess of bars of 7/8" diameter are completely used up."

If the excess resulted owing to a curtailment of the programme one would hardly expect the complainant to write as he does in Ext. 54.

When questioned about this statement in Ext. 54. he says it was "silly" of him to have written that too many bars were ordered by mistake.

I will leave it at that.

In none of the other documents is there any mention or reference made that these bars were required for Dharavi and the Flats.

Ext. P/1 supplemented the stores mentioned in Exts. I/1, K/1 and M/1, Ext. I/1 is for Worli chawls, while K/1, L/1 refer to the chawls under Executive Engineer No. 1. Ext. P/1 purports to fill in an omission by Hamid in Ext. I/1. In Ext. P/1 Harvey distinctly mentions 'I shall require for piles at Worli.'

In the reply given to Nariman in Ext. A "Dharavi and Flats" are not mentioned. In October 1924 the reply is "It is not possible to state at this stage what bars if any will be surplus to the Department as this depends on whether the chawl construction programme is to proceed after the chawls now under construction are completed." According to the complainant it was definitely known in January 1924 that Dharavi programme was to be given up.

In Ext. 66 the Deputy Director wrote to the Chairman of the Bombay Improvement Trust on 1/4/24 that Government had decided that no new industrial housing scheme was to be taken up.....and the land in the Trusts Dharavi scheme will not be taken up.

If the bars were indented for Dharavi one would expect the reply to state that and give it as one of the reasons why the bars would be in excess.

The complainant admits that piles can't be made by using only 5/8" or 7/8". Bars for wiring would be needed. That also would have to be ordered out and in proportionate quantity. Then there would also be the bars for hoops and cappings.

There is no corresponding provision made for them. Hamid says he provided for actuals and not for "equivalent" and the complainant had to say that Ext. I/1 and the indents submitted by Mehta were not correctly drawn up as they were for actuals and did not provide for equivalent. "The consolidated statement also was not correct. The orders placed by Sykes based on the consolidated statement would also not be correct." And yet Harvey says he *scrutinised* these indents, made certain alterations and discussed the indents with Hamid.

The evidence and the documents put in as Exts. also prove that there was no necessity of ordering out so many bars in excess at that period.

Even the placing of order for the 30000 bars locally was not proper.

The complainant contends that it is for the Executive Engineer to state how many he wishes to be purchased locally. That may be true still where a large quantity is ordered it is his duty as the head to scrutinise it carefully.

According to Hamid his indent I/1 was for 28 chawls and it was for actuals. He provided upto October 1923. Hamid admits that it would be impossible to use 30000 bars by December 1922.

To meet this the complainant contends that the orders were for equivalent and not actual and equivalent means $2\frac{1}{2}$ times the actual. The actual requirements would come upto about 12000 bars and $2\frac{1}{2}$ times that would be 30,000.

Mr. Nariman does not accept the value that equivalent is $2\frac{1}{2}$ the actual.

Whether this be so or not is more than I can say. For there is no expert testimony called by Mr. Nariman to rebut the statement of the complainant, on this point.

But we have these facts to go upon. According to the complainant Hamid in the slip of paper suggested 80,000 bars out of which 30,000 were to be purchased locally and 50,000 to be placed through the High Commissioner.

So far as Hamid is concerned he admits he only ordered for actuals. So did Mehta. Exts. I/1, K/1, L/1, M/1 are all for actuals. The complainant in order to support his theory of equivalent had to say they are all wrong as they ought to have provided for equivalent and not actuals.

The point, however, is that if Hamid asked for them he could never have asked for equivalent. It follows then that 30000 bars would be far in excess.

According to Hamid, the 30,000 bars if used for double pile would suffice for about 70 chawls and if used for single pile they would suffice for 140 chawls. According to the complainant $7/8$ " would be for single pile. Therefore the 30,000 bars would suffice for 140 chawls. Hamid also accepts the statements prepared by Mr. Nariman Exts. 135 and 137 as correct; he admits that he does not see the urgency of putting orders for 30,000 bars locally and concludes by saying that the complainant's explanation could not be correct.

"Ext. D" says Hamid "does not mention the word "equivalent" Ext. E is my reply. This shows that my list shows materials for complete 25 chawls, not equivalent. Complete means actual and not equivalent. If I had received any letter from Harvey asking me to correct my list and give for equivalent, I would surely have done so. Ext. I/1 gives a list for actuals and not for equivalent etc."

In short Hamid's statement on this point is absolutely irreconcilable with that of Harvey's.

This order was also contrary to the provisions of Rule 347 of the P. W. D. Code which lays down that articles of European Manufacture must be indented for in England. And Salebhoy Tyabjee, too, had not these bars ready in stock but ordered it out from England.

That the placing of order with Salebhoy Tyabjee was irregular, is also the opinion of the Secretary of State as appears from the despatch dated 15/3/23 (Ext. 87). The India Office write that the "High Commissioner for India could have supplied these stores promptly at a price considerably less than that paid.....and the saving would have been substantial had it been possible to place the order in England. These stores had in any case to be obtained from outside India, and although it is represented that the order was placed locally for reasons of urgency it seems doubtful in view of the fact that the materials could have been purchased by the High Commissioner and despatched promptly whether any delay would have been involved had this course been followed. Even if, in order to avoid delay, local purchase was necessary a telegraphic reference to the High Commissioner would have been useful, as it might have enabled the authority here to place the order locally on more advantageous terms."

This is a pretty strong condemnatory letter, and if Hamid's statement is accepted there seems to be no excuse at all for placing the order locally.

Whether Harvey did it on account of Hamid writing in the slip of paper or not, does not matter much. There seems to have been no justification for such a large order, and particularly so, as not a single pile of 7/8" was manufactured. If there was such an emergency the urgency could not have disappeared within a few months.

The placing of the orders locally depended upon the complainant to this extent that if he wrote to Sykes that so many bars were urgently needed Sykes would have to place the order locally. Sykes says "If Harvey said he wanted bars very urgently then I would forward an application for sanction to order from local purchasers.....the ultimate decision for size tonnage and quantity rested with Harvey."

The accused also alleges that the rates paid were excessive. According to Ext. 87 the High Commissioner could have got the bars for £. 10/17 or about Rs. 162 per ton, whereas the rate paid to Salebhoy Tyabjee was Rs. 197/8 and Rs. 239. Sykes admits in his cross examination that on the figures given by the Secretary of State there would have been substantial saving if the order was

placed by cable than placing it locally.....The fact that the order was placed locally was because Harvey suggested that it was urgently needed. He adds, however, that Harvey had nothing to do with the placing of the order...If the order had been placed with the High Commissioner instead of locally there might have been a saving of approximately Rs. 46,000.

It is not my purpose to go into the question of rates etc. very deeply for the simple reason that Harvey had nothing whatever to do with the rates given to or with the acceptance of the tender of Salebhoy Tyabjee.

I allude to it to show the circumstances which go to show that Mr. Nariman's suspicions were not ill-founded.

There can be no doubt, however, that the order of these bars was a blunder on the part of the Department and we have not yet got the correct or true departmental explanation. The answers given by Sir Cowasji Jehangir on materials furnished by Harvey are found to be wrong. Harvey admits this. It is indeed, a very serious matter for a department to furnish erroneous or incorrect explanation to the General Member, knowing that the latter is bound to act upon it and make statements in the Council fully relying on these representations.

Though I hold that the complainant ordered excessive number of bars and of a wrong size it does not necessarily follow that he did it out of corrupt or dishonest motive. It may have been due to error of judgment, incompetency, carelessness, or negligence or wrong calculation or he acted on the slip of Hamid.

Only if the proposition advanced by the accused that there was a combination or conspiracy on the part of these higher officers viz. Sykes, Harvey and Hamid, could it be held that it was done out of corrupt or dishonest motives.

The evidence before me is not sufficient to warrant such a conclusion. There may be suspicious circumstances but they could only be matters of vague suspicion, not entitled to any serious consideration.

The theory rests practically on the broad fact that certain group of officers who were working together at the Delhi Imperial Works, came to occupy the practically same position here.

It is a mere coincidence, for the appointments of these officers did not rest with, and were not made by, any one of these officers. Apart from this, it is a matter of common knowledge and sound policy to engage men who are experts in a particular branch or have sound practical experience of a particular kind of work, to do that

work. These men were employed at Delhi on this kind of work and it is natural for the Bombay Government to give them preference over others.

The second suspicious circumstance pointed out by the accused is that in some cases certain officers were influenced or guided in certain matters by some of the other officers. There is nothing definite about this. But assuming it to be so, it is not a matter of any surprise. It is but natural for one officer to trust his colleague or his immediate subordinate and rely on his judgment or recommendation to a certain extent.

I find nothing adduced before me to show that there was a combination or group of officers who took secret commissions from merchants and shared in the secret profits.

Nariman has proved that some officers of the department were corrupt, and some of the witnesses do state that these officers said that they had to charge a high commission as it had to be shared by higher officers.

The latter statement if believed, would be only hearsay evidence against the higher officers. At the same time it is also a matter of common knowledge that a corrupt subordinate often assigns this reason as a motive for extorting a higher commission. Apart from this, not one of the several witnesses called by Nariman make any allegation of corruption against the complainant personally.

On the contrary, Jal Chichgar says that when he and his master went to give bribes to Hamid or others they used to carry a promissory note form. The object in carrying these forms was, in case, they were detected "giving the money, by a superior officer, to enable them to say that they had gone there to make a loan.

"Our object" he says, "in carrying such a note was to protect ourselves against Burra Sahebs like Harvey or such other person coming down upon us."

This would show that Harvey at any rate had nothing to do with Hamid in the matter of bribes in regard to transactions referred to by this witness.

I hold, therefore, that there is no evidence to prove any such conspiracy or combination or association of higher officers including Harvey.

The accused's next suggestion is that if wrong sized bars are ordered and ordered in excess, it could only be so because the officer receives secret commission. It may be one of the reasons but that is not the only reason for doing so. As I have already stated it may be due to error of judgment, incompetency, carelessness, negligence, wrong calculation or absolute reliance on a subordinate.

The facts proved in connection with this indent for 80,000 bars show that before the 5th August there could not have been any dishonest or corrupt motive on the part of either Hamid or of Harvey. The indents prepared by Hamid and Mehta went to Sykes. It was only between the 5th and 8th August that it struck Harvey that Hamid had not indented for piles. The reason he gives for that inference is quite probable. Mehta did not want bars for piles and yet his indent contained the identical sizes of bars as Hamid's indent. It would appear then to be a reasonable inference that Hamid had omitted bars for the foundation piles. He questioned Hamid, and Hamid admitted that there was an omission in his indent.

I have already held that there is no evidence to show that Hamid and Harvey conspired in this matter to get a secret commission. If Hamid be innocent there was no motive for him to say that there was an omission, if he knew that he had indented for piles.

The evidence of Hamid and Palnitkar and the Exhibits show that the preparation of an indent is really done by the office staff. It would be the duty of the Executive Engineer to go over it carefully. But duty is one thing and actuality another.

It is not urged that Mehta was in the conspiracy. And yet Mehta's indent contained orders for $5/8" \times 19'$ bars which were used for foundation piles. Mehta did not want bars for foundation piles and yet they are in his indent.

So that Hamid's answer to Harvey that he should add the necessary number of bars might be due to carelessness or incompetency or want of definite knowledge.

Hamid is then asked to go and find out what stock he had and that number he wanted. He goes and then send in the slip of paper asking for 30,000 bars to be purchased locally and 50,000 through the High Commissioner.

The question is why did he do so? In view of the evasive and noncommittal answers given by him it is not possible for me to give any reason.

It cannot be due to a corrupt motive. For Hamid never contemplated this order. It was Harvey's suggestion that he had omitted bars for piles and that was between 5th and 8th August and what is Hamid's first answer "It is a simple matter of calculation, "Calculate it and put it." He gave this answer then and there. So that he could not have seen Salebhoj or anybody else and his answer does not suggest that he wanted to have anything to do with it. It is Harvey, who tells him that he should go and ascertain the stock. He goes away and sends or returns with the slip of paper.

It is possible that Hamid might have asked some of his subordinates to go and make inquiries and that subordinate might have thought that 7/8" bars were required for piles, as Mehta had also indented for 5/8". And 7/8" were at one time actually contemplated. It is possible I say, that the subordinate might have made a mistake.

According to Z/3 the 3/4" bars were exhausted and if according to the erroneous impression of some one bars were needed, they would be needed very urgently so that orders would have to be placed locally also, as well as through the High Commissioner. Ext. Q. also suggests that Hamid had something to do with 7/3" x 19' bars.

But once it is held that Hamid did not act dishonestly in this matter the whole theory of Harvey acting from corrupt motives falls to the ground.

There is also another obstacle to the acceptance of the accused's suggestion of corruption and that is the procedure observed in the ordering of the bars. That did not rest with Harvey at all.

The evidence shows that tenders were invited by advertisement for these bars and 6 tenders were received. (Ext. U. & R.) These tenders were submitted to Sykes for report, and it was on Sykes' report that Salebhoy Tyabjee's tender was accepted (Ext. R) and it was Sykes who ordered out the bars from England through the High Commissioner.

