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2, 1955

Supreme Court of Ceylon
No. 100 (Interlocutory) of 1950.

District Court, Colombo
No. 10277.

18 1955

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON.

In the matter of the Last Will and Testament of KATHRI ARACHIGE DON
FREDERICK SIRIWARDANA of Walagedera, Deceased.

BETWEEN

KATHRI ARACHIGE DON VELIN SIRIWARDANA of Kolehekada in
Katugahahena in Iddagoda Pattu of Pasdun Korale West.

Respondent-Appellant.

AND

ARACHI APPUHAMILLAGE DON CARTHELIS APPUHAMY of Wala-
gedera.

Petitioner-Respondent.

THE COLOMBO 'BUDDHIST THEOSOPHICAL SOCIETY LTD. of
Buddhist Head Quarters, Norris Road, Pettah, Colombo.

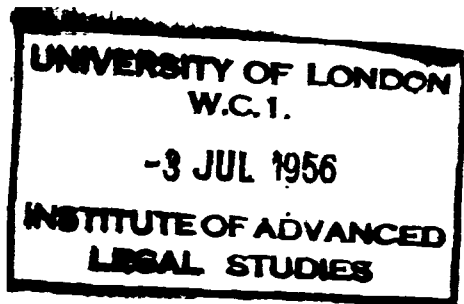
Added-Respondent-Respondent.

1. KATHRI ARACHCHIGE PREMAWATHIE SIRIWARDANA of Kole-
hekada.

2. CECELIA KANNANGARA of Kalutara.

Intervenients-Respondents-Respondents.

RECORD
OF PROCEEDINGS



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Supreme Court of Ceylon
No. 100 (Interlocutory) of 1950.

District Court, Colombo
No. 10277.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON.

In the matter of the Last Will and Testament of KATHRI ARACHIGE DON
FREDERICK SIRIWARDANA of Walagedera, Deceased.

BETWEEN

KATHRI ARACHIGE DON VELIN SIRIWARDANA of Kolehekada in
Katugahahena in Iddagoda Pattu of Pasdun Korale West.

Respondent-Appellant.

AND

ARACHI APPUHAMILLAGE DON CARTHELIS APPUHAMY of Wala-
gedera.

Petitioner-Respondent.

THE COLOMBO BUDDHIST THEOSOPHICAL SOCIETY LTD. of
Buddhist Head Quarters, Norris Road, Pettah, Colombo.

Added-Respondent-Respondent.

1. KATHRI ARACHCHIGE PREMAWATHIE SIRIWARDANA of Kole-
hekada.

2. CECELIA KANNANGARA of Kalutara.

Intervenients-Respondents-Respondents.

RECORD OF PROCEEDINGS

PART I.

No. 1.

Journal Entries,

No. 1
Journal
Entries
9-12-42 to
10-5-51.

IN THE DISTRICT COURT OF COLOMBO.

In the Matter of the Estate of the late KATHRI
ARATCHIGE DON FREDERICK SIRIWAR-
DANA..... *Deceased.*

Testamentary
Jurisdiction
No. 10277.

ARATCHI APPUHAMILLAGE DON CARTHE-
LIS APPUHAMY of Walagedara.....*Petitioner.*

AND

10 K. A. DON VELIN SIRIWARDENA.

(1)

This 9th day of December 1942, Mr. J. S. Paranavitana, Proctor, files proxy (1a), Affidavit (1c), and a petition (1b) of the Petitioner together with Last Will (1d), translation of affidavit (1e) and moves that an Order Nisi be entered declaring the status of the Petitioner and his right to take out Probate.

20

The motion is allowed, and it is hereby ordered that an Order Nisi be entered declaring that the Petitioner is entitled to Probate and that a copy of the said Order be published in the Government Gazette and twice in the Ceylon Daily News newspaper from 11-2-43.

Sgd. JAMES JOSEPH,
Addl. District Judge.

(2)

30

18-12-42. Proctor for Executor states that application for letters of Administration on the footing that the deceased died intestate has been made in Case No. 10238 Testamentary of this Court, and states that Court be pleased to direct further proceedings be stayed in the case No. 10238.

The returnable date of the Order Nisi in Case No. 10238 Testamentary is 21-1-43. He also further moves that the returnable date of the O/N in these proceedings be advanced to the same date, 21-1-43.

40

Move with notice to the other side.

Sgd.
A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

(3)
4-1-43 Proctor for Petitioner states that Order Nisi has not yet been served nor even issued. His last application to advance the date to 21st January was an ex-parte application; and does not require a notice on the Respondents. He therefore moves that Court be pleased to advance the Order Nisi returnable date to the 21st January, 1943.

Allow for 21/1. 10
Intld.
A. D. J.

(4)
5-1-43. Order Nisi entered.

(5)
8-1-43. Order Nisi issued to Fiscal, Kalutara.

(6)
21-1-43. Mr. J. S. Parnavitana for Petitioner.
1. Gazette
2. Papers 20
3. O/N. on Respondent served.

He is absent.
Mr. Kannangara files his proxy.
His objns. for 20/2.
Impound last Will.

Will Kept in Iron Safe.
Intld.
21/1/43.

(7)
3-2-43. As the last will in this case has been impounded, Proctor for Petitioner moves that Court be pleased to allow Mr. E. T. McIntyre, Hand writing Expert to examine the signature on the Will in the presence of the Secretary of this Court and also to take a photograph of the impugned signature. 30
Allowed.

(8)
12-2-43. Proctor for Petitioner files Petition and Affidavit of Petitioner: (8a) and (8b) and upon the materials contained therein moves 40

- No. 1
Journal
Entries
9-12-42 to
10-5-51-
—continued
1. That Court be pleased to appoint a receiver in respect of deceased's estate, pending determination of conflicting claims to Probate or Admn: respectively.
 2. That Respondent be removed from the possession and custody of said properties.
 - 10 3. That the said Receiver be given the management and the custody of the said properties, *or*,
 4. In the alternative, that Court be pleased to appoint an Adminstr. pendente lite as aforesaid and direct that such admr. do have the Management and custody of the said properties, and
 5. for costs of suit, etc.

Proctor for Respondent: receives notice and states case may be called on 25-2-43 for date to be fixed for inquiry into this matter.

Call on 25-2.

Intld.

A. D. J.

(9)

25-2-43. Mr. J. S. Paravitana for Petitioner.

Mr. J. A. W. Kannangara for Respondent-Objector.

1. Objections filed.

Inquiry 23 and 25 June..

30

2. Case called in respect of appln. to appoint a Receiver or Admr. pendente lite.

Objn. filed by way of affidavit, inquiry re Receiver.

Apptmt. 15-4.