Harvey had thus nothing to do with the acceptance of Salebhoy Tyabjee's tender or of the placing of order with English manufacturers.

In addition to this we have in evidence that the orders placed with the English manufacturers are placed through the High Commissioner and the names of manufacturers with whom the orders are placed are not made known to people here. The people here would not come to know of their names till the test certificates came through with the steel.

Why should then Harvey order out 50,000 bars from England. He would have nothing to do with the placing of that order. He would not even know the name of the manufacturers. And if Harvey wanted to earn secret commission from them why did he attempt to cancel that order.

It is not for a court of Law to go on theorising and speculating. The court cannot constitute itself into a sort of Detective Agency, or act the part of Sherlock Holmes. A court's duty is to weigh the evidence before it and decide on the evidence led in the case by the parties. If there be any deficiency in it, it is not the duty of the

court to speculate and try to fill in that gap. A court may infer from certain facts. But that inference must be compatible with all the other facts adduced in the case.

In a plea of justification the complainant's position is somewhat different from that of an ordinary complainant. The plea in this case practically amounts to a charge of corruption on the part of the complainant. And a court would only be justified in upholding the plea if the evidence before it is of such a nature that the court would have no reasonable doubt in coming to the conclusion that the complainant was guilty of the charge.

I have already held that there is no evidence before me to show that Sykes and Harvey formed a group of persons who took secret commissions. A bare suggestion is no proof at all.

On the other hand we have in evidence that Salebhoy Tyabjee's were fined Rs. 6000 for late delivery. If the higher staff had received commission from them they would not go to the length of penalising them to such an extent for late delivery.

On the evidence, therefore I must hold that the plea of justification fails.

As regard the other instances on which the complainant was examined it is not necessary for the purpose of this case to go into them. The charge against Nariman is only with regard to his statements made in connection with the ordering out of these bars. So that even if the accused proved the truth of his other allegations that cannot be any defence to the charges framed against him. It might go to mitigate the sentence.

At the same time I had to allow Nariman to go with all these matters as his defence was that there was a group or association of these High Officers who took bribes and the allegations he sought to prove thereby would be relevant in determining his "good faith" which is the next point that remains to be considered.

The 8th exception to Section 499 provides that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

9th exception is that it is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it or of any other person or for the Public good.

"Good faith" implies acting with due care and caution.

In order to consider the question whether Nariman, when he inferred corruption on the part of the higher staff of officers acted in good faith it is necessary to determine what was the state of his

knowledge when he gave his evidence before the Back Bay Enquiry Committee.

Mr. Nariman was always a keen critic of the department and even when he was not in the Council he seemed to have used his influence with some of the members particularly with Mr. Trivedi to agitate in the Council.

The evidence called by the defence also proves that there were rumours that there was corruption in the department and particularly in the Iron Trade Market known as the "Lokhundno Jatha." The merchants of that Jatha were very much dissatisfied with the manner in which tenders for the supply of steel were accepted and orders placed. Some of these merchants complained both to Mr. Trivedi and to Mr. Nariman that no orders could be secured unless commission was paid to the officers of the department and those that got orders were not even people of the Jatha. This belief not only prevailed among those who owned Jathas but it was also common to other merchants and contractors. Both Trivedi and Nariman worked together in this matter and when they received such complaints they made it a point to investigate it as far as they could.

Therefore, Trivedi put certain questions in the Council in July 1923. A reply was sent to him in February 1924. Ext. 149 shows the questions put and the replies given. In the meantime Trivedi and Nariman also came to know of this order for 80,000 bars.

The answers given in Ext. 149 were based on materials or facts furnished by Sykes, who was then the Acting S. Engineer, Harvey being on leave.

One of the questions put was "Do official records show that wrong size bars were ordered?" This question (B) dealt with 7/8" bars. The reply was "No."

Though by November-December Harvey, Sykes, and Hamid were aware that 7/8" bars were ordered by mistake yet Sykes replies "No" to the question put. I cannot accept his statement that he did not know that wrong size bars were ordered in 1922 by mistake. Harvey communicated with him both on the phone and by letter and Sykes himself sent the cable to the High Commissioner trying to cancel the order. Then again a question was put as to what quantity of 7/8" round steel bars were ordered for Project No. I of the D.D. The answer was "1552 tons of 7/8" round steel bars were ordered for 1 Project of the D.D."

This again was an incorrect answer.

Sykes admits that the result of this reply would be to keep out the indent order of 2000 tons placed with Geo. Service & Co. He

assigns as a reason for so doing by stating that the question did not relate to this period.

Q:—Why did you keep out order placed with Geo. Service & Co.?

A:—Because obviously the question would deal with current matter and not to what happened before. Geo. Service's tender was on 23-12-21. Supplies were made in the course of the year 1921 upto December. I adopted the period August to April 1923 because it appeared to be reasonable. It is not correct that I purposely or deliberately did not put in the order placed with Geo. Service & Co. The answer to question (f) is a correct answer. Ext. Y does not show that a wrong size was ordered but a different size was ordered. The cablegram means:—"remove 7/8" and put in 5/8".

I do not think these answers need any comment. The question put by Mr. Trivedi is not for any particular period. It was asked in July 1923 and the natural interpretation one would put upon it is what was the quantity ordered for Project 1 upto that date.

Nariman had certain information and knew that the answers given to questions (f) and (a) put by Mr. Trivedi were false.

When he was elected a member of the Council he had gathered certain other information as well. Merchants and Contractors complained to him and urged him to bring their grievances before the Council. He received certain information about the Company called the Bombay Petrol and General Supply Agency. He also came to know that the quantity ordered *viz.* 80,000 bars was far in excess of the actual requirements. He therefore, again put certain questions in the Council (Ext. A).

It is not necessary to go over it again at this stage. But the main fact to be observed is that while in Ex. 149 the Department denied that any wrong sized bars were ordered, in Ex. A. the Department admitted that by mistake wrong size bars were ordered. The mistake was suggested to be due to the Superintending Engineer's Office Supervisor.

It was alleged by Nariman that the bars were lying unserviceable in the Stores of the Development Department which had been unable to sell them in spite of public advertisement. This was denied by Government; but the information of Government was again not accurate as Nariman got up a bogus purchaser to put in an offer for their purchase and the Department wrote to the bogus purchaser offering him the bars.

Mr. Nariman continued receiving information from various persons including some of the staff in the Department about the corruption of certain officers.

It is impossible to say what exactly was the information available to Mr. Nariman when he was examined by the Back Bay Inquiry Committee.

But most of the witnesses called by him in defence had seen him in connection with their alleged grievances; and he had received information about the dealings of the Department with the Bombay Petrol and General Supply Agency, the contracts given to B.C.C. Co. and F.C.C. Coy. and to Gannon and Dunkerley, contract of Gaya and Co., sale of these bars to Maneckchand Jivraj and certain other matters.

Armed with all this information he gave his evidence before the Committee.

The Committee was a properly constituted body having power to deal with all the questions relating to the Reclamation Scheme and of hearing of complaints or charges made against officers of the Development Department.

Nariman does not himself ask the Committee to hear him. He is *invited* by the Committee to give his written statement and to appear, if convenient, on any day from August 16th to 21st (Ex. 30).

He is also requested to give the names of the Officers of the Development Department who received secret commissions with any other details in his possession. What the Committee wanted was the information "Upon which he based his speech of March 3rd 1925 in the Legislative Council."

His speech was already before the Committee. In consequence of the request he attended the Committee.

Mr. Velinkar says that the Committee was only concerned with the Back Bay Reclamation Scheme; while these charges were craftily put in by Nariman.

I do not think that Nariman put it in craftily. His attention could not have been drawn to this fact if the charge had nothing to do with the Reclamation Scheme.

In his written statement before the Committee he had mentioned several other particulars which had nothing to do with the Reclamation Scheme. He did so, as he had moved a resolution in the Corporation requesting the Government of India to enlarge the scope and powers of the Committee particularly with regard to contracts for building chawls, purchase of stores materials, etc., and he expected Government would grant this request.

The Government, however, did not think it advisable to enlarge the scope of the Committee.

Owing to this the Committee deleted or omitted certain passages from his written statement. Nariman did not give a copy of the statement to the Press.

He was asked about his "criticisms on internal administration or rather on maladministration and the internal working of the Scheme."

Q : Are your contentions confined to the Back Bay Scheme ?

A : They would be covered by the three instances I have given. I have referred to a number of others but as they do not come within the scope of the Committee they may be left out.

Sir Frederick Hopkinson : You cannot escape from what you have put down ?

A : I do not wish to escape.

Sir M. Vishweshwaraya: What are the three instances?

A : First about favouring a contractor Balkrishnaseth, second is about mild steel bars when the indent was changed and the third about cement contract.

Sir F. Hopkinson: I have read your document and perhaps all it implies is that a mistake was made by somebody in ordering 5/8" bars instead of 7/8". What would you say.

A : I cannot take it as a mistake. I take it as an unnecessary superfluous order which was not required.

Q : What do you suggest it was ordered for.

A : They were ordered to be dumped in Matunga Store Depot. 5/8" bars were required but 5 was changed into 7 by the Superintending Engineer.

Sir Frederick Hopkinson : Perhaps this might be for Housing Contracts.

A : Well, Sir, it was meant for housing contracts or for the Development Directorate but the instance is there. (Ext. 40 & C 3).

This shows that Nariman did not then know whether it related to the Housing Contract or to the Development Directorate; as both Departments used pile for foundations.

No doubt a careful study of answers given in Ex. A and the speech of Sir Lawless Hepper (Ex. 21) and Ex. 149 would have shown that the order did not relate to the Back Bay Scheme.

Though Sir Frederick Hopkinson seemed to have been aware of it, it is really he who started these questions. He told Nariman that he could not escape from what he had put down.

Nariman replied he did not wish to escape. He was there *ready to answer* any questions put to him by the Committee.

Besides the evidence shows that at first they took piles from the Reclamation.

Even Husseinbhai Lalji was allowed by the Committee to refer to it in Ext. 31.

That the Committee thought it referred to the Back Bay Scheme appears also at page 453 of Ex. C. Sir Lawless Hepper was anxious to report the charges made by Nariman and the Chairman at line 45 says, "We thought the purchases referred to the Back Bay Scheme."

There was then some discussion over the relevancy and eventually the Committee held it to be relevant. Sir Frederick Hopkinson puts this question at page 454 of Ext. C.

Q:—If any one of these bars has been used in the Reclamation work I think we can listen to your (Harvey's) explanation.

A:—Mr. Harvey; I think some of these bars have been passed on to the Reclamation.

Q:—Only one will do ?

Sir Lawless Hepper: You have got it in writing and also by Mr. Harvey. (Ext. 46).

I do not think, therefore, that Nariman put in this craftily. Besides the defamatory imputations were made by Nariman in the course of *replies* given by him to questions put by the members of the Committee.

The statements were thus made on a privileged occasion before a properly constituted body authorised to receive such complaints and in answers to questions put to him by that body and not irrelevant altogether. (*Seaman vs. Nethercliff*, 2 C. P. D. 53 at 59 and 3 All. 815).

It is not of the essence of "good faith" that truth of the imputation shall be proved. The imputation conveyed must be expressed in "good faith" although it may turn out to be erroneous. But it does not mean that the imputation may be based on nothing. If it is based on certain facts, these facts must be proved, or if it is a matter of inference it must be a fair and reasonable inference. Though it may be that certain matters in which the accused relied turn out to be untrue, it will still be a good defence if the accused succeeds in proving that he did not and could not have known with due diligence that the matters on which he relied were untrue.

I have already held that the ordering out of the bars was not due to a "trifling mistake." The bars were ordered out deliberately and that larger number of bars were ordered out than necessary. On the facts as now proved I have held that they were not ordered

out from corrupt motives. But all these facts were not before the accused.

He did not know that the Superintending Engineer had nothing to do with the ordering out of these bars. He did not know that orders were placed in England through the High Commissioner and that the names of Manufacturers are not made known to people here. He did not know of the existence of the slip of paper written by Hamid. All that he knew then was that a large and extensive order was placed and that there was an alteration made in the indent of the E. E. He further had the replies given to Trivedi in mind. There a false reply was given both as to quantity, and also to the ordering out of these wrong size bars. He had heard of the ugly rumours about corruption of certain officers. People concerned with some of the firms of contractors told him about actual bribes being given. He could not, therefore, be said to have not acted in good faith when he inferred that excessive quantity of bars of a size not wanted were ordered out of corrupt motive or with a view that Manufacturers should earn profits. Eyen Harvey admits that if superfluous stores are ordered that would result in a profit to manufacturers.

Mr. Nariman has all along complained, and rightly complained, that he has been severely handicapped by the institution of this case long after the alleged transaction.