(10)

26-3-43. Proctor for Respondent moves for an Order to deposit the sum of Rs- 55/- for the following witnesses payable as follows as their Batta for attending Court at the inquiry on 15-4-43:—

40

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

- | | | | |
|----------|--|----------|-------------------------|
| | 1. D. J. Jayasekera of Meegama
Estate, Bentota | Rs. 20/- | |
| | 2. M. M. K. Banda, S. I. Police,
Welipenna | Rs. 20/- | |
| | 3. D. H. Jayanetti, V. H., Wala-
gedera | Rs. 15/- | |
| | Issue paying-in-Voucher. | | |
| | | |
			.....A. D. J. |
| (11) | | | 10 |
| 26-3-43. | Proctor for Respondent moves to cite the
witnesses and documents enumerated in his
motion for the inquiry fixed for 15-4-43. | | |
| | He states he sent a copy of this motion to
Mr. J. S. Paronavitana, Proctor for the
Petitioner by registered Post on 24-3-43. | | |
| | Allowed. | | |
| | | | Intld.
A. D. J. |
| (12) | | | 20 |
| 30-3-43. | SS. on D. J. Jayasekera, M. M. K. Banda
and D. H. Jayanetti, witnesses for Respondent
issued to Fiscal, W. P. | | |
| | | | Intld. |
| (13) | | | |
| 31-3-43. | The alleged Will produced in this case being
challenged by Respondent as a forgery. Proctor
for Respondent moves that Mr. Laurie
Mutukrishna, handwriting expert be permitted
to examine the same and get it photographed. | | 30 |
| | Allowed in the presence of the Secretary. | | |
| | | | Sgd.
A. D. J. |
| (14) | | | |
| 6-4-43. | Proctor for Petitioner moves to file Peti-
tioner's list of Witnesses. Copy was sent by
registered Post to Proctor J. A. W. Kannangara
to Kalutara. | | |
| | File. | | |
| | | |
			.....A. D. J. |
| | | | 40 |

- (15)
6-4-43. SS. on Witnesses Nos. (2) and (4) in (14) issued to D. F. Kalutara.
- (16)
6-4-43. SS. on witness No. (3) in 14 issued to D. F. Colombo.
- (17)
10-4-43. Proctor for Petitioner moves to file additional list of witnesses.
10 Copy was sent by registered post to Proctor for Respondent.
File.
.....
A. D. J.
- (18)
10-4-43. SS. on witness in (17) issued to D. F. Kalutara.
- (19)
15-4-43. Mr. J. S. Paravitana for Petitioner.
20 Mr. J. A. W. Kannangara for Objector.
Inquiry. Mr. N. J. S. Cooray files proxy of the Buddhist Theosophical Society Ltd.,
Vide proceedings and Order filed.
Intld
A. D. J.
- 16-4-43. Second Respondent added.
.....
Deficiency of Rs. 27/- in Proxy.
.....
- 30 (20)
21-4-43. Commission issued to Mr. E. S. de Kretser, Supdt., Pahan Estate, Kalutara to take charge of the property. (rubber).
Accounts on 3-6-43.
- (21)
4-5-43. Vide letter dated 2-5-43 from Mr. E. S. de Kretser regarding the commission appointing him as Receiver in respect of certain rubber properties mentioned therein. He states he can visit the properties on the 12th May, 1943, and requests that Court be pleased to instruct the
40

No. 1
Journal
Entries
9-12-42 to
10-5-51.

—continued. 1. Ack. receipt.

2. Proctor to
report on
(21) and
call case 3-6.

Intld. R. F. D.
4-2.

Proctors in the case to see that the parties concerned come to Pahan Estate on 12-5-43 at 8 a.m. to go over to the properties and point out same to him. After he takes charge he will have to allow about 10 days for the rubber already produced to be removed from the smoke house attached to these properties, during which period of 10 days, tapping will have to be suspended. His fee will be Rs. 100/- per month. A conductor may have to be employed. He requests that Petitioner be ordered to deposit half his fee in Court by 20th of each month, so that the Secretary may send him an Order to withdraw this money. In the event of his deciding not to take over the properties, he will have to be paid for travelling and inspection a fee of Rs. 50/-, which he begs be paid in advance to him.

10

(21a)

4-5-43. Respondent asked.

20

(21b)

4-5-43. Lr. at (21) referred to Mr. J. S. Paranavitana.

(22)

8-5-43. Mr. J. S. Paranavitana, Proctor returns letter at (21) and states that he will communicate with the Proctor for the Respondent and also with his client to secure their attendance at the time and place mentioned in the Receivers letter.

2. It will not be necessary for tapping to be suspended for 10 days. The Receiver can get the sheets smoked on his own Estate until such time as the rubber produced now is removed.

30

3. The fee named by the Receiver is noted. He will make arrangements for his client's share, Rs. 50/- to be deposited monthly before the 20th.

4. He will ask the Petitioner to forward a Cheque for Rs. 50/- as requested in the penultimate para of the Receiver's letter.

40

(22a)

10-5-43. Copy of Report at (22) sent to Receiver and informed of Order (2).

.....

(22b)

10-5-43 Mr. J. S. Paranavitana, Proctor informed of Order (2).

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

(23)

13-5-43 With reference to the Order to pay deficiency Rs. 27/- Proctor for 2nd Respondent points out that the proxy filed on behalf of the Colombo B. T. S. is to watch their interest in respect of one land devised to the Society and which is valued at Rs. 4,500/- and is the 22nd land in the list and in the circumstances no stamp duty is due on the proxy as it is an incidental proceeding.

10

(24)

14-5-43 I do not think that Mr. Cooray's proxy is in the nature of Incidental Proceeding. A certain property (Land No. 22 on the list in the affidavit) has been gifted by the deceased to the Ananda College. The will is being disputed as a forgery. The Buddhist Theosophical Society have retained Mr. Cooray to support the will and get the land for the College. Mr. Cooray cannot call this "Incidental Proceeding" Incidental Proceedings in Testy. Cases are not exempt from stamp duty but liable to stamp duty according to the value of the Interest involved. Mr. Cooray claims that since the value given by the Petitioner is Rs. 4,500/- he is exempt from Stamp Duty. If it is decided that Mr. Cooray's part is incidental the question of Stamp Duty may stand over till the official valuation is received. If it is not so decided he must pay the deficiency now.

20

30

Intld.

(25)

I want a Report from the Secretary.

Intld. R. F. D.,

15-5.

(26)

40 17-5-43 D. J.

The B. T. S. could get the devise given to them under the Last Will only if the Last Will be held by the Court to be genuine. The

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

question for decision is whether the Last Will is genuine. Therefore the step taken by Mr. Cooray cannot be considered incidental. If after the Will was admitted to Probate Mr. Cooray came in to compel the executor to give his clients the devise, that would be incidental proceeding, and the papers could be stamped on the value of the devise. As things are at present, Mr. Cooray has, I think, to stamp on the value of the entire property dealt with by the Last Will. 10

Let the Proctor support. (23). 17-5.
18-5. Intld. C. E. Secy.

(27) Call 3-6.

21-5-43 E. S. de Kretser acknowledges receipt of Letter No. 10277/T of 11th instant the contents of which he has noted.

As the time mentioned being that day (12-5-43) and as the parties had not turned up he states he will have to give them a date convenient to him will be 21st or 22nd instant. 20

He regrets in being not able to agree re sheets being smoked in his own Estate which is about 15 miles away and it will not be tolerated by his Agents even if it was close by.

If no suitable place can be procured to suit both parties, the place will have to be rested for this period. 30

Vide (28).

.....
A. D. J.

(28) 21-5-43 E. S. De Kretser informs that he is unable to proceed to the lands in this case on 20-5-43 as arranged for the inspection and taking over.

He is ill with a very bad throat and a chest cold and it being very wet there is every likelihood of most of these land being under water. 40

He states that he would be much obliged if Court would kindly arrange for another Offl. Receiver to be appointed in this case, as he feels that he shall not be in a position to do this at present for some time.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

Refer to Proctor for report by 10-6.

.....
A. D. J.

(28a)

10 24-5-43 Letter at (27) and (28) referred to Mr. J. S. Parnavitana Proctor for report.

(29)

28-5-43 Mr. J. S. Parnavitana, Proctor, returns endorsement at (28a) and states that he has submitted 3 names to the Proctor for the Respondent for his approval in place of the Receiver appointed with the consent of the parties.

20 *Vide* (28). Call on 10/6.

.....
A. D. J.

(30)

3-6-43 Case called.

Mr. N. J. S. Cooray in support of (26). Mr. Cooray moves to withdraw his proxy if it is held by Court that it is stampable.

Secretary for further observations.

(31)

30 7-6-43 Please see my report (26).

It is too late now for Mr. Cooray to withdraw the proxy as he has been heard in Court in virtue of that proxy and that document should be stamped in the class of the case.

Intld. C. E.

Secy.

I think that proxy once filed cannot be withdrawn. It should be stamped in the total value of the estate.

40

.....
7/6.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

(32)

10-6-43 Mr. J. S. Parnavitana for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. N. J. S. Cooray for B. T. S.
Case called.
Deficiency Rs. 27/-.
Write to Mr. Cooray to pay deficiency.
Call 8/7.

(33)

10-6-43 Mr. N. J. S. Cooray, Proctor, written to. 10

(34)

14-6-43 Proctor for Petitioner moves to file
Petitioner's list of Witnesses.
He has sent copy by registered post to
Proctor for Objector (34a).
File.

.....
A. D. J.

(35)

14-6-43 SS. on witness 4 in list of Proctor for 20
Petitioner sent to Deputy Fiscal, Kalutara.

(36)

14-6-43 SS. on witness 6 in list of Proctor for
Petitioner sent to Deputy Fiscal, Kalutara.

(37)

18-6-43 Proctor for Respondent moves to file list of 30
witnesses and documents on behalf of the
Respondent and moves for SS. on Nos. 5, 8, 9,
10, 17, 18, 21-24. He states that he posted
copies of this list to Proctors for Petitioner
and 2nd Respondent under registered cover.

1. Allowed.
2. Re witness 22
also obtain certified copies.

.....
A. D. J.

(38) 18-6-43 SS. on witnesses Nos. 5, 8, 9, 10, 17, 18, 23 and 24 issued to Fiscal W.P. (issued in hand).
No. 1 Journal Entries 9-12-42 to 10-5-51. —continued

(39) 18-6-43 Proctor for Administrator moves to file additional list of witnesses on behalf of Petitioner. Proctor for Respondent consents.
File.

10
A. D. J.

(40) 21-6-43 SS. witness No. 5 in (39) issued to Fiscal W. P.

(41) 21-6-43 SS. witnesses Nos. 3 and 4 in (39) issued to D. F. Kalutara.

(42) 22-6-43 Proctor for Petitioner moves to file the second additional list of witnesses on behalf of Petitioner. He sent a copy of this list to the Proctor for Respondent as per receipt annexed. (42a).

20 1. File.
2. Re witness (1) also obtain certified copies.
.....
A. D. J.

(43) 23-6-43 Mr. J. S. Parnavitana for Petitioner.
30 Mr. J. A. W. Kannangara for Objector.
Inquiry.
Vide proceedings filed.
Further hearing on 25-6-43.

.....
A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

- (44)
25-6-43 Case called.
Vide proceedings filed.
Inquiry adjourned for August 20, 25 and 27.
Call case on 5th July, 1943 to consider the
question of appointing a new Receiver.
.....
A. D. J.
- (45)
30-6-43 As the signature of the Testator to the Will 10
is in dispute and as the handwriting experts
employed by the Petitioner have examined the
signatures of the deceased on the proxies in
Cases Nos. 22817, 22300, 22451, 21764, 21707
and 21976 of the District Court of Kalutara,
Proctor for Petitioner moves that the Court
be pleased to allow the Summons on the
Secretary, District Court of Kalutara to cause
to be produced the records of these Cases at
the Trial on 20th August 1943. 20
Allowed.
.....
A. D. J.
- (46)
5-7-43 Case called to consider the question of
appointing a new Receiver.
Vide (46a) joint motion filed.
Call 22-7.
.....
A. D. J. 30
- (47)
8-7-43 Deficiency Rs. 27/- from Mr. N. J. S.
Cooray.
Supplied.
.....
- (48)
22-7-43 Mr. J. S. Parnavitana for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Case called.
Call on 29-7. 40
.....

(49)
22-7-43. Mr. J. S. Parnavitana, Proctor for Petitioner files a letter received from the Medical Superintendent General Hospital, (49a) and moves that Court be pleased to direct that a copy of the bed Head Ticket of the deceased at the General Hospital admitted on 7-10-42 be issued to the Petitioner for production in Court.

10 Allowed.

.....
A. D. J.

(50)
29-7-43. Case called.
Mr. Advocate Rajendra for Petitioner.
Mr. Advocate Malalgoda for Respondents.
I, appoint, of consent of parties, Mr. R. S. Gunasekera, Secretary, D. C. Kalutara, receiver as from 1st August on the terms already agreed regarding the appointment of Mr. de Kretser.

20

.....

(51)
6-8-43. *Vide* Order of today.
Inform Proctors in this case that it will not be taken up on 20-8-43.
It will be heard on 25th and 27th August.

.....
A. D. J.

(51a)
30 6-8-43. Proctors informed by letter.
Copy filed.

.....

(52)
11-8-43. Proctor for Respondent moves to file Additional list of witnesses and moves for Summons on them.
Proctor for Petitioner Receives notice and consents.
Allowed.

40

.....
A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

- (53)
13-8-43. SS. on Witness No. 1 in Additional list at (52) sent to Deputy Fiscal, Kalutara.
- (54)
18-8-43. In view of the Order of Court on the last date of inquiry ordering that the Respondent should have access in Court to documents P 9—P 14 produced at the inquiry for the purpose of having them photographed, Proctor for Petitioner sends the said documents P 9, P 10, P 11, P 12, P 13, P 14, to Court. 10
Allow Respondent to Photograph documents.
- (55)
19-8-43. SS. on witness No. 4 in (42) issued to D. F. Kalutara.
- (56)
19-8-43. SS. on witness No. 3 in (14) issued to Fiscal, Western Province.
- (57)
20-8-43. SS. on witnesses Nos. 2 and 3 in (37) and 2 in (52) issued in hand. 20
- (58)
23-8-43. SS. on witness No. 6 in 34 issued to D. F. Kalutara.
- (59)
25-8-43. Mr. J. S. Parnavitana for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Vide proceedings filed.
Further hearing on August 27th.
..... 30
A. D. J.
- (60)
25-8-43. Mr. E. L. Gomes, Proctor, files his application for the intervenients, K. N. Siriwardene and C. Kannangara (60a) together with their Caveat under Section 535 C.P.C. (60b) and also their Petition and affidavit in support of the Caveat (60c) and (60d) and moves for an Order in terms of the said Section.

Mr. Advocate W. S. de Saram in support.
All the parties to the case agreeing, I allow application of intervention.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

.....
A. D. J.
25-8-43.

(61)
26-8-43. SS. on witness in (45) issued to D. F. Kalutara.