Most important documents which could have thrown a flood of light, are missing. The slip of paper of Hamid is missing, the pile Manufacture Register which would show the size of bars used for piles is missing, Palnitkar's original draft is missing, Intermediate statement prepared by Hamid is missing, the Stock Book of Material District is missing, Salebhoy Tyebjee's books are not forthcoming and the counterfoil of cheque drawn by Maneckchand Jivraj for Rs. 5000/- is missing.

Coupled with this was the fact that incorrect explanations were given in the Council. If a false explanation is given by a party, he cannot have much of a grievance if his conduct and action are misconstrued particularly when "ugly rumours" are afloat.

Not only had he heard about these ugly rumours but actual complaints were received by him from merchants and others, who complained to him of actual extortion and bribes paid by them to certain officers.

In a case where corruption is alleged it is well nigh impossible in 99 out of 100 cases to prove it as a matter of absolute certainty. It could only be a matter of inference from certain facts and in generality of cases it rests up in the reliance placed on the oral testimony of people who make those allegations.

In this case, however, Mr. Nariman has been able to get certain books of accounts of certain firms who had dealings with the Development Department. Mr. Nariman has put in entries after entries, which can only lead to the one conclusion that bribes were actually paid to some of these officers.

But apart from that, the facts stated above are in my opinion sufficient to establish the "good faith" of the accused when he made certain statements before the Committee.

It has to be borne in mind that Mr. Nariman did not openly prefer a charge of corruption against Harvey. In his written statement all that he does is that he alludes to the "ugly rumours" and says that no effort was made to explain how such a "trifling error" could have occurred particularly when the indent was originally correctly prepared by one Engineer and deliberately altered by the Supervisor.

He alludes to it again in speaking of the large surplus stores existing.

Husseinbhai Lalji also alluded to it. In Ex. 31 he says "Once it was stated in Council that surplus stores to the value of 6 lakhs were sold."

Q: Who stated that?

A: I remember that the Director once admitted in Council that certain steel bars valued at Rs. 250,000 were indented of a wrong size.

It is only when Sir Frederick tells Mr. Nariman that he cannot escape from what he had put down, the latter says that he did not wish to escape. And it is to questions put to him by the Committee that he gives the replies (Ex. C-3) which form the subject matter of these charges.

Every one owes a duty to his fellow man to state what he knows about a person when an inquiry is made in a proper case. *Robshaw vs. Smith* 38 Law Times 423.

When it comes to the knowledge of any one that a crime has been committed, a duty is laid on that person as a citizen of the country to state to the proper authorities what he knows and if he states only what he knows and *honestly believes* he cannot be subjected to an action merely because it turns out that the person as to whom he has given information is after all not guilty of the charge. (R. 934).

Statements before Quasi Judicial Body such as Commissions for Enquiry are equally protected though it has no authority to administer an oath or compulsorily summon witnesses. I.K.B. 511; 18991 Q.B. 459; 24, Q.B. 441 and 447.

I will now deal with the question of corruption of some of the officers in the Department.

The prevalence of these rumours is proved by Mr. Trivedi, Mr. Sethna and the Merchant Vanmalidas and Dr. Cooper.

Nothing was urged against Mr. Sethna and Dr. Cooper. Mr. Sethna is Deputy Manager of 4 firms of Tata Hydro Co., Dr. Cooper is a Dentist D.D.S. while Mr. Trivedi was at one time a member of the Council.

It is not my purpose to go into the evidence of these witnesses as the prevalence or existence of these rumours is even admitted by the complainant.

But Mr. Nariman does not rest satisfied with the prevalence of these rumours. He has called certain evidence and put in certain documents which in my opinion are sufficient evidence to show that certain officers were corrupt.

So far as oral evidence goes the witnesses Chichgar, Kapadia, Elavia and Joosab Hassan state about the corruption of certain officers of their own knowledge. They have been severely cross-examined and criticised too.

Apart from any other consideration there is no reason why these witnesses should give false evidence. They have nothing to gain by it. On the contrary by proclaiming to the world that they were instrumental in giving bribes they expose themselves to a certain amount of opprobrium.

It is a matter of common knowledge that witnesses are unwilling to come forward in such cases and proclaim their dishonest conduct.

These witnesses have nothing to do with Mr. Nariman and have no favours to seek of him and no expectation of any reward from him. On the contrary they know that as business men they will have to suffer to a certain extent by proclaiming to the world that they gave bribes to certain officers.

Had the evidence rested on their bare word it might have been urged that a Court should not attach much weight to such "tainted" testimony and condemn officers of such grave charges.

I fully realise the gravity of the charges made by these witnesses, and as stated before, this Court will not readily impute corruption on mere vague allegation, or surmise or suspicions, however well founded they be.

But the statements of these witnesses are borne out by certain entries appearing in the regular books of account of certain firms.

The witness Chichgar was for some time a Manager of a firm known as the Bombay Petrol Supply and General Agency Co.

This Company managed to secure contracts for the supply of several articles to the Department. These contracts and the rates given to the Company and their bills have been subject matter of great controversy in the case..

I do not propose to enter into the merits of those questions.

Chichgar alleges that the Company was a favourite of certain officers and got contracts at any favourable rates and that these favours were the result of an understanding between certain partners of the firm and the officers.

The partners of the firm were Bhagwat, Nanchand and Chimantal. As Manager Chichgar had to go to the Department to obtain orders and he used to see Hamid, Gazdar, Mehta and Caldwell. "So far as I know for small orders no rates were given. The rates were settled by Hamid afterwards when Nanchand saw him. For very large orders Bhagwat used to arrange the rates in the Head Office in the Old Customs House. The arrangement between our Company and the officers was not made distinct to me but from the transactions that passed through my hands I came to know there was such an arrangement viz. that a certain amount was to be sent to the party giving the order. At times I myself used to hand over the amounts to the Officers."

This witness then points out certain entries appearing in the books of the firm to prove payments to officers.

Ext. 182-B is an entry dated 13-5-22 of Rs. 500. Chichgar says that he accompanied Nanchand when this amount was paid. The entry reads Rs. 500 debited to the Stores Department Account and there are sub-entries of Rs. 400, 50, and 50 making up the total of 500. The sub-entry of Rs. 400/- reads thus "Mr. Caldwell by the hand of Nanchand, 50 Mr. Caldwell's clerk etc. and 50 Worli's Storekeeper" etc.

Ex. 182-C is dated 23/5/22. this is an entry of Rs. 340. It consists of 2 sub-entries 300 and 26/4 and 14/1. The sub-entry of 300 reads thus. "To Mr. Gazdar by the hand of Nanchandbhai in settlement upto the end of May."

The sub-entry of 26/4 reads B. D. Matunga Tarpauline by the hand of Chichgar.

This connects Chichgar with the firm and this item is a sub-entry of Rs. 340/-

Ex. 182/D is an entry of Rs. 200/-and reads "Paid in cash to Mr. Gazdar."

Ex. 182/E is for 1200/- It reads "Paid cash for the purchase of a motor cycle from H. C. Ball through Bhagwat." Chichgar says this cycle was given to Hamid's cousin.

Ex. 182/F is an entry of Rs. 300/- for Christmas fruits and cigarettes.

Ex. 182/G is an entry of Rs. 100/- paid to Overseer Kamat.

Ex. 186/A is an item of Rs. 750/- paid to Gazdar on 2-12-22. Similarly Ex. 186/B relates to an item of Rs. 500/- paid to Gazdar on 20/12/22. Ex. 186/C is payment of Rs. 500/- to Gazdar on 10-1-23.

Ex. 186/D relates to payment of Rs. 500/- to Hamid. Ex. 186/X relates to payment of Rs. 500/- debited to account No. 3

Chichgar says that the firm kept 4 or 5% accounts to which only numbers were given. Payments made to certain officers were entered in these accounts, the detailed particulars of which were with Bhagwat. When payments were made to these officers they would be debited to "Shah Khate." These accounts were all "veiled accounts".

The entry 186/X is for Rs. 250. Nanchand and Chichgar went to Zaveri Bazar and purchased a silver vase. Chichgar gave the vase to Bhagwat and he gave a chit to Chunilal, the Mehta who made this entry.

An attempt was made by the Prosecution to prove that these accounts were kept merely in order to ascertain the profit and loss made by the company with regard to its dealings with a particular department. The goods, it was alleged, purchased by Co. for being supplied to the Departments would appear debited in these accounts and the amount of bills recovered would be credited.

This explanation cannot be correct for some of the entries appearing therein could not have been debited in the accounts. Ex. 190/B is a list of some of these entries. I will only cite a few.

Rs. 15/- for lottery tickets on motor cycle.

Rs. 300/- Paid to Gazdar.

Rs. 10/- Paid to Abdul Hamid's man.

Rs. 140/- Paid to Worli Store-keeper.

Rs. 168/4- Paid for Rafal's salary for October.

Rs. 100/- Paid to Supervisor Colardo etc. etc.

The suggestion of the accused is that these veiled accounts of large sums of money represent payment of Commission to certain officers on bills recovered.

Ext. 180/A is an account of Abdul Hamid.

Hamid was cross-examined at some length on certain entries appearing in this account. He said he had made payments to the Company and produced certain receipts. But the receipts do not

cover the entire amount. I can't accept his statement. Some of the items in his account refer to payment made to Hamid's chauffeur. Why should the Co. pay his chauffeur? The company was not a Banking Company and besides Hamid had a banking account. There is no reason why this firm should make such payments as supplying boot and shoes to the driver or pay Rs. 101/- to Fiazali Khan; nor is there any reason why they should pay for blankets and cloth supplied to Hamid. Hamid does not produce any cheque showing payments.

But what absolutely militates against his story that he repaid these amounts subsequently on presentation of bills, are payments made in cash to Hamid.

He says that he did not receive any cash from them. If so how came the entry of Rs. 500 on 11-1-23. Similarly there is no reason for this Co. buying a motor cycle for Rs. 1,200 and debit to Hamid's account. Ext. 180/A and the other entries of cash payments made to Hamid clearly prove that this Co. did make secret payments to Hamid just as they made to Gazdar and other officers.

The entries in the books of account of this firm clearly show that bribes were paid to some of the Officers.

Chichgar was severely handled and criticised by Mr. Velinkar. It is true that certain statements made by this witness were not correct. But I do not think his evidence can be impugned in this point. The books of account corroborate his statements and the only inference one can draw from all the entries therein is that the Co., did pay illegal gratification to certain officers. It would be absurd to suggest that this witness is a got up witness. He complained to Mr. Nariman about the corruption of officers long before this case was launched and when such a contingency was not even thought of. I see no reason whatever to disbelieve his testimony in this point. It is not that he makes allegations against everybody. On the contrary the evidence of this witness is to some extent in complainant's favour. For he says that when they went to make payments to officers they carried promissory note forms as they were afraid of Burrasabs like Harvey and others. The object of carrying these promissory note forms was to enable them to say, if caught in the act of making payments that they went there to make loans.

The next witness who speaks about the corruption of the officers is Kapadia. His evidence implicates Gazdar and Caldwell. He struck me as an honest witness and I accept his testimony. He too says that when certain proposals were made to him by Gazdar of sharing half and half he refused to agree to those proposals as he was afraid of being detected by superior officers like Harvey. He also speaks of the favours shown to Balkisan by the officers at

Colaba and of presents made by Balkisan to some of the officers and their wives, consisting gold emerald anklets, furs, carpets, cushions, chairs etc.

Narayanrao Mahadeo Pai, the proprietor of the motor agency speaks of his overhauling, painting and repairing motor cars of Hamid, Nandkishore and others and says that his bills were paid by the B. P. and G. S. Co. He also speaks of Chunilal going with Abdul Hamid and Gazdar and bringing two Buicks from Pratt & Co.

Dr. Cooper says that he had a client called Vali Mahomed who had some contract work from the Development Department. Vali-mahomed is now dead. He complained to Dr. Cooper about the officers taking bribes and asked Dr. Cooper to introduce him to Mr. Nariman. And introduction was brought about. Vali Mahomed mentioned the names of Mehta, Gazdar and 2 other Indians.

Vali Mahomed's brother Joosab produces the books of his brother Ext. 202 and 202/A is an account bearing no name but the word "Engineer" is written at the top. It shows cash payment of 100, 325, 500, 719, 200, 400, 800, 125, 200, 200, 235 and various other small cash payments or for purchase of certain articles. The total sum debited to the "Engineer" is 5064/5/-. Joosab says the Engineer referred to in this a/c is Captain Carmicheal. Carmicheal was under Mehta. Ext. 204 shows payments of 10 per cent as secret commission to the officer of the Development Department who gave some work in connection with the record room. This is deposed to by Doola also.

Elavia also speaks about actual payments made to some of the officers. He held a Power of Attorney from one Samboo Bhagoji, a partner of Gaya & Co. Samboo was the financing partner. He says that before the contract for 80 chawls was actually given to the B.C.C. Co., it was arranged between the officers of the Development Department and Gaya & Co. that they had to share half and half. Subsequently the arrangement was to pay 12½ per cent profit. This 12½ per cent was paid to the officers. He is supported by the entries in the books of Gaya & Co. Ext. 208, D/1, 208 D/2, 208 D/3, 208 D/4, 208 E/1, 208 F, 208 F/1, 208 G/1, 208 G/2, 208 G/3, etc. All represent payments made to officers according to the share in the profits at 12½ per cent which was subsequently reduced to 5 or 7 per cent on the amounts received on the bills. At the end of Ext. 208 there is a summary made of all such payments.