10 (62)
27-8-43. Mr. J. S. Parnavitana for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenient.
Case Called.
Vide proceedings filed.
Further hearing on August 30, 31 and September 2.

.....
A. D. J.

20 (63)
28-8-43. SS. on Witness No. 7 in (39) issued to D. F. Kalutara.

(64)
30-8-43. Case called.
Vide proceedings filed.
Further hearing tomorrow.

.....
A. D. J.

30 (65)
30-8-43. Mr. Gomes, Proctor for Intervenients files list of witnesses and moves for SS. on them.
Issue SS. for 2-9-43.

.....
A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

(66)
30-8-43. SS. on witness No. 1 in (65a) issued to D. F. Kalutara.

(67)
31-8-43. Mr. J. S. Parnavitana for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenant.
Case called.
Vide proceedings filed.
Further hearing 2-9-43. 10
.....
A. D. J.

(68)
2-9-43. Case called.
Vide proceedings filed.
Further hearing 25th and 26th October, 1943.

Mr. Advocate Obeyesekera applies for a summons on witness L. Baddevitana to give evidence and to produce the register of Rubber application forms. Issue Summons on him to appear on 25/10/43. 20

.....
A. D. J.

(69)
9-9-43. D. J. Kalutara requests that the records in D. C. Kalutara Cases Nos. 21976, 22300, & 22451 which were produced in this case on 30/8/43 be returned as they are pending cases. 30
Return.

(70)
13-9-43. D. C. Kalutara
Case Nos. 21976, 22300
22451 returned.
.....

(71)
12-10-43. SS. on witness No. 1 in (52) issued to D. F. Kalutara.

(72)
20-10-43. Proctor for Petitioner moves that the records in D. C. Kalutara which were produced and marked in evidence and were returned to said Court on request of D. J. Kalutara, be called for again from that Court to be produced at the resumed enquiry on 25th instant.

10

Call for the Record.

.....
A. D. J.

(73)
21-10-43. Record called for.

(74)
25-10-43. Mr. J. S. Parnavitana for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenient.
Case called.
Vide proceedings filed.

20

.....
A. D. J.

(75)
26-10-43. Case called.
Vide proceedings filed.

C. A. V.

30

.....
A. D. J.

(76)
4-2-44. Mr. J. S. Parnavitana for petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenient.
Vide Judgment. The order nisi in this case is discharged.

40

The petitioner will pay one set of costs to the 1st respondent and another set of costs to the Intervenients for whom Mr. Proctor Gomes appeared.

Intld. S. S.
A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued.

(77)

16-2-44. Mr. J. S. Parnavitane Proctor for Petitioner files petition of appeal against the order of Court dated 4-2-44 and moves that the same be accepted.

2. He also supplies stamps to the value of Rs. 27/- for certificate in appeal (2) Rs. 75/- for judgment of S. C. (3) Rs. 24/60 for service of notice of tender of security on respondents. (4) Notices under section 756 of the Code and (5) application for typewritten copies of the record for the purpose of the appeal and moves that the petition of appeal be accepted and that a deposit order for Rs. 24/- being the cost of the two typewritten copies be issued.

10

3. He further moves that notices of security be served through Court.

(1) File.

(2) Issue notice of security for 23-2-44.

Intld. S. S.

20

A. D. J.

(78)

16-2-44. *Vide* (77)

Notice of security issued on Proctors for 1, 2 and 3 respts (2) to Fiscal W. P. Paying in voucher for Rs. 24/- entered.

(79)

23-2-44. Mr. Advocate Misso instructed.

Mr. J. A. Parnavitana for appellant.

Mr. Advocate Malalgoda instructed by Mr. J. W. A. Kannangara for objector respondent—
E. L. Gomes for Interveniend respondent—
absent.

30

Notice of security served on Messrs. J. W. A. Kannangara and E. L. Gomes proctors for respondents.

I hear counsel for appellant and for objector respondent.

I accept the security tendered. Issue deposit order for Rs. 500/-.

Intld. S. S.

40

Proctor for appellant tenders stamps to the value of Rs. 31/80 to cover costs of service of notices of appeal.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

Intld. S. S.

23/2

(80)

23-2-44. *Vide* (79).

Paying in voucher for Rs. 500/- entered.

(81)

10 23-2-44. Mr. J. S. Paronavitane proctor for appellant files security bond duly perfected with K. R. for Rs. 500/-.

He also tenders notices of appeal (2 sets) with 2 copies of the petition of appeal for issue through court. Stamps of the value of Rs. 31/80 having been tendered to court *vide* (79).

1. File.

2. Issue notices of appeal for 9-3-44.

Intld. S. S.

20 (82)

23-2-44. Notice of appeal issued on Proctor for 1st respondent to Kalutara and proctor for 2 and 3 Int. respts to Colombo.

Intld

23/2

(83)

25-2-44. Mr. J. S. Paronavitane proctor for appellant files K. R. for Rs. 24/- being fees for typewritten copies.

30 (84)

9-3-44. Mr. J. S. Paronavitane for appellant.

Notice of appeal served on Messrs J. W. Kannangara and E. L. Gomes proctors for 1st 2nd and 3rd respondents respectively.

They are absent.

Forward appeal to S. C. in due course.

Intld. S. S.

(85)

40 4-4-44. The Commissioner of Estate duty intimates of the issue of notice of assessment.

Intld.

(86)

15-5-44. Commissioner. of Income Tax calls for the case record in above case for reference and return within 2 weeks from date of receipt.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued.

Forward record and ask for its return by 31/5
as an appeal is pending.

Intld. S. S.

(87)

18-5-44. Record forwarded to C. I. T. to be returned
by 31-5.

Intld.

(88)

26-5-44. C. I. T. returns record.

Intld.

10

(89)

15-6-44. K. R. of 27-3-44 for Rs. 16/- fees for 2 type
written copies for 1st respondent filed.

(90)

2-10-44. The Commissioner of Estate Duty forwards
a certificate of Estate Duty in default in respect
of deceased's estate and requests that writ be
issued to the Deputy Fiscal Kalutara for
recovery of said amount in default.

A duplicate of certificate and a writ form in
duplicate with a list of immovable property
belonging to deceased's estate annexed for
transmission to the Fiscal.

20

Issue writ.

Intld. S. S.

D. J.

(91)

4-10-44. Writ for recovery of Rs. 4,559/96 with interest
and cost of writ issued to D. F. Kalutara—
ret'ble on 1-2-45—*vide* (90).

30

Intld.

(92)

9-10-44. The brief in this case comprises of 308 pages.
Call for following additional fees from the
parties.

Mr. J. S. Paranavitane 72/-

Mr. J. A. W. Kannangara 80/-

Intld. S. S.

A. D. J.

(93)

10-10-44. *Vide* (92).

Additional fees called for.

Intld.

(94)

13-10-44. Reference his letter of 21-8-44 the Commissioner of Estate Duty wishes to know what the present position is with regard to the recovery of estate duty in above case.

10

Reply to be sent by Secretary indicated on the back on the letter.

Intld. S. S.

(95)

17-10-44. Reply sent.

Intld.....

(96)

10-10-44. K. R. for Rs. 72/- additional fees due from appellant filed.