I do not think any serious attempt was made to challenge the testimony of this witness as to the arrangement of paying 12½ per cent commission. I accept his evidence as true and he is borne out by the entries in the books.

The last piece of evidence I propose to consider on this point is that of Manekchand Jivraj who purchased the surplus iron bars in question. I allowed Mr. Nariman to cross examine him as I considered him to be a hostile witness.

When the 80,000 bars arrived and it was discovered that they were of the wrong size an attempt was made to use them wherever possible by altering certain designs. Still a good number was left over as surplus.

It is unnecessary for me at present to state how and under what conditions these came to be sold to Manekchand Jivraj. They were sold on the day that Harvey arrived from England and took charge. It is alleged by the defence that a secret commission of 5,000 was paid by Manekchand Jivraj as a consideration for bringing about this transaction.

I may state that there is no evidence to show that Mr. Harvey was paid Rs. 5,000. But the evidence led is in my opinion of such a nature as would lead to the inference that Rs. 5000/- was paid to some one for bringing about this transaction.

From the evidence it appears that Manekchand Jivraj had put in a previous offer for the tenders but he was told by Caldwell that he had no authority to put the transaction through and that the 'Burrah Sab' meaning Mr. Harvey will put it through after his return. He waited till Mr. Harvey returns and wrote to him a letter dated 20th October. He went with the letter to Harvey direct and the transaction was put through and completed on that day. The terms of the agreement were approved of by Mr. Bell but Mr. Harvey tightened some of the clauses.

On the 29th October Maneckchand Jivraj drew a cheque for Rs. 5,000. He was asked to produce the counterfoil of that cheque. He has preserved all the other counterfoil books except this one. He said he must have mislaid it somewhere and he would look for it. He was asked by the Court to produce it whenever he found it. He was examined at the end of November but he has not yet produced the counterfoil.

Mr. Nariman received certain information and he applied to this court for seizure of the book of Maneckchand Jivraj. Mr. Nariman accompanied by one Motilal went to Manekchand Jivraj's shop and asked him to produce his books of account. Manekchand Jivraj appeared to be unwilling to do so but eventually produced them. In going through the books of accounts the entry of Rs. 5,000 was found debited to the Development Department "Haste M. J. (i.e. by the hand of Manekchand Jivraj.) When this was discovered Manekchand Jivraj said "it was necessary to do such a thing when dealing with the department" and he asked

Nariman not to harass him. He took Motilal aside and asked him to speak to Nariman requesting him not to trouble him (Manekchand Jivraj) saying "such a thing is usual with merchants."

Subsequently Manekchand Jivraj saw Mr. Trivedi and asked him to intervene and Mr. Trivedi called Mr. Nariman to his office. At that time Manekchand Jivraj was present and Mr. Trivedi's younger brother who is now in Europe was also present.

Manekchand Jivraj referred to the entry of Rs. 5,000 and said that the matter should not be disclosed in court as they (i.e. his firm) being contractors they had dealings with Government and Railway Departments and it would prejudice their business. He was pressed by Mr. Nariman to speak the truth about the entry. Manekchand Jivraj was taken by Mr. Trivedi's younger brother to an inner room and they returned after some minutes. The brother stated in the presence of Manekchand that he would only state about the entry, if protection was given. Nariman assured him that as a lawyer he knew the court would give protection. Still Manekchand Jivraj did not say anything. The brother stated that Manekchand Jivraj told him that the amount was paid to Caldwell for bringing about the Transaction. Manekchand Jivraj did not contradict this statement but he stated would consult his legal advisers. A week later he told Mr. Trivedi that he had consulted his legal adviser and Mr. Trivedi told him to speak the truth if protection was given.

Manekchand Jivraj admits that he had an interview with Nariman in Trivedi's office. He admits he came out of the inner room and the brother made a statement. But he does not remember what he said. He however, admits he consulted Mr. Kanuga pleader.

I cannot accept the testimony of Manekchand Jivraj when he says he did not make the above statements.

There is no reason for Motilal who has got nothing to do with the accused and Mr. Trivedi to make false statements on oath and concoct a story against Manekchand Jivraj who never did them any harm and against whom they bore no grudge or spite. What is more Manekchand Jivraj and Mr. Trivedi's firm and another formed syndicate and bought these surplus stores. Mr. Trivedi would have no reason to make any statement adverse to his copartner in this venture. Besides if this entry of Rs. 5,000 was a harmless entry there was no necessity of consulting Mr. Kanuga nor was there any necessity of asking Mr. Trivedi to intervene in the matter and bring about the interview.

What is more, the entry itself supports the contention of the defence and coupled with non-production of the counterfoil it shows that his present statement about the entry could not be correct.

He once says that Rs. 5,000 was the sum representing his share in the profit. He then changes his statement and says he took this sum of money on account.

Neither of these statements can be true. Ex. 179 is the debit entry of the sum of Rs. 5,000 in his fair cash book. It reads thus, Rs. 5,000 Kartik sud 15th, 30/10/25 debited to the Bombay Development Department Matunga Bar Rs. 5,000 paid for sundry labour (charges) with regard to the bars by the hand of M. J.

Ex. 220 is his rough cash book and the entry in that book reads thus:—Rs. 5,000 debited to the account of Bombay Development Department, Matunga Bar Account by the hand of Maneckbhai.

Balubhai is scored and Maneckbhai written. If the amount was taken as his share of his profit or on account how came the two entries to be debited to the Bombay Development Department Matunga Bar Account and how could the words “for sundry labour charges” occur.

It is a matter of common experience to find that when entries showing bribes are entered in books of account and if the object is not to mention the name of the person to whom it is paid, the words “sundry expense account” or “sundry labour charges” are put in.

The evidence also shows that about this time a representation was made to Mr. Sethna by M. J’s agent or representative one Mr. Vora that commission was paid to the Department.

Taking into consideration all the above facts *viz.* the existence of ugly rumours, complaints of individuals to Nariman about their being made to pay bribes, the ordering out of wrong size bars, the excessive quantity, the wrong and contradictory explanations given in the Council in Ex. A. and Ex. 149, the sale of these bars at a very lower price than that fixed by Government, Maneckchand Jivraj’s representation that he had paid commission to the Development Department and the actual payment of commission to certain officers could it be said that the accused did not act in ‘good faith’ when he inferred that the “higher staff of officials” was corrupt.

It is true that all the facts now brought out were not known to the accused when he made his statement before the committee. But most of these facts were known to him. Besides these facts show that Mr. Nariman was justified in accepting the statements of the several persons who made such complaints and the inference he drew in connection with the transaction of these bars could not therefore be said to have been drawn ‘maliciously or without “good faith”’.

Besides these facts Mr. Nariman had received complaints about favours shown to certain contractors and about the acceptances of tenders and the favourable rates given to them.

These form the subject matter of the long cross examination of the complainant and Hamid.

I do not propose to go into them, in view of my finding on the above points. I may state, however, that even as regard those instances the plea of justification fails so far as Mr. Harvey is concerned.

At the same time they are very relevant in considering the question of "good faith" on the part of the accused. Without the knowledge of the full facts as now disclosed in the evidence some of the incidents are of such a nature as would lead an ordinary man to infer corruption on the part of the officers concerned.

It is true that the final decision of the acceptance of tenders and the giving of contracts rested with the Development Director. But it is admitted that Mr. Harvey's recommendation was in every case approved of by the higher authorities. So that in the absence of facts now disclosed in the evidence, I am of opinion that it would not be unreasonable for a man in the accused's position then to have believed in the corruption of the complainant.

Some of the suggestions made in reference to the contract given to certain persons are puerile and too ridiculous but there are others which are much more serious.

To discuss all the points *pro and con* would involve an expenditure of good deal of time, which in my opinion is unnecessary as I have decided in favour of the accused on the plea of "good faith".

I may state, however, that on a careful consideration of the evidence before me I hold that the complainant did not act corruptly with regard to the placing of these contracts with the several firms referred to by the accused in the latter part of the cross examination of the complainant.

For reasons stated above I hold that the first head of charge about the "ugly rumours" is true, but as the complainant is also one of the members of the higher staff of officers the plea of justification fails. I hold, however, that the accused preferred the charge in "good faith" before a competent authority.

Besides in his written statement though he alludes to the "ugly rumours" at the same time he says that he can place before the Committee all the materials that he has been able to collect not with a view or desire to cast any aspersions against any individuals of the department but primarily with a view to enable an independent investigation to find out the truth and if sufficient materials were disclosed to take such action as the Committee thinks proper.

This shows that he bona fide believed in the existence of these "ngly rumours" and he had certain materials before him which he wished to place before the Committee in order that the Committee might take such action as it may think proper. The attitude of Mr. Nariman here is like that of an ordinary citizen, who has reasons to believe in the commission of a crime by some one and who lays such information before a Court or Police or some competent body with a view to its investigating in the matter.

On the facts now proved it cannot be held that he did not prefer the charge in good faith.

The other 8 charges really form one charge containing several inaccurate statements.

The 2nd charge by itself is not defamatory. At first the prosecution case was that it was due to a "trifling error" or "mistake" of the supervisor or some staff that "5" was changed into "7." If that had been proved it might have been argued that the accused in denying that it was due to a 'trifling mistake' suggested corruption. But I have already held that it was not an alteration made by mistake in writing the figure 5/8." The order for 7/8" bars was a deliberate addition made in the indent sent in by Hamid and that it was a blunder for which a true explanation is not forthcoming. The inaccurate statements made by the accused in this part of his statement are first that the bars cost 3 lacs whereas they were of the value of 2½ lacs or so; the other inaccuracies are the suggestions that all these 7/8" bars were deposited in the Matunga Depot, that the amount of nearly 3 lacs was purely wasted, and that fresh indent had to be prepared. By themselves these statements cannot be said to be defamatory.

In the 3rd charge the statement made by the accused cannot be said to be false. In one sense "5" could not be said to have been changed into "7" by the Superintending Engineer but the addition was made at the instance of the Superintending Engineer.

This statement also standing by itself cannot be said to be defamatory and besides Mr. Nariman was not aware of the real facts. The statement was made by him on information received by him and which he had no reasons to disbelieve. Besides the complainant himself changed his story from time to time in trying to explain how the figure "7/8" came to be written as appears from statements made in the Council and before the Committee.

Charges 4 and 5 are statements made by Mr. Nariman to questions put to him by the Committee. They are repetitions of his statements referred to by Mr. Nariman that the alteration could not be due to a "trifling mistake." Standing by themselves they could not be held to be defamatory in view of my finding that the

order of 7/8" bars that was not due to a "trifling error" on the part of a scribe or some staff.

Charge No. 6 is an inference drawn by Mr. Nariman. It is a bona fide inference and the complainant himself admits that it would be a legitimate inference to draw if wrong size bars were ordered. The statement that the stores were used as scrap iron is not true. A portion of this quantity was made use of by redesigning certain parts of the chawl.

The statement in charge No 7 is inaccurate if the Superintending Engineer referred to is Mr. Harvey, but it would be a correct statement if the Superintending Engineer referred to is Mr. Sykes. For it was he who had to place orders with the Home Manufacturers through the High Commissioner. Standing by itself it could hardly be considered as defamatory.

The statement made in charge 8 is inaccurate to this extent that the alteration was made by the S.E. The indent was altered at the instance of S.E. and that by adding the quantity of 7/8" bars to the original indent.

Charge 9 is a matter of inference.

I Therefore Acquit the Accused.

Before I part, I would like to refer to certain attacks made by Mr. Nariman against the Public Prosecutor. In my opinion they were absolutely baseless and uncalled for. Mr. Walker, as representing the Government and watching the case on behalf of the Government took no part in the proceedings. He took up a very correct attitude and produced whatever documents the Court called upon him to do so.

(Sd.) H. P. Dastur.

Presidency Magistrate,
Third Court, Bombay.

27-1-28

PRESS AND PUBLIC COMMENTS ON THE CASE.(1) **TIMES OF INDIA.**

14-2-28.

A Case and a Moral.