(97)

20

24-10-44. The Commissioner Estate Duty requests that the Deputy Fiscal, Kalutara, be directed not to take further action on the writ issued for recovery of estate duty due in above case on payment of his costs by Proctor J. A. W. Kannangara of Kalutara or his client K. A. Don V. Siriwardene. The collection of the duty charged may therefore lie over until Court makes a final order as to who the lawful heirs of the deceased are. The Proctor will be directed to obtain a certified copy of Order of Court, produce it before the Deputy Fiscal, Kalutara and on payment of his charges have the execution of the writ stayed.
Allowed.

30

Intld. S. S.

A. D. J.

(98)

20-10-44. K. R. of 20-10-44 for Rs. 80/- additional fees for typewritten copies filed.

40

Intld.

(99)

15-11-44. Record forwarded to S. C.

Intld.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

- (100)
7-12-45. Record received from S. C. with S. C. Judgment. Order set aside and case sent back for trial de novo.
Call on Bench on 13-12-45.
Intld. S. C. S.
A. D. J.
- (101)
13-12-45. Mr. J. S. Parnavitane for Petitioner.
Mr. J. A. W. Kannangara for Objector. 10
Mr. E. L. Gomes for Interveniend.
Case called *vide* above order.
Proctor for Petitioner to take steps.
Call 14-2-46.
Intld. V. E. R.
A. D. J.
- (102)
5-2-46. The appeal of the petitioner appellant having been allowed with costs, Mr. J. S. Parnavitane for petitioner appellant moves for an O. P. in his favour for Rs. 500/- being security deposited for 1st respondents and 2nd and 3rd Interveniend respondents' costs of appeal. 20
Petitioner appellant consents.
Proctor for respondent and proctor for 2nd and 3rd Interveniend respondents consent.
Pay.
Intld. V. E. R.
A. D. J.
- (103)
6-2-46. Reqn. 63 for Rs. 500/- issued to Mr. J. S. Parnavitane, Proctor. 30
Intld. V. E. R.
A. D. J.
- (104)
14-2-46. Mr. J. S. Parnavitane for Petitioner—present.
Mr. J. A. W. Kannangara for Objector—present.
Mr. E. L. Gomes for Interveniend—present. 40

Case called—*vide* S. C order at (100).

Case to be tried de novo.

Inquiry on 11th, 12th, 17th June, 1946.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—*continued*

Intld. V. E. R.

A. D. J.

(105)

16-2-46. The Legal Secretary calls for record in above case for reference and return.

Send.

10

Intld. V. E. R.

A. D. J.

(106)

18-2-46. Sent.

(107)

30-5-46. Mr. J. S. Parnavitane for petitioner moves that the enquiry fixed for June 11, 12 and 17 be postponed and three dates be fixed for enquiry after 31-8-46 as Counsel is on State duty.

Call on 31-5-46.

20

Intld. V. E. R.

A. D. J.

(108)

31-5-46. Mr. J. S. Parnavitane for Petitioner.

Mr. J. A. W. Kannangara for Objector.

Mr. E. L. Gomes for Intervenient.

Case called—*vide* (107)

Vide proceedings. Call case on 7-6-46 to fix date of inquiry.

Sgd. V. E. RAJAKARIER,

A. D. J.

30

(109)

7-6-46. Mr. J. S. Parnavitane for Petitioner.

Mr. J. A. W. Kannangara for Objector.

Mr. E. L. Gomes for Intervenient.

Case called for fresh dates of inquiry.

Call on 10-6-46.

Sgd. V. E. RAJAKARIER,

A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

- (110)
10-6-46 Case called—*vide* (108) and above order—
to fix fresh dates of inquiry.
Inquiry refixed for 10th, 11th, 12th and 16th
September, 1946.
Sgd. V. E. RAJAKARIER,
A. D. J.
- (111)
11-6-46 Mr. Advocote E. G. Wickremenayake for
Objector. He is informed of the change of the
date of inquiry. Inquiry refixed 27th Septem- 10
ber, 1946 and 1st, 2nd and 3rd October, 1946.
Mr. Wickremenayake states he will communi-
cate the order to the Proctor for other parties.
Office to inform proctors for parties.
Intld. V. E. R.
A. D. J.
- (112)
17-6-46 Letters written to Proctors.
- (113)
30-8-46 Mr. E. L. Gomes Proctor for 1st and 2nd 20
Intervenients moves that Medical Superintendent
General Hospital Colombo, be authorised to
issue a certified copy of the Bed-Head Ticket
of the deceased in this case as this document is
very material for this case.
1. Copy authorized.
2. Serve a copy of this order.
Intld.
A. D. J. 30
- (114)
25-9-46 Mr. J. S. Parnavitane, Proctor for petitioner
as the petitioner is very ill, moves that the
inquiry in this case fixed for the 27th September
and 1st, 2nd and 3rd October be postponed.
Mr. Kannangara, Proctor for 1st respondent
receives notice and objects and moves that this
be called on 26-9-46. Mr. Gomes, Proctor for
2nd and 3rd respondents receives notice.
Call case on 26-9-46. 40
Intld. N. S.
A. D. J.

(115)
 26-9-46. Mr. J. S. Paravitane for Petitioner—
 present.
 Mr. J. A. W. Kannangara for Objector.
 Mr. E. L. Gomes for Intervenients—absent.
 Case called—*vide* order at (114).
 Mr. Advocate Gooneratne with Mr. Advocate
 Jayawardene instructed by Mr. Kannangara for
 Objector.
 10 Mr. Gomes for Intervenients—absent.
 Mr. Paravitane submits medical certificate.
 Inquiry cannot proceed on.....27th.
 Call on 1st October which is the next date of
 inquiry when an appropriate order for costs of
 27th will be made.
 Intld. N. S.
 A. D. J.

No. 1
 Journal
 Entries
 9-12-42 to
 10-5-51.
 —continued

(116)
 1-10-46. Mr. J. S. Paravitane for Petitioner.
 20 Mr. J. A. W. Kannangara for Objector.
 Mr. E. L. Gomes for Intervenient.
 Inquiry.
Vide proceedings.
 Inquiry postponed for 5th and 7th February,
 1947.
 Intld. N. S.
 A. D. J.

(117)
 30-1-47. 4 sup. issued on petitioner's list on witnesses
 30 Nos. 3, 4, 7 and in (39) and 6 in (34).

(118)
 5-2-47. Mr. J. S. Paravitane for Petitioner.
 Mr. J. A. W. Kannangara for Objector.
 Mr. E. L. Gomes for Intervenients.
 Inquiry.
Vide proceedings.
 Inquiry postponed for 7th and 11th July,
 1947.
 Intld. S. C. S.
 40 A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

- (119)
1-3-47. Objector's bill of costs of inquiry on 11-6-46
taxed at
Incurred Rs. 262/54.
- (120)
15-3-47. Objector's bill of costs for 27-9-46 and 1st
to 3rd October, 1946 taxed at
Incurred Rs. 563/91.
- (121)
15-3-47. Intervenient's bill of costs for 27-9-46 and 1st 10
to 3rd October, 1946 taxed at
Incurred Rs. 409/25.
Intld.
- (122)
2-7-47. Proctor for respondents files respondents'
additional list of witnesses.
Proctor for petitioner received notice.
File.
Intld. S. C. S.
A. D. J. 20
- (123)
4-7-47. SS. to witnesses No. 5 in motion 39 issued by
petitioner.
- (124)
7-7-47. Mr. J. S. Parnavitana for petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenients.
Inquiry.
As I am not feeling well enough to take this
case up for hearing I propose commencing on 30
Wednesday 9th July. I have been down with
fever the whole of last week and am completely
unfit to go on with a heavy case. Learned
Counsel who appear for the petitioner are pre-
sent and agree.
Intld. N. S.
- (125)
9-7-47. Inquiry.
Vide proceedings.
Adjourned for 10-7-47.
Intld. N. S.
A. D. J. 40

- (126)
10-7-47. Adjourned inquiry.
Vide proceedings.
Inquiry adjourned for 22nd, 23rd, 24th, 25th
and 26th September, 1947.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

Intld. N. S.
A. D. J.

- (127)
10 14-7-47. Mr. J. A. W. Kannangara for respondents
tenders the following additional list of witnesses
on behalf of the respondents and moves for
summons on them.

Proctor for petitioner received notice and copy
and has cause to shew.

Allowed.

Intld. N. S.
A. D. J.

- (128)
20 14-7-47. Mr. J. A. W. Kannangara for respondents
with reference to the respondents additional
list of witnesses filed by him on 1-7-47 and also
list No. 52 moves that Court do allow summons
to issue on the parties mentioned in the said
two lists.

Allowed.

Intld. N. S.
A. D. J.

- (129)
30 14-7-47. Mr. J. A. W. Kannangara for respondents
tenders an additional list of witnesses on behalf
of the respondents and moves for summons on
them.

Proctor for Extr. received notice.

Issue SS.

Intld. N. S.
A. D. J.

- (130)
17-9-47. SS. to witness No. 6 in petitioner's list 34
issued to Kalutara.

- 40 (131)
19-9-47. SS. to witness No. 1 in 122 and No. 2 in 52
issued to Kalutara.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

- (132)
22-9-47. Mr. J. S. Paronavitane for petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenients.
Inquiry.
Vide proceedings.
Adjourned for 23-9-47.
Intld. N. S.
A. D. J.
- (133) 10
23-9-47. Adjourned inquiry.
Vide proceedings.
Adjourned for 24-9-47.
Intld. N. S.
A. D. J.
- (134)
24-9-47. Adjourned inquiry.
Vide proceedings.
Adjourned for 25-9-47.
Intld. N. S. 20
A. D. J.
- (135)
26-9-47. Adjourned inquiry.
Vide proceedings.
Inquiry adjourned for 27th, 28th November,
1947, and 2, 3, 9 and 16th December, 1947.
Intld. N. S.
A. D. J.
- (136)
1-10-47. Mr. J. S. Paronavitana for petitioner files 30
additional list of witnesses and moves for
summons on them.
Proctor for respondent consents.
Obtain certified copy. Subject to this allowed.
Intld. N. S.
A. D. J.

(137)
6-10-47. Mr. J. S. Paravitane for petitioner moves that the impounded will be made available to him and copy will be made in the presence of an officer of Court.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

Allowed in the presence of Secretary.

Intld. N. S.

A. D. J.

(138)
10 27-11-47. Mr. J. S. Paravitana for petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervient.
Adjourned Inquiry.
Vide proceedings.
Adjourned for 28-11-47.

Intld. N. S.

A. D. J.

(139)
20 28-11-47. Adjourned Inquiry.
Vide proceedings.
Adjourned for 9th and 19th December, 1947.

Intld. N. S.

A. D. J.

(140)
9-12-47. Mr. J. A. Paravitane for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervient.
Adjourned inquiry
Appearances as on last date.
30 *Vide* j.e. 28-11-47.
Inquiry 19-12-47.

Intld. D. A. L.

A. D. J.

(141)
15-12-47. Mr. J. S. Paravitane requests that an order be issued to produce the records as they will be required on 19th instant to the D. J., Kalutara.
Cite Secretary, D. C. Kalutara.

Intld. N. S.

A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—*continued*

(142)
16-12-47. SS. issued on Secretary D. C. Kalutara.

(143)
19-12-47. Mr. J. S. Parnavitane for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenient.
Adjourned enquiry.
Vide proceedings.
Further hearing for 6-2-48.

Intld. N. S. 10
A. D. J.

(144)
6-2-48. Mr. J. S. Parnavitane for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenient.
Adjourned enquiry.
Vide proceedings.
Further hearing for 28th, 29th and 30th June,
1948.

Intld. N. S. 20
A. D. J.

(145)
23-6-48. Proctor for 1st and 2nd Intervenients moves
that the Court may be pleased to postpone
this inquiry for some other date convenient
to court, in view of the reasons stated in the
motion.

Counsel has seen me. He did not expect the
case before the S. C. to last so long when he
accepted the original date. His junior is no
longer available. New counsel will find it
difficult to proceed without getting full instruc-
tions. As there appears to be no time for this
purpose and as all parties have consented, I
allow the application. 30

Call 28-6 to fix date.

Intld. N. S.

(146)
 28-6-48. Mr. J. S. Paronavitane for Petitioner—absent.
 Mr. J. A. W. Kannangara for Objector—absent.

No. 1
 Journal
 Entries
 9-12-42 to
 10-5-51.
 —continued

Mr. E. L. Gomes for Intervenient—present.

Call case to fix date.

Mr. Advocate H. W. Jayawardene instructed
 by Mr. Kannangara for Objector.

10 It is agreed that intervenient and Objector
 should pay petitioner 30 gu. as costs.

Inquiry for 1st, 2nd and 3rd September.

Intld. N. S.

(147)
 27-8-48. SS. to witness No. 6 in (14) issued to
 Balapitiya.

Intld.

(148)
 1-9-48. Mr. J. S. Paronavitane for Petitioner.

20 Mr. J. A. W. Kannangara for Objector
 instructed by Mr. Advocate H. W. Jayawardene.

Mr. E. L. Gomes for Intervenient.

Inquiry postponed for 2-9-48.

Vide proceedings.

Intld. N. S.

A. D. J.

(149)
 1-9-48. SS. to witness No. 2 in (52) issued to
 Alutgama.

SS. handed to Proctor for service.

30 (150)
 2-9-48. Mr. J. S. Paronavitane for Petitioner.
 Mr. J. A. W. Kannangara for Objector
 instructed by Mr. Advocate H. W. Jayawardene.
 Mr. E. L. Gomes for Intervenient.

Inquiry.

Vide proceedings.

Addresses on 28th September and 1st
 October.

Intld. N. S.

A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—*continued*

- (151)
28-9-48. Mr. J. S. Paronavitane for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenant.
Addresses.
Vide proceedings.
Further addresses on 1-10-48.
Intld. N. S.
A. D. J. 10
- (152)
1-10-48. Appearances as above.
Further addresses.
Vide proceedings.
Judgment on 15-11-48.
Intld. N. S.
A. D. J.
- (153)
20-10-48. Documents marked R37, R39, R40 and R42
filed.
- (154) 20
7-12-48. Documents marked P46 and P47 filed with
list.
- (155)
21-12-48. Proctors informed that judgment in this case
will be delivered on 17-1-49 at 10-45 a.m.
- (156)
21-12-48. C. E. D. requires this record for reference
and he undertakes to return same within a week
of its receipt.
Forward record to be returned before 10-1. 30
Intld. D. A. L.
A. D. J.
- (157)
17-1-49. Mr. J. S. Paronavitane for Petitioner.
Mr. J. A. W. Kannangara for Objector.
Mr. E. L. Gomes for Intervenant.
Judgment filed.
I accordingly declare the will proved and
admit it to probate. The S. C. has left the
question of costs of the previous trial to this 40

Court. As petitioner has succeeded in these proceedings it is my view that he would be entitled to the costs of all steps and proceedings that had been taken in order to vindicate his right. I accordingly allow him the costs of the earlier proceedings as well as those of the present proceedings.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

Pronounced in open court in the presence of Mr. Rasanathan.