Recently a speaker denounced on the platform a certain notorious book, and admitted afterwards that she had not read it. That is a characteristic illustration of the levity with which statements are made in Modern India. We make bold to say that of every hundred persons who have pronounced dogmatic opinions on the Harvey-Nariman case, not one has read the eighty closely typed pages in which the Magistrate embodied his careful judgment. Having discharged that task not once, but several times, we propose, even at this comparatively late stage, to try and extract the essentials from this very tangled skein. Mr. Nariman averred that there had been "serious maladministration and wasting of public funds" in the work of the Development Department; further "that the higher staff of officers has been receiving secret commissions from the manufacturers". Now if we are to form a correct judgment, it is essential to reconstruct the conditions which existed when the Department was formed. There was unparalleled and desperate overcrowding in Bombay. If it were to be quickly corrected, exceptional expedition was necessary. In such circumstances it is unreasonable to expect the same meticulous care as accrues from the laborious and very slow methods of the Public Works Department; a certain measure of irregularity, a certain amount of waste is the price which generally has to be paid for very rapid organisation and construction. This is especially the case when in the middle of operations where speed was the paramount consideration, the programme is suddenly interrupted and the works cut down because in changed conditions the original scheme no longer stands. That was the fate of the Development Directorate. When the chawl programme was in full swing, we heard some criticism of the design, but little save praise of the rapidity with which the work was being pushed forward. It is easy to be wise after the event; it is most unjust to judge the activities of the boom in the painful agonies of the slump.

Now the charge of maladministration really centered on the order for seven-eighths in inch steel bars for use in reinforced concrete when five-eighths inch were really required. With this, is associated in part the general charge of corruption. According to the Magistrate's decision, "the main gravamen of the charge is that the alteration of five-eighths into seven-eighths was made deliberately by the Superintending Engineer in the indent prepared by the Executive Engineer out of corrupt and ulterior motives". That charge was not substantiated. After all the laborious hearing of the case, and the desperate attempts to eluci-

date the truth, the mystery of these seven-eighths bars is as complete as that of The Man in the Iron Mask. What is clear is that the Superintending Engineer did not alter the figures in the indent, but after certain inquiries added an indent. Also that these seven-eighths bars were not wanted for the work in hand. Very soon after they began to arrive it was discovered that an error had been committed, and efforts were made to cancel the contract in Bombay and the indent made on the High Commissioner. The explanations given from time to time were at complete variance with each other; the information furnished to Government for their replies in the Legislative Council was inaccurate. There was no such need for haste as to justify the placing of an order for thirty thousand of these bars locally; the figures show that if the whole indent had been placed through the High Commissioner there would have been a saving of Rs. 46,000. On this point the charge of maladministration was established, and in circumstances so obscure as to give reasonable ground for concluding that there was something worse behind it. But that was not the real gravamen of the charge; we are all likely to err, even the youngest. The essential part of the case was that the bars were wrongly ordered, with the view that the manufacturers should make a profit and Mr. Harvey get a secret commission. The Magistrate's conclusions on this point are clear. There was no evidence that Mr. Sykes who placed the order and Mr. Harvey who gave it formed a group of persons who took secret commissions; there was much evidence to the contrary, for the local contractor was fined for late delivery and the balance of the order went through the High Commissioner; and therefore the plea of justification failed.

Now let us turn to the general allegation, that the higher staff of officers had been receiving secret commissions. The Magistrate found that the allegations made by Mr. Nariman were definite and could be applicable to Mr. Harvey. In defining the obligations which fall on anyone who sets up a plea of justification, the Magistrate said "When a plea of justification is set up the accused must prove that each and every fact stated by him is true in fact." The Magistrate decided that the allegation that Mr. Harvey changed the figure of five in the indent for bars into seven was not correct, and Mr. Nariman admitted that it was not correct. The Magistrate found that the plea that this was done from corrupt motives was not established by evidence. He found that nothing was adduced before him to show that there was a combination or group of officers who took secret commissions from merchants and shared in the secret profits. "On the evidence therefore I must hold that the plea of justification fails." That there was corruption amongst others the Magistrate was satisfied. The curious will naturally inquire how it came about that, allegations having been

made which were not proved, and a plea of justification set up which failed, the Magistrate acquitted Mr. Nariman. The Magistrate seems to have been powerfully influenced in his decision by the judgment which laid down "when it comes to the knowledge of anyone that a crime has been committed a duty is laid on that person as a citizen of the country to state to the proper authorities what he knows and honestly believes; he cannot be subjected to an action merely because it turns out that the person as to whom he has given information is after all not guilty of the charges." As Mr. Nariman acted in good faith he was acquitted. No one who knows him would charge Mr. Nariman with bad faith. His zeal for the public welfare is unquestioned; the only criticism is that it sometimes outruns his discretion. He had ample ground for his demand for inquiry into these matters. The evidence of mal-administration was serious, and has not been cleared up even now. The nature of the transactions, and above all the inaccurate statements put into the mouth of the spokesman for Government, justifiably raised unfavourable conclusions. Therefore substantial justice has been done. Looking back on the chequered history of this case we cannot acquit the Government of Bombay of a lamentable mishandling of the matter. True, they were misled by inaccurate information supplied to them. But, a serious charge having been made in the Legislature, the wise course would have been at once to institute careful inquiry; if that had been done all these tedious and exacerbated proceedings would have been avoided.

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(2) HARVEY-NARIMAN CASE.

18-2-28.

To the Editor, the ' Indian Daily Mail '

Sir,—I send a copy of my letter of 14th instant to the "Times of India" in reply to its criticism of this case in its issue of the 14th instant. As the Editor has not shown the usual courtesy of publishing a reply to its own views, I send it to you for favour of publishing it in your next issue.

Yours faithfully,

G. B. TRIVEDI.

To the Editor the " Times of India "

Sir,—In your leading article in to-day's issue, you blame people for not reading carefully the bulky judgment of the Magistrate before pronouncing their opinions. The responsibility for this blame lies on you and your contemporaries for not making that judgment available in full to the reading public.

As regards the charge of maladministration and wasting of public funds levelled against the department, the present case, as you state, referred to one incident only. Even the Mears Committee's report had reference to only Back Bay Reclamation and so if an inquiry is instituted even now, many instances of maladministration and wastage of public funds will come to light. For instance, the Development Bill came before the old pre-reform Council on 3rd August, 1920. The Secretary of State's sanction was obtained only a few days ago and yet it was stated in reply to my question in the Council that orders for dredgers and other plants worth Rs. 95 lakhs were placed in May, 1920, 3 months before the Secretary of State sanctioned the Scheme of Development. Speed may be a paramount consideration but Government are not able to explain the need of such hurry, when dredgers and pipe lines remained idle in the Bombay Harbour for 18 months after arrival. The appointment of Meik and Buchanan as consulting Engineers was made in 1920 but the agreement was not put before the Finance Committee till late in 1923. Everything important was hurried up before the new reformed council could study the schemes and offer any criticism. The first Development Budget was put before the Council to be discussed and passed in 10 minutes only. The Director's services were obtained on extra liberal terms. His pay was next to the Governor himself more than that of his superior member Sir Chimanlal Setalwad. Besides he was promised a bungalow worth Rs. 2 lakhs. On the Reclamation 5 superior expert European Engineers were engaged and for housing and suburban schemes four Superintending Engineers, all Europeans were engaged on double their previous pay whereas the P.W.D. has only four such officers for the whole Presidency work. Bungalows for officers were built at Kandivli and Ambernath long before the schemes were in progress. All this was done before Council could grasp the position and offer constructive criticism. Warnings given by experienced Council Members like Dewan Bahadur Godbole retired P. W. D. Engineer, Dewan Bahadur Haribhai Desai, the present Minister of Education and Merchants like Sir Purshottamdas, Lalji Naranji, Jehangir Petit and experienced Corporators like Dr. Dadachanji were ignored and ridiculed. There was something



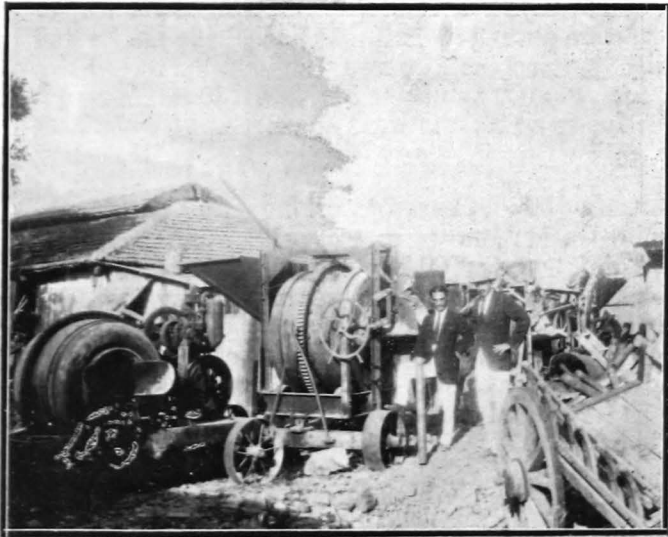
A long line of unoccupied Chawls at Worli.



Mr. Nariman on inspection of B. D. D. works in suburbs.



Tokens of appreciation from Mr. Nariman's friends and admirers.



Inspection of Worli Stores.

mysterious about the whole thing more than mere consideration of speed. Even the Accountant General was loud in his protests against irregularities of finance. If this is not maladministration and wastage of public funds, one fails to understand what else it can be called.

There was no doubt shortage of houses in the City due to wrong method of the Improvement Trust of demolishing unfit houses and not providing for new buildings, but the recommendation of the Development Committee appointed by Lord Sydenham in 1913 to compel millowners to build houses for mill hands was set aside by Sir George Lloyd in 1919. He was for direct action by Government, thus relieving millowners of their duty by promising to subscribe to the Development Loan. He was a man of great ambitions, who wanted to leave a name in the History of Bombay Presidency by two big schemes costing Rs. 30 crores each, one in Bombay, and the other in Sindh, and he was in a hurry to see his ambition fulfilled before he left Bombay. He set aside ordinary redtape rules and created a special department with special experts. He ordered, it is reported, work to be started without definite estimates and sanctions. A general notification of acquisition of 3,500 acres of land in the suburbs was issued with a view to profiteer. His Government consulted no public bodies in the suburbs as to the best method of development there. They ignored the advice of expert engineers to develop suburbs from Bandra to Borivli and poured money in developing Trombay. Housing schemes for mill-hands similarly were pushed on without consulting labour leaders and the costs went up and rents were fixed high. Everywhere he asserted his autocracy and what wonder that Government resented even constructive criticism and went ahead?

Thus all this autocratic working even in reform days led to maladministration and wastage of public funds for which Sir George Lloyd and his councillors are primarily responsible. If the Council insists on appointing its own elected Committee, real truth will come out and there will be no whitewashing. Mr. Nariman has exposed the rotten state of affairs. Let the press and the public demand an inquiry to find out how far this autocracy was responsible for this criminal waste of public money. If this is done, the Harvey Nariman Case will not be considered as waste of public time and money.

G. B. TRIVEDI.

(3) THE BOMBAY CHRONICLE.

Saturday January 28, 1928.

REWARD OF DARING.

It was evidently with a view to avoid a popular demonstration that Mr. H. P. H. Dastur, Presidency Magistrate, Third Court, sprang a surprise on the public of Bombay by suddenly deciding to deliver judgment in the Harvey-Nariman case on Friday. In arriving at this decision the Magistrate deprived the public of Bombay of the satisfaction that was due to them of expressing to Mr. K. F. Nariman their spontaneous and unbounded joy at his honourable acquittal. But unfortunate as this decision was, the judgment which Mr. Dastur delivered is one on which he may well be congratulated. For he has brought to bear on the performance of his task the ability and independence which is expected from one who has to administer justice and has thus considerably enhanced the reputation of Courts of justice. In view of the startling disclosures made during the hearing of the case, its outcome was, of course, a foregone conclusion. Nevertheless Mr. Dastur's judgment will send a thrill of joy throughout the City and even throughout the country. For the case against Mr. Nariman has been an unparalleled one in many respects and as such has engaged the anxious and interested attention of the public in the remotest parts of the country. Concluding his defence address Mr. Nariman said: "A conviction or an acquittal, so far as I am concerned does not matter. I say so in all earnestness without any defiance or bluster. The result of a conviction in this case, apart from personal considerations is bound to be disastrous so far as the public administration and public morality are concerned." Mr. Nariman when he made this declaration was uttering but the simplest truth. For the public followed the hearing of the case with anxious interest because they realised that it involved an issue of vital importance to public life and public morality. The issue was, in short, whether a publicist who had dared to ventilate a public grievance by exposing the ways of a public department was to be punished for his courageous attempt to serve the cause of truth and justice. If the issue had been decided against him the sufferer would not have been Mr. Nariman himself but the public because not only would it have removed the wholesome check of vigilant public criticisms on the work of departments entrusted with the expenditure of public money but it would have also made it impossible for any public enquiry into the working of such departments in future in as much as it would have deterred witnesses from coming forward to give

evidence. Mr. Nariman was thus fighting not a private defamation case but vindicating the right of citizens to call public servants to render account of their stewardship whenever things went wrong.