10 Mr. Gomes takes notice on behalf of Mr. Kannangara also Mr. V. Siriwardene 1st respondent is also present.

Intld. N. S.
A. D. J.

(158)

24-1-49. Mr. J. A. W. Kannangara, Proctor, for respondent files petition of appeal against the order of Court dated 17-1-49 and moves that the same be accepted.

20 2. He also supplies stamps to the value of Rs. 27/- for certificate in appeal (2) stamps to the value of Rs. 75/- for judgment of S. C. (3) Rs. 31/80 for service of notice of security in appeal, on respondents (4) notice under s. 756 of the Code and (5) application for typewritten copies of the record for purposes of appeal and moves that the petition of appeal be accepted and that a deposit order for Rs. 36/- being the cost of 2 typewritten copies be issued.

30 Proctors for petitioners respondents added respondent—respondent and intervenients respondents—respondents have received notice and proctor for intervenients respondents—respondents waive security and notice of appeal and all other notices in connection with this appeal.

1. File.
2. Issue D. O. for Rs. 36/-.
3. Issue notice of security for 28-1-49.

40 Intld. N. S.
A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

(159)

24-1-49. Notice of security issued on petitioner respondent to Fiscal Kalutara and notice on added respondent issued to Fiscal W. P. Returnable forthwith.

Intld.

(160)

25-1-49. Paying-in-Voucher for Rs. 36/- issued.

(161)

28-1-49. Mr. J. A. W. Kannangara for respondent. 10

Mr. N. J. S. Cooray for added respondent and appellant respondent.

Mr. E. L. Gomes for Intervenients respondents.

Mr. J. S. Parnavitane for petitioner respondents.

1. Notice of security on petitioner respondent is not served. Proctors have received notice for today. Mr. Gomes present and waives security. 20

2. Notice of security on added respondent respondent is served.

Mr. Parnavitane is absent.

Security offered is accepted.

Issue D/N for Rs. 500/-.

Issue notice of appeal on bond being perfected for 24/2.

Intld. N. S.

(162)

28-1-49. Paying-in-voucher for Rs. 200/- entered. 30

(163)

28-1-49. Proctor for respondent appellant tenders security bond duly perfected with K. R. for Rs. 500/- and K. R. for Rs. 36/- being fees for typewritten copies. He also tenders notice of appeal.

1. File bond and K. R.

2. Issue notice of appeal for 24/2.

Intld. N. S.

A. D. J. 40

(164)

28-1-49. Notice of appeal issued on Mr. J. S. Parana-
vitane Proctor for petitioner respondent and
on Mr. N. J. S. Cooray, Proctor for added
respondent—respondent.

No. 1
Journal
Entries
9-12-42 to
10-5-51
—continued

(164)

11-2-49. Proctor for petitioner files petition and
affidavit of the petitioner and moves that the
court be pleased :—

- 10 (a) To make order under s. 671 of the C. P.
 C. appointing a receiver to take charge
 of the estate of the deceased, or in the
 alternative
- (b) to appoint an administrator pendente
 lite
- (c) to direct the respondents to file the
 accounts for the period since the death
 of the deceased to date and to bring into
 Court any unexpended balance, and
- 20 (d) for costs of this application.

He also files a minute of consent from the
devises who have expressed their willingness to
this application.

Proctor for respondent received notice and
moves that he may be given a date to file
objections three weeks hence.

Objections for 10-3-49.

Intld. N. S.

A. D. J.

30 (165)

- 24-2-49. 1. Mr. J. A. W. Kannangara for respondent
 appellant.
2. Mr. N. J. S. Cooray for added respondent
 respondent.
3. Mr. E. L. Gomes for Interveniens
 respondents.
4. Mr. J. S. Paranavitane for petitioner
 respondent.

40 Notice of appeal served on proctors 2 and
 4 and they are absent.

Forward record.

Intld. N. S.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued

- (166)
10-3-49. Mr. J. S. Parnavitane for petitioner.
Mr. J. A. W. Kannangara for respondent.
Objections (*vide* J. E. (164)).
File.
Inquiry on 14-7.
Intld. N. S.
- (167)
11-3-49. Proctor for petitioner respondent applies for two copies of the record and moves for a paying-in-voucher for Rs. 16/-. 10
Issue paying in voucher for Rs. 16/-
Intld. N. S.
A. D. J.
- (168)
14-3-49. Paying in voucher for Rs. 16/- entered.
- (169)
28-3-49. C. E. D. requires this record for reference for estate duty purposes.
Forward to be returned in a week as record has to be sent to S. C. 20
Intld.
- (170)
1-4-49. Record forwarded to C. E. D.
- (171)
14-5-49. K. R. for Rs. 16/- filed.
- (172)
14-7-49. Inquiry.
Mr. J. S. Parnavitane for Petitioner.
Mr. J. A. W. Kannangara for Respondent. 30
Vide (164) and (166).
Vide proceedings.
Inventory and bond on 8-9-49.
Accounts on 20-10-49.
Intld. N. S.
A. D. J.

(173)
14-7-49. Proctor for petitioner files the petitioner's list of witnesses and documents in this case and moves for summons on the witnesses.

He also files postal receipt No. 643 in view of the fact that he has posted a copy to enable the proctor for respondent to receive notice.

1. File.
2. Cite.

10

Intld. N. S.

A. D. J.

(174)

8-9-49. Mr. J. S. Paronavitane for petitioner.
Mr. J. A. W. Kannangara for respondent.
(1) Inventory and Bond filed.
Issue letters.

Intld. N. S.

A. D. J.

(175)

20

13-9-49. Letters (Pendants lite) entered.
Accounts 20-10-49.

Intld.....

A. D. J.

(176)

20-10-49. Mr. J. S. Paronavitane for petitioner.
Accounts—handed by adm.
Respondent moves for time to consider.
On 10-11.

Intld. L. W. de S.

30

A. D. J.

(177)

10-11-49. Mr. J. S. Paronavitane for petitioner.
Mr. J. A. W. Kannangara for respondent.
Respondent's objections, if any, to the accounts filed.

Mr. Advocate Navaratnarajah for the petitioner wants a date to file objections to the receiver's accounts.

Objections on 8-12.

40

Intld. N. S.

A. D. J.

No. 1
Journal
Entries
9-12-42 to
10-5-51.
—continued.

(178)

8-12-49. Mr. J. S. Parnavitane for petitioner.
Mr. J. A. W. Kannangara for respondent.
Objections filed.
Inquiry on 18-5.

Intld. N. S.

(179)

16-1-50. *Vide* (165)
Send case to S. C.
Call for the record from S. C. for inquiry re 10
(178) before that date.

Intld.....
A. D. J.

(180)

17-1-50. Record sent to S. C. with Vol. II, III and IV,
and Ledger books P42, R6 and R14.

Intld.....