If the case was an unparalleled one, because of the vital issue that it involved, it was unique in the history of criminal courts in many other ways also. It lasted for nearly a year, occupied 62 hearings, 18 of which were devoted to the cross-examination of the complainant. Mr. Nariman had put in 276 exhibits some of them running to 30 to 40 pages. Amazing revelations were made about contracts and bribes to some officers of the Development Department which have come as a rude shock to the citizens who pay for the maintenance of public departments. The last but not the least remarkable feature of the case was the bold, fearless and masterly manner in which Mr. Nariman conducted his defence. As regards the indent of mild bars, which was the main issue, the Magistrate found that Mr. Nariman's allegation that stores not required were ordered was true, but he held that the evidence before him was not sufficient to warrant the conclusion that Mr. Harvey, acted with dishonest motive or that there was a combination or conspiracy on the part of the officers and that there was no evidence to show that Mr. Sykes and Mr. Harvey formed a group of persons who took secret commissions. But the allegations, Mr. Dastur held, "were made on a privileged occasion before a properly constituted body authorised to receive such complaints and in answer to questions put to him (Mr. Nariman) by that body and not irrelevant altogether." Mr. Dastur comes to this decision after pointing out that Mr. Nariman himself did not ask the Mears Committee to hear him. "He was invited to give his written statement and to appear if convenient in person. He was also requested to give the names of officers who received secret commissions. His speech was already before the Committee. He was asked about his criticisms on internal administration or rather maladministration and internal working of the scheme." In fact, the Committee wanted from the witnesses all the information in their possession and Mr. S. B. Billimoria, one of the members of the Committee, declared: "If people have information, why should they not boldly come forward and give out the information? If nobody were to give out clear information, how is the Committee to proceed?" Mr. Nariman came forward with the information in his possession. And what was his reward by Government? A sanction for criminal prosecution in spite of the fact that the members of the Committee when approached on this matter had given no countenance to the idea of prosecution and that Sir Grimwood Mears had declared himself against it. And the decision of the Government was the more amazing and deplorable in view of the fact that Mr.

Nariman had made his position clear both in his statement before the Committee and during the Council debates that the materials were placed by him before the Committee because they were considered "prima facie" sufficient to start an independent public investigation to have them either verified or falsified, and to take action, only after sufficient evidence was disclosed, against any officer or officers. Whatever the motive that inspired the Government in sanctioning the prosecution, their action was calculated to rouse the suspicion of the public that they did not want an enquiry and were determined to punish an inconvenient critic who could not be silenced. The result of the action, however, has been to make the need for an independent and even judicial enquiry into the working of the Development Department more imperative than ever.

The revelations made in the Nariman case do not rebound to the credit either of the Government or the Department. Mr. Dastur says in the course of his judgment: "After examining all the evidence on the point no doubt was left in his mind that the order of the bars was a blunder on the part of the Department and the Court had not got the true explanation. The answers given by Sir Cowasji Jehangir on materials given by Mr. Harvey were found to be wrong. It was indeed a very serious matter for a department to furnish erroneous explanations to a General Member knowing that the latter was bound to act upon them." "The accused had", the Magistrate said, "proved that some officers of the Department were corrupt and some of the witnesses did state that these officers said that they had to charge a high commission as it had to be shared by higher officers." Again: "Mr. Nariman had all along complained that he had been severely handicapped by the institution of this case long after the alleged transaction. Most important documents which could have thrown a flood of light were missing. The slip of paper of Hamid was missing, so were the pile manufacture register, Palnitkar's original draft, intermediate statement of Hamid, the Stock Book of Materials District, Shalebhoy's books and the counterfoil of the cheque drawn by Maneckchand Jivraj for Rs. 5,000. Coupled with this was the fact that incorrect explanations were given in the Council. If a false explanation was given by a party he could not have much of a grievance if his conduct and action were misunderstood particularly when ugly rumours were afloat." Incidentally the case has proved that the investigation by the Mears Committee was most inadequate and that "Lloyd's Folly" and the Department created to perpetrate it have not only mortgaged the resources of the Presidency for a generation and more, making development of

education and other beneficent activities impossible, but have also shaken the confidence of the public in the efficiency and integrity of public departments. The best interests of the Presidency, including the good name of our many honest and efficient public servants, demand that the affairs of the Development Department be examined *de novo* by a Committee commanding the confidence of the people. If the citizens of Bombay and the tax-payers of the Presidency are anxious adequately to appreciate the services of Mr. Nariman they cannot do so better than by not resting content until such an enquiry is made. It is impossible to exaggerate the value of the services that Mr. Nariman has rendered in bringing home the enormity of the wrong done to the City and the Presidency by the Lloyd's Folly. They will be remembered by generations of Bombay's citizens. But he has not merely served the Presidency; he has also served the whole country by demonstrating to its sons and daughters that the cause of Indian Freedom cannot be won except by those who, in serving her, are fearless and daring enough to face the might of a resourceful and powerful Government without counting the cost to themselves. We heartily congratulate Mr. Nariman on his unforgettable triumph, and we have no doubt the fact that the whole country shares in the joy of that triumph will be compensation enough to him for the anxiety and strain of a prolonged case. That his intrepid fight will be an abiding inspiration to the younger generation will be his best reward.

(4) **INDIAN NATIONAL HERALD.**

SUNDAY JANUARY 29, 1928.

Public Issues in Nariman Case.

The Back Bay Libel Case involved more than one issue of the country and the position of the public men who criticise it. The Mears Committee, which was appointed after a ceaseless agitation by the public-spirited citizens of Bombay against the doings of the Bombay Development, demanding a thorough investigation into its working by an impartial body, approached Mr. Nariman with a request to disclose all the facts he had in his possession about corruption in the Development Department. The Committee also wrote to him to give evidence and to furnish the names of officers who received secret commissions, the names of the manufacturers giving such commissions, the amounts so given and any other details in his possession. It was in response to this, that Mr. Nariman submitted his written statement exposing the Development Department. The Committee wanted every available information and Mr. S. B.

Billimoria one of the members of the Committee openly asked: "If people have information, why should they not boldly come forward and give out that information? If nobody were to give out clear information how were the Committee to proceed?" Mr. Nariman took up the challenge and disclosed some startling evidence of corruption. It is a recognised custom in cases where public men are requested to help a committee of investigation that they will get full protection from any kind of persecution or general harassment. This is such a common practice that witnesses take it for granted and do not even care to ask for protection before tendering evidence.

AN EVIL PRECEDENT.

The prosecution of Mr. Nariman was a blow directed against this very healthy practice. It is a thoroughly pernicious precedent which is calculated to deter impartial witnesses from coming before similar committees in future. Malpractices in Government departments would in such circumstances run riot. The Bombay Government went even beyond this. They not only gave permission to Mr. Harvey to institute the prosecution, but also sanctioned the money for the purpose. This was one more departure from the usual practice. The Harvey-Nariman case even from the legal point of view is a private case in which Government were not connected. When Mr. Nariman protested repeatedly that Government had identified themselves with the case, the Government solicitor stoutly denied it. He may deny it as much as he likes but he cannot explain how Government can finance a private prosecution without identifying itself with the case. As Mr. Nariman stated in the Court, in matters where Government officers are concerned, Section 124-A (sedition) and Section 500 (defamation) of the I. P. C. are identical to them. The money was sanctioned on the understanding that if Mr. Harvey lost the case he would have to pay the cost. This again is extraordinary. Either the case was private or Governmental. If it was the former no money could be advanced on any condition; if it was the latter, Government should have frankly and openly identified themselves with it and taken upon themselves its entire cost and blame.

SPOKESMAN OF GOVERNMENT.

Moreover, the whole attitude of the prosecution counsel, Mr. Velinker, was such as to convey the impression that he was a spokesman of Government. He ridiculed the Swarajist witness, talked sarcastically of the "citizens of Bombay," "public interests" and "public duty," had fine flings at anybody who criticised Government, including the Herald. These surely could have been

the methods of a purely private counsel! With all these plain indications Government cannot wriggle out of it. The Bombay public will have to demand that on future occasions these practices shall cease in the interest of good administration and free criticism.

TWO IMPORTANT FACTS.

The Court proceedings further revealed two important facts: One that the findings of any committee, however impartial can never fully disclose official misdeeds. The Mears Committee could not get at the grave instances of rampant corruption which were brought to light in the Esplanade Police Court. The Magistrate admitted that Mr. Nariman had proved that some of the officers of the Department were corrupt and that some of the witnesses did state that they charged higher rates to the Department as they had to pay high commission to the higher staff of officers. These things were not known to the Mears Committee and the public did not know of them from the Committee's Report. The reason is clear. The malpractices are best known to the officers themselves. They have in their custody all the documents, papers etc. The official witness cannot be expected to bring them before a committee of investigation. And the people who know about them cannot bring forward any such proofs, with the result that the reports of these committees can never do full justice to popular grievances. Secondly, the court proceedings brought to light that many of the replies given by Mr. Cawasji Jehangir in the Legislative Council to questions put by Mr. Nariman and Mr. Trivedi on the subject were, to put it very mildly, false and misleading. The replies were no doubt supplied by the heads of the Department. The public will now know the worth of the information supplied to the Legislative Council, for there is no guarantee that the same is not the case with many other Government departments. Information can be supplied, withheld or misrepresented and distorted according to the wishes and desires of officers. There is nothing to prevent them from saying anything. We hope those people who have a mania for asking questions and moving resolutions will bear this huge fact in mind.

EVIDENCE DISBELIEVED.

Lastly, about the prosecution case itself. It was based on the order for mild steel bars. There were various theories advanced about the "mistakes" in the size of bars ordered. As the Magistrate rightly pointed out, the various theories advanced by Mr. Harvey were "conflicting and inconvincing." Mr. Harvey changed his original theory at a very late stage. The Magistrate says, "Mr. Harvey's evidence when he propounded his new theory about the ordering of bars was so vague and halting and inconsistent with the

facts proved that he could not accept it as true." It is wrong in principle and unfair in practice to allow the prosecution case to be changed at a late stage. The defence is put to a serious disadvantage. But in the present case even the altered theory of Mr. Harvey was not accepted by the Magistrate. This is a very grievous reflection on the doings of the officers. But of their doings—the public know what they are. The regulations of the P. W. D. Code, which contains very beneficial provisions for the conduct of officers dealing with contractors, engineers and building works, were ruthlessly flouted by the officers of the Bombay Development Department. The regulations were treated with absolute contempt because Lord Lloyd gave the Department powers to override all usage, custom and law in his vain conceit of his own wisdom.

ANOTHER ENQUIRY NEEDED

The sanctioning of the prosecution, its financing by Government, the attitude of prosecution counsel, the misleading answers given in the Council, the documents missing from Government offices, the inefficiency and shameless breach of the Government Code, make up a tragic tale. The City and the Presidency will have to mortgage their future progress for years to come for this great: Lloyd's Folly. But we hope public opinion will be organised to prevent its repetition in future. Above all, however, it is essential that there should now be a further enquiry in the light of the revelations of the Nariman Case. Every case of corruption proved or alleged, must be subject of searching investigation and the whole business dragged into the light of day.

(5) "SANJ VARTAMAN."

RE: LIBEL CASE.

30th January 1928.

THE HERO AND AFTER.

The outburst of extreme public jubilation over the result of the Harvey-Nariman Case, is the measure of the tense anxiety the whole of the public felt and the interest they all took in what is likely to be the greatest *cause celebre* in the annals of Bombay's public life. For weeks and months the public has been on the tanter hooks of anxiety not unmixed with fear. For weeks and months every minutest detail of the Police Court proceeding was followed with the deepest interest, and as the Case dragged on its course, the admiration of the public for little David increased as he fought valiantly with big Goliath, and at the same time came to the conclusion that whatever the outcome of the Case may be on mere technical legal grounds, the accused had rendered a signal service

to the City by thoroughly exposing the nauseating filth of the Augean Stable, otherwise called the Bombay Development Department. The public has been right all throughout and the decision of the learned Magistrate sets its hall mark of approval on the public verdict. The services that Mr. Nariman has rendered in this Case cannot be measured in words. He has exposed not only the internal rotten heart of the Development Department but he has also made the public extremely anxious and suspicious about the internal working of other Governmental Departments. It is shrewdly surmised that the Development Department is not the only department of the Government where irregularity (we use a very mild word) is rampant, and that what was so boldly exposed by Mr. Nariman in one case might be similarly exposed in any other case (more or less), if the Back Bay hero or some other public-spirited citizen would but come forward and tackle it with equal boldness. But one thing is certain. The decision in the Harvey-Nariman Case does not end the part played by the Government in the Development business. Indeed, the Government's work really commences now. The Government cannot now plead ignorance. Their eyes have been opened as they never were opened in the past, and for the sake of public morality, for the sake of the Government themselves and for the sake of the same Government's much-vaunted prestige, they cannot now sit quietly with folded hands. If the Government possesses sporting spirit—and Englishmen are supposed to prize it most—they ought to thank Mr. Nariman for the services he has rendered not only to the public but to the Government themselves. The Government must now commence where Mr. Nariman left the Case in the Police Court. They must prove to the hilt their own bonafides to the public by demonstrating fully that they have no heart or hand in the filthy work done by their servants, and that they too are equally solicitous for the good name and purity of their public servants. This is the least thing that they could do in the matter. Indeed, there is not the least doubt that what was considered to be a great blunder on the part of the Government when they sanctioned the prosecution against Mr. Nariman, has, after all, turned out to be a great blessing in disguise. But for this supposed blunder, the devastating mysteries of the Development Department would never have seen the light of day, and the public and the Government themselves never have realised the wide extent of the mismanagement that pervaded the whole Department, costing the public in the waste of millions of their ill-spared money. So much for the Government and the part they are expected by the public to play in the future. The whole of the vocabulary is exhausted in singing his praise and belauding his public spirit. His conduct has been

put forward as an example for all public men, whether old or young to emulate. Without fear and without favour to work for the public and to fight for that which one considers to be the right, is the highest sign manual of citizenship. Mr. Nariman is the shining example of such a citizenship. His was an uphill fight. He knew perfectly well that a mighty machinery was set to work behind the hands that prosecuted him. He knew perfectly well that if defeated, he was surely to be crushed by those whose full resentment he had won by his outspokenness. Defeat for him meant extinction from public life and even loss and defeat in his own profession, for he knew that the arms of those who were behind the Case were long and that no scruples would be felt, no pains would be spared to wipe him out of the public life of this City. All these dangers and all these possibilities, aye probabilities, Mr. Nariman faced with his eyes open and knowing all, he risked all. Thus, when the whole Case is seen in its true perspective, his debt on public gratitude is immeasurably increased. He was virtually staking his all when with lion-hearted courage he was hurling his thunderbolts from the Legislative Council, from public platforms, and last but not the least, when he tendered his evidence before the Mear's Committee. Mr. Nariman has done his part and that part has now been written in letters of gold in the history of Bombay's public life. Now, the part to be played by Bombay, remains. This part ought to be worthy of Bombay and worthy of the hero, who dared so much and has achieved so much.

(6) HINDI GRAPHIC.

The hero of the most protracted trial in the annals of the Bombay Police Courts, a fearless critic, a man of stern independence, a strenuous politician, Mr. K. F. Nariman has carved out a niche for himself in the Temple of India's devoted sons.

(7) INDIAN DAILY MAIL.

27th January 1928.

The Harvey--Nariman Case.

The decision of the Magistrate who tried the case of defamation brought by the late Superintending Engineer of the Development Department, Mr. T. Harvey, against Mr. K. F. Nariman, has been received with much relief by the public. Those who have tried to expose the mistakes of a Government Department know

how difficult and risky the task is. Mr. Nariman himself, we are sure, had he known that his attempt to bring public opinion to bear upon the working of the Development Department, would land him in a protracted libel action, would have hesitated to undertake the task. His charges against the Department so long as they were made within the four walls of the Legislative Council, were privileged. But when at the invitation of the Mears' Committee, he re-iterated them or some of them in his evidence before that Committee, he enjoyed no similar privilege though the Chairman, Sir Grimwood Mears, we think, has declared that witnesses before the Committee would be protected. Government undertook to pay the legal expenses in the case if Mr. Harvey won it. Mr. Harvey has not won the case, but the Magistrate has held that no corruption has been proved against him. Mr. Nariman has been acquitted on the ground that his charges were made in good faith, and that the facts regarding the malpractices in the Department, which he has been able to establish to the satisfaction of the Court, justified him in entertaining a reasonable suspicion that they were not confined to the particular occasions or individuals concerned in them. The judgment will strike all those who have followed the evidence in the case as just and proper one, and Mr. Dastur, the Magistrate, has exhibited rare qualities of clear analysis, cogent reasoning and dispassionate judgment in handling the vast mass of material which had accumulated in the course of the proceedings extending over several months. From the first it was clear that Government had committed a great blunder in sanctioning the institution of this case. The judgment of the Magistrate shows that the public were right in their opinion. It is not too much to say that the result of this case is not such as to rebound to the credit of Government in the Development Department. The proceedings have revealed an amount of incompetence and neglect on the part of men placed in responsible positions, which would be discreditable even in the worst governed Indian State. Mr. Nariman has earned the gratitude of the public by his courageous and persistent endeavour to bring to light the shortcomings of the Development Department.

(S) THE STATESMAN.

Calcutta, Sunday, January 29th 1928.

Mr. Nariman has been acquitted by a Presidency Magistrate at Bombay on the charge of defaming the Superintending Engineer of the Development Department. His opposition to the Back Bay Scheme has been vigorous and his criticisms open; he has maintained

that he could substantiate what he said if given the opportunity. During the case he was proved inaccurate in one major matter. He had accused the complainant of altering an indent for iron bars ; what happened was that in his official capacity he had added to the indent. The complainant's explanation was not accepted by the Magistrate, who found it vague and halting and inconsistent. Stores were ordered that were not required ; why, the Court could not find out. The evidence did not warrant the conclusion that there had been dishonesty ; nevertheless the Magistrate decided that Mr. Nariman had acted in good faith and acquitted him. The public will still want to know what did happen. The only satisfaction to be got out of the unpleasant business lies in the knowledge that there are vigilant watchers for the public interest.

(9) **HINDUSTAN TIMES (DELHI)**

HARVEY NARIMAN SUIT COSTS.

If after the judgment delivered in the Harvey Nariman Case, Government on the advice of the Advocate General of Bombay decides to bear any part of the expenses of Mr. Harvey, the public will be forced to the conclusion that Government does not only desire to protect the honour of its officers but wants to place them at an unfair advantage against those who have the courage to question their conduct. While there may be some justification for Government bearing the expenses of a suit to help an officer to vindicate his honour, there can be absolutely no sense in Government sharing any of the costs when the good faith of the other party has been absolutely proved. On the other hand we think it is the clear duty of the Government to make further inquiries into the conduct of the various officers of the Development Department to verify the allegations made by Mr. Nariman. If any party in this case deserves to be compensated it is Mr. Nariman who has done such a great public service by making at great personal sacrifice, serious disclosures about the administration of a very important department of the Bombay Government. It is he and not Mr. Harvey who should be fully compensated for this case. Mr. Nariman should be further helped by personal funds to aid Government in knowing more about the corruption that was rampant in the Development Department.

(10) AMRITA BAZAR PATRIKA, CALCUTTA.

31st January 1928.

We congratulate Mr. K. F. Nariman on his acquittal of the charge of defamation brought against him by Mr. T. Harvey, Superintending Engineer of the Bombay Development Department. It may be remembered that Mr. Nariman in his evidence before the Committee to enquire into what is known as Back Bay scandal made certain very grave allegations against the Bombay Development Department and its Superintending Engineer. Even though Mr. Nariman understood that his statements were to be regarded as privileged, the Government of India in the Department of Industries and Labour ordered the Superintendent to prosecute Mr. Nariman. The cross-examination by Mr. Nariman brought out certain very ugly disclosures damaging the reputation of this department. In the absence of the full text of the judgment we are not in a position to know how far the finding of the Magistrate, that Mr. Nariman had failed to prove "justification," is justified by the evidence adduced. The Magistrate acquitted Mr. Nariman because he found that Mr. Nariman had adduced ample evidence to prove that he acted in good faith.

It seems that of late corruption in some of the Government Departments has assumed such proportions as to necessitate the washing of much dirty linen in public. The Calcutta Medical Hospital case involved a few lacs but the Back Bay scandal involved millions of rupees. Naturally there is great misgiving in the public mind that there may be more instances than meet the eye of scandalous inefficiency and dishonesty involving immense loss of public money. Rightly or wrongly the impression one gets from the attitude the Government takes up in these matters that it is concerned more in the maintenance of its prestige than for a thorough re-hauling of the department involved and punishment of the guilty. This is indeed unfortunate.

In the case under review the superintendent was ordered to prosecute Mr. Nariman. All the expenses of the case were of course borne by the tax-payer. And Mr. Nariman, but for whose allegations, some of which were very strongly supported by the evidence he adduced, the public would perhaps have been in the dark as to the extent of corruption prevailing in the Department, had to suffer inconvenience, pecuniary loss and loss of time for his public spirit and courage. Moreover the Government which should always welcome criticism prompted by good intentions and based on authenticated information ignores it altogether till

matters come to such a pass that to maintain an indifferent attitude becomes impossible. But instead of setting about to enquire into the truth of the allegations or charges made, it compels the officer criticised to bring in a case against the critics at its own expense, thus giving the case the dignity more or less of a Government case. This means a great deal in a country where the judiciary is not often so independent as one should wish. But subsequently even if the critic is completely vindicated, we have not yet heard that the money spent in prosecution is recovered, from the Government servant. In most of the instances, however the Government servants win as the critics need have to be very rich to compete with the Government in engaging the best lawyers.

In England when an allegation is made against a civil servant it is he who has got to vindicate his character in a court of law like any ordinary man. And if he succeeds in the case and if the allegations made relate to his conduct as a public servant in the ordinary course of his duties it is then and then only that he is entitled to have his costs paid by the State, if it is not decreed by the court, the case being fought out in a criminal court. But usually it is a civil suit that is brought and there is a jury which decides whether the complainant is entitled to damages.

31-1-28

(11) SWARAJYA OF MADRAS.

30-1-28.

The Nariman Case.

Few prosecutions in recent times have aroused such sensational public interest as the case against Mr. Nariman. As the proceedings unfolded, it became clear that Mr. Nariman was but a nominal accused. Whatever the technical form of the case, the real accused was the complainant Mr. Harvey himself and his colleagues in the executive of the Back Bay scheme. These latter have emerged out of the hearing with their credit utterly blown to smithereens. As for Mr. Nariman, his acquittal takes away nothing from the intrepid courage with which he faced the consequences of a public exposure of the working of a notoriously corrupt and ill-conducted department. It will be interesting to note, in view of the startling disclosures brought to light by the prosecution, what action the Government propose to take to investigate matters further.

(12) " JUSTICE OF MADRAS. "

THE ACQUITTAL OF MR. NARIMAN.

The Indian Public has been following with vivid interest for the last several months the Harvey Nariman libel suit. No other criminal prosecution has during recent time attracted such wide publicity. The position of the parties, the nature of the charges made, and the manner in which the case was conducted—all added to the interest of the case. It was learnt at a very early stage that Government was assisting the complainant in diverse ways. The Back-Bay Scheme was the subject of discussion and criticism among those who have understood the colossal blunder of the Scheme. The Committee appointed to investigate the Scheme had virtually condemned the Scheme, and though it fought shy of throwing the blame on Lord Lloyd, the gentleman who pushed through the Scheme, it is obvious how his Lordship's active association and interest in it was responsible for the sinking of crores of rupees in the Back Bay. It was in connection with the investigation by the Committee that Mr. Nariman gave evidence making certain charges against Mr. Harvey, a very prominent engineer associated with the work of the Back Bay reclamation. We offer no opinions on the merits of the evidence of Mr. Nariman, but it is obvious that commissions of enquiry would be a farce, if witnesses before such Commissions were not fully and adequately protected against any prosecution for statements made by them to such Commissions. If the threat of prosecutions at the hand of private individuals were to be perpetually before such witnesses the Commissions are bound to prove futile, and would merely result in white-washing reports. That this aspect should not have been appreciated by Mr. Harvey is only natural. But that the Bombay Government should have, not merely allowed him to carry on a prosecution in a Criminal Court against the witness Mr. Nariman, but should have helped and aided him, shows how unjustifiable is the conduct of that Government. It also proves the undue interest which that Government took in the case. Mr. Nariman has fortunately the means and capacity to carry on his own defence and was ably assisted by sympathetic friends. But there are few witnesses who can command the advantages which he commanded. The moral of the prosecution is obvious. The law ought to be revised so as to give the same immunity to witnesses before such Commissions as is now enjoyed by those who appear in regularly constituted courts of law. The judgment of the Magistrate is a thorough

vindication of Mr. Nariman. It is true that he does not find the plea of justification established. It is also true that he makes the statement that no charge of corruption against Mr. Harvey can be accepted. But Mr. Harvey is not the accused before the Magistrate and his conduct was not directly in question except to the extent of substantiating the plea of justification. The more important finding of the Magistrate is his emphatic statement that Mr. Nariman made his charges in perfect good faith coupled with this is the statement by the Magistrate that he accepts the charge of corruption against some high officials. This is a most serious and damaging finding. We await the result of this finding and the action that the Bombay Government will take on this finding. It cannot ignore such a definite statement from so responsible an authority. It is unfortunate that at the present juncture there should have been in the two most important capitals of India two such cases like the Calcutta Medical College Case and the Harvey Nariman Case. We hope that Madras will not produce its sensation next. It is such cases that destroy the prestige of the Government. We congratulate Mr. Nariman on his acquittal and on the exceptionally able manner in which he conducted his case.

(13) NEW TIMES.

MR. NARIMAN'S ACQUITTAL.

Karachi—Monday, 30th January 1928.

The victory of Mr. Nariman in his acquittal in the famous Harvey—Nariman defamation case in Bombay is no end to that episode, at any rate not to the matter under investigation. Though Mr. Nariman's acquittal was a foregone conclusion in view of the exposures made and the substantial evidence which disclosed a rotten state of affairs in the development department, the press and the public could not comment on the case because of its being *Sub Judice*. Now that the case has been decided we are free to comment. We have no hesitation in saying that the Harvey-Nariman case was one of the most glaring exposures of corruption in British India in a department of Government.

Indeed, so thorough and so complete was the exposure that the Government cannot, with any sense of decency, now plead the purity of the conduct of Back Bay affairs. Indeed, they must confess that the manner in which the affairs of the Development Department have been conducted for the last few years reflects on the so-called efficiency of the government. The government cannot now

efface the impression on the public mind that public money was ruthlessly spent in an extravagant manner and that there was a great deal of leakage in corruption through some subordinate officers. We earnestly hope the question will not be allowed to rest there and the government will be heckled in the Bombay Council.

A case of such flagrant mismanagement needs to be pressed home upon the British Parliament and we hope an attempt will be made to interest some labour members who may put questions in Parliament.

The Lloyd administration in Bombay blundered so badly that in a democratic government Sir (now Lord) Lloyd would have been severely censured. In India he was lifted to the category of imperial statesmen. Mr. Nariman conducted the case at great personal sacrifice and risk and no doubt he deserves the thanks of the people of the presidency and the Bombay Council in exposing the Back Bay muddle.

(14) THE TRIBUNE, ALLAHABAD.

" HARVEY-NARIMAN CASE."

11th Dec. 1923.

After a protracted trial, the Harvey-Nariman case has come to a close. The case had attracted more than ordinary interest for three reasons, viz., the position of the parties, the seriousness of the allegations made by the accused, which formed the basis of the prosecution, and the fact that it was the Government who had initiated the expensive legal proceedings. Mr. Nariman, the accused, is a prominent Swarajist member of the Bombay Legislative Council, who has always been an uncompromising critic of the Back Bay scheme. When the scheme was launched in 1920, Mr. Nariman as a member of the Municipal Corporation lost no opportunity of criticising the scheme there as well as in the press and sought to expose certain alleged defects which came to his notice. After his election to the Bombay Legislative Council he moved various resolutions for abolition of the Department and the appointment of an Enquiry Committee into its administration and the wasting of public funds. Agitation continued to be carried on outside the Council and the Reclamation scheme, far from turning out a huge success as anticipated, evoked the strongest criticism and was regarded by many as a public disaster from the financial point of view.

After the Mears Committee was appointed, Mr. Nariman appeared before it and made grave allegations against the Development Directorate and its high officers. The revelations were so scandalous that Mr. Harvey, the Superintending Engineer, supported by Government, prosecuted Mr. Nariman for defamation. The proceedings lasted for several months, and Mr. Nariman has proved to the hilt some of the most serious charges brought by him against the Department. According to the trying Magistrate, the accused in conjunction with Mr. Trivedi had collected sufficient material to convince them that officers were in the habit of receiving secret commissions. His Worship held that the accused acted in good faith. As to the specific allegation about bars, after examining all the evidence no doubt was left in the mind of the Magistrate that "the ordering of bars was a blunder on the part of the Department and the court had not got a true explanation. Answers given by Sir Cowasji Jehangir on the materials given by Harvey," said the Magistrate, "were found to be wrong. It was indeed a very serious matter for the Department to furnish erroneous explanation to the General Member knowing that the latter was bound to act on them." Though His Worship held that the bars were ordered in excess of requirements and were of wrong size it did not in his opinion necessarily follow that Mr. Harvey did it out of corrupt or dishonest motives. It might have been due to error of judgment, incompetency, carelessness, negligence or wrong calculations.

The net result of the proceedings is that Mr. Nariman has substantially vindicated his position and neither the Government nor Mr. Harvey has come out unscathed from the litigation which could not have been started or prolonged to such tremendous length but for the large amount of money spent by Government to finance it. The result of this case once again proves the unwisdom of the Government financing defamation cases against private individuals or newspapers. In the present, as in similar cases in the past, it is the clear and imperative duty of the Government to make the complainant pay up the entire sum of money spent by Government from the public revenues to vindicate his honour particularly when the case has been dismissed on the merits and not on any technical or legal grounds.

(15) PIONEER.

THE BOMBAY DEFAMATION CASE.

The result of the Bombay defamation case which, in a manner too characteristic unhappily of trials in this country, was dragged

out to an unconscionable length, is most satisfactory from the point of view of Mr. Nariman. His pertinacious criticism of the Bombay Development administration has its reward. Mr. Harvey has the satisfaction of being personally cleared of the charges which Mr. Nariman made against his Department. The Provincial Government, however, cannot be particularly happy over the Court's finding. We imagine that an enquiry into the allegations which Mr. Nariman is now considered to have justly made will have to be instituted. It is most unfortunate that an enterprise which was designed for the greater prosperity of Bombay, should have been marred by regrettable laxity in administration. It must be confessed that in the face of experiences in allied undertakings, the Government of Bombay seem to have exercised undue caution in accepting the need for examining the charges made by the successful litigant. The joy which the court's finding must bring to a certain camp is obvious, but it should not evoke reluctance to take suitable action.

Indian Daily Telegraph Lucknow, 2-2-1928.

(16) THE BACK BAY HERO.

We hasten to congratulate Mr. K. F. Nariman the Back Bay hero for having come out unscathed through the ordeal of the sensational Back Bay Defamation Case. The enthusiasm and perseverance with which Mr. Nariman boldly braved the cross-fire of prosecution and the remarkable shrewdness and courage which he displayed in his fight against the heavy odds deserve more than a passing note. It is to be hoped the Government would institute inquiries on the basis of the startling revelations made in this remarkable case.

(17) INDIAN MERCHANTS CHAMBER

Mr. WALCHAND HIRACHAND'S ADDRESS AT ITS
ANNUAL GENERAL MEETING 1927

MR. NARIMAN CONGRATULATED.

Before I close, I should like to congratulate Mr. K. F. Nariman on the result of the defamation case against him. Your Committee have been taking great interest on the working of the Department from the very beginning and have time after time protested against the method and manner of its working. It was a matter of deepest regret that the Government of Bombay sanctioned the defamation proceedings against Mr. Nariman as it was tant-

amount to putting restrictions upon the freedom of speech before any investigating Committee or Commission. The proceedings against Mr. Nariman have, however, proved of value in this that a full exposure has been made of the Development Department—an exposure which was not even made by the Mear's Committee. The country as a whole is indebted to Mr. Nariman for the public spirit with which he has fought the issue and you will all join me in congratulating him.

The appointment of the Mear's Committee was brought about through the efforts of your Committee who may feel happy that they have been proved right in this as in several other important questions. Your new Committee will have to consider what steps to take to protect witnesses giving evidence before public Committees.

Sir Shapurji B. Billimoria (a member of Mear's Committee) supported the proposition.

MR. NARIMAN'S TRIUMPH.

(18) SUGGESTION TO PARSI LADIES.

14-2-28

To the Editor of *The Chronicle*.

Sir,—The heroic clear sailing of Mr. Nariman through the Harvey-Nariman Case, may be deemed a triumph not only of Mr. Nariman himself, but also as that of the Parsi community; while the splendid spirit of undaunted courage displayed throughout the great ordeal in defence of right against might, must be a signal service done to Truth itself.

Side by side with the men-folk then, we, who have followed this brave conflict closely through the press, might well consider ourselves honoured, through this grand achievement, for what are men but what their women folk have made them? By the influence that begins with the cradle and ends with grave?

Women are admirers of truth and bravery, and though Mr. Nariman may not be the first sample of a pioneer spirit in the community, there may have been in the past an element of homage, for mature experience, rather than the enthusiastic admiration that at present is stirred up in response to the resolute soul-courage of an immature career, which attracts, and holds.

Deservedly, therefore, Mr. Nariman may be considered the head of the Youth Movement at the present memorable period of history, and this being so, a suggestion through your sympathetic columns towards an early meeting of Parsi ladies of Bombay, to be convened by public-spirited personages such as Bai Shirinbai M. Cursetji, Mrs. Shirinbai Cama, Mrs. F. S. Taleyarkhan and Mrs. Patuck of the Stri Zarthoshti Mandal, also those belonging to other public bodies, to offer congratulations to Mr. Nariman on his well-earned success may not be out of place. Not that there would have been any very great difference, had the learned magistrate's decision been less than what it was, yet, the judgment accorded by the Court, though perhaps of a guarded nature, not the less plainly says—"Truth is after all Truth."

Let us devoutly hope there are, in embryo amidst us, many more of the Khurshed Nariman spirit who in due time may shine forth as true sons and daughters of Mother India, to console her in her sorrows, and cheer, when these have ended—Yours, etc.

ROSHAN.

Bombay, February 6.

CONGRATULATORY MESSAGES.



A few of about 700 Congratulatory messages received from public bodies and institutions by Mr. K. F. Nariman, on the successful termination of the Harvey-Nariman Case.

- Kurla Residents' Association, Kurla.
- Mazdyasni Mandal, Bombay.
- Bombay Vakils' Association, Bombay.
- National Boarders' Union, Benares Hindu University, Benares.
- Bombay Shroff Association, Bombay.
- Shri Guru Singh Sabha, Bombay.
- Shri Saraswati Vidyalaya, Poona.
- National Medical College Students, Bombay.
- Bombay Hack Victoria Owners' Association, Bombay.
- Maharashtra Provincial Congress Committee, Bombay.
- B. B. and C. I. Railway Employees' Union, Bombay.
- Indian Merchants' Chamber, Bombay.
- Sarswat Club, Santa Cruz.
- Maharashtra Chamber of Commerce, Bombay.
- Youngmen's Non-Brahmins' Association, Kurla.
- Lokmanya Seva Sangh, Villa Parla.
- Bombay Municipal Corporation, Bombay.
- Pleaders of Appellate Court, Bombay High Court, Bombay.
- Bombay Presidency Association, Bombay.
- Villa Parla Friends' Union, Villa Parla.
- Staff of Bombay Baroda Assurance Co., Ltd., Bombay.
- Wardha Bar Association, Wardha.
- Mahad Congress Committee, Mahad.
- Rajputana Congress Committee, Ajmer.
- Young Men's Parsee Association, Broach.
- Parsee Residents of Lahore.
- Sholapur Arogya Mandal, Sholapur.
- Esplanade Police Court, Bar, Bombay.
- Dharwar Bar Association, Dharwar.
- Akola Bar Association, Bombay.

- Barsi Bar Association, Amalner.
 Ratnagiri Bar Association, Ratnagiri.
 Baroda Bar Association, Baroda.
 Amalner Bar Association, Amalner.
 Hoshangabad Bar Association, Hoshangabad.
 Thana Bar Association, Thana.
 Chiplun Bar Association, Bombay.
 Alibag Bar Association, Alibag.
 Poona Bar Association, Poona.
 Belgaum Bar Association, Belgaum.
 Parsee Residents of Ootacamund.
 Salsette Taluka Congress Committee, Thana.
 Khar Youth League, Khar.
 Bombay Council Responsivist Party Poona.
 Bombay Presidency Youth League, Bombay.
 Public of Wai, Wai.
 Residents of Andheri and Vesava.
 Bombay Small Causes Court Bar Association, Bombay.
 Telugu Community of Bombay.
 Arya Niti Natak Samaj, Bombay.
 The Bombay Grain Dealers' Association.
 Tarm Rashtriya Mandal, Sholapur.
 Priests and Parsee community of Hong-Kong, Canton, Macao, China etc.
 Comrade Shapurji Saklatwalla, M.P. (London).
 Dr. M. A. Ansari, President, Indian National Congress, (Delhi).
 Mr. Mukundi Lal, Deputy President, U. P. Legislative Council, (Lucknow).
 Rao Bahadur Chunilal H. Setalwad, M.A., LL.B., Bar-at-Law, (Bombay).
 Mr. Shantaram Narayan Dabholkar, (Sangli).
 Mr. David S. Erulkar, Manager, Scindia Steam Navigation Co., Calcutta.
 Mr. M. D. Karki, M. L. C. (Kanara).
 Prof. K. G. Naik, M.A , D.Sc., (Lond), F.I.C. Prof. of Chemistry, Baroda.

Dr. B. H. Gore, M.D. (Berlin), Delhi.

Mr. Buttonchand Master, Share, Stock, Bullion, Finance & Exchange Broker, Bombay.

Mr. J. K. Mehta, M.A., Secretary, Indian Merchants' Chamber, Bombay.

Mr. A. Rangswamy Iyenger, Editor, Hindu, Madras.

Maharaja of Nabha, Dera Dun.

Mr. H. B. Shivdasani, M.A., (Cantab) M.L.C., (Ex. I.C.S.)

Mr. G. T. Garrett, (Ex. I.C.S.)

Mr. N. S. R. Iyengar, Agricultural & Industrial Technologist, Mysore.

Mr. S. A. Brelvi, Editor, Bombay Chronicle, Bombay.

Mr. B. G. Horniman, Editor, Indian National Herald, Bombay.

Mr. Frank Oliveira, Advocate, (Retired Presidency Magistrate), Bombay.

Mr. Sureshchandra, Jinga (Uganda).

Mr. R. F. Munshi, London.

Mr. Chinoy, Jinga (Uganda).