(181)

18-5-51. Inquiry. 20
Mr. J. S. Parnavitane for petitioner.
Mr. J. A. W. Kannangara for respondent.
Vide proceedings.

Intld.....
A. D. J.

(182)

10-5-51. *Vide* S. C. judgment filed.
Appeal dismissed with costs.

Intld.....
A. D. J.

No. 2**Petition of the Petitioner**

No. 2
Petition
of the
Petitioner
8-12-42

IN THE DISTRICT COURT OF COLOMBO.

In the matter of the Last Will and Testament of Katri Aratchige Don Frederick Siriwardene of "Siri Nivasa" Walagedera in Iddagoda Pattu of Pasdun Korale West deceased.

10 Testy. Journ.
No. 10277
Value Rs. 91,285/-

ARATCHI APPUHAMILLAGE DON
CARTHELIS APPUHAMY of Walagedera
aforesaid.....*Petitioner.*

vs.

- 20
1. KATRI ARATCHIGE DON VELIN SIRIWARDENE of Kolahekada in Katugahahena in Iddagoda Pattu of Pasdun Korale West.....*Respondent.*
 2. THE COLOMBO BUDDHIST THEOSOPHICAL SOCIETY LTD., of Buddhist Head Quarters, Norris Road, Colombo.....*Added-Respondent.*

On this 8th day of December, 1942.

The Petition of the Petitioner abovenamed appearing by his Proctor, John Samuel Paravitane, states as follows :—

- 30
1. Katri Aratchige Don Frederick Siriwardene, the deceased abovenamed, died on the 12th day of October, 1942, at the General Hospital, Colombo, within the jurisdiction of this court.
 2. The said Katri Aratchige Don Frederick Siriwardene executed his Last Will and Testament on the 5th day of October, 1942, (herewith filed marked 'A') whereby the said deceased duly appointed the Petitioner Managing Executor in connection with all matters therein mentioned.
 - 40 3. The intestate heirs of the deceased are (1) Katri Aratchige Don Velin Siriwardene of Kolahekada aforesaid (the respondent abovenamed), (2) Katri Aratchige Emy Nona of Katugahahena in Pasdun Korale West (step-brother and step-sister), (3) Katri Aratchige Premawathie Siriwardene, (4) Piyasena Siriwardene, (5) Edwin Lionel Siriwardene, (6) Upali Weinman Siriwardene, (7) Puspa Aileen

No. 2
Petition
of the
Petitioner
8-12-42
—continued

Siriwardene, and (8) Nandasena Siriwardene (children of a predeceased step-brother K. David Siriwardene) (9) Cecilia Kannangara, (10) Emmie Nona Siriwardene, (11) Aselin Nona Kannangara, and (12) Joselyn Nona Kannangara (children of a predeceased step-sister Jane Nona Siriwardene) (13) Katri Aratchige Cecilia Siriwardene, and (14) Katri Aratchige Lily Siriwardene (step-sisters) and devisees under the Will both of Walagedera aforesaid.

4. Of the heirs abovenamed K. Velin Siriwardene has applied to this Court in Testamentary Proceedings No. 10238 for grant of Letters of Administration to the estate of the deceased Testator as of an intestacy and is accordingly made a Respondent to these proceedings. 10
5. Full and true particulars of the property left by the deceased, so far as the Petitioner has been able to ascertain the same, are given in the Schedule to the Affidavit which this Petition supports. The said property is of the aggregate value of Rs. 91,285/-.
6. The Petitioner claims to be entitled to administer the said Estate and to have Probate of the said Last Will and Testament dated the 5th day of October, 1942 issued to him as the sole Executor therein-named. 20

Wherefore the Petitioner prays

1. for an order declaring the said Last Will and Testament dated 5th October, 1942, proved.
2. that he may be declared Executor of the said Last Will and Testament dated 5th October, 1942, and that Probate thereof be issued to him accordingly, and
3. for costs of these proceedings and for such other and further relief in the premises as to this court may seem meet. 30

Sgd. J. S. PARANAVITANE,
Proctor for Petitioner.

No. 3.

No. 3
Affidavit of
the Petitioner
8-12-42

Affidavit of the Petitioner

IN THE DISTRICT COURT OF COLOMBO.

In the matter of the Last Will and Testament of Katri Aratchige Don Frederick Siriwardene of "Siri Nivasa" Walagedera in Iddagoda Pattu of Pasdun Korale West, deceased.

Testy.

Jurisdiction.

10 No. 10277

Value Rs. 91,285/-.

ARATCHI APPUHAMILLAGE DON CAR-
THELIS APPUHAMY of Walagedera afore-
said.....*Petitioner.*

vs.

KATRI ARATCHIGE DON VELIN SIRI-
WARDENE of Kolahakade in Katugahahena
in Iddagoda Pattu of Pasdun Korale West
.....*Respondent.*

20 I, Aratchi Appuhamillage Don Karthelis Appuhamy of Walagedera
aforesaid, not being a Christian, do solemnly sincerely and truly affirm
and declare as follows:—

1. I am the petitioner abovenamed.
2. Katri Aratchige Don Frederick Siriwardene, the deceased abovenamed, died on the 12th day of October 1942 at the General Hospital, Colombo, within the jurisdiction of this Court.
3. The said Katri Aratchige Don Frederick Siriwardene executed his Last Will and Testament on the 5th day of October 1942 (herewith filed marked 'A') whereby the said deceased duly appointed me managing Executor in connection with all matters mentioned in the said Will.
- 30 4. The intestate heirs of the deceased are (1) Katri Aratchige Don Velin Siriwardene of Kolahekade aforesaid (the 1st respondent abovenamed) (2) Katri Aratchige Emy Nona of Katugahahena in Pasdun Korale West (step-brother and step-sister) (3) Katri Aratchige Premawathie Siriwardene (4) Piyasena Siriwardene (5) Edwin Lionel Siriwardene (6) Upali

No. 3
Affidavit of
the Petitioner
8-12-42
—continued

Weinman Siriwardene (7) Puspa Ailen Siriwardene and (8) Nandasena Siriwardene (children of a predeceased step-brother K. David Siriwardene) (9) Cecilia Kannangara (10) Emmie Nona Siriwardene (11) Aslin Nona Kannangara and (12) Joselyn Nona Kannangara (children of a predeceased step-sister Jane Nona Siriwardene) (13) Katri Aratchige Cecilia Siriwardene and (14) Katri Aratchige Lily Siriwardene (step-sisters) and devisees under the Will both of Walagedera aforesaid.

5. Of the heirs abovenamed K. Velin Siriwardene has applied to this Court in Testamentary proceedings No. 10238 for grant of Letters of Administration to the Estate of the deceased testator as of an intestacy and is accordingly made a respondent to these proceedings. 10
6. Full and true particulars of the property left by the deceased, so far as I have been able to ascertain the same, are given in the schedule hereto. The said property is of the aggregate value of Rs. 91,285/-.
7. I claim to be entitled to administer the said Estate and to have Probate of the said Last Will and Testament dated the 5th day of October 1942 issued to me as the sole Executor therein-named. 20

The Schedule above referred to.

Moveable Property

	Rs.	cts.	
Value of household furniture	2,800	00
Value of 7 tons of Plumbago	2,100	00
Value of crockery and cutlery	200	00
Value of two elephant tusks	325	00
Value of 2 carts	100	00
Value of 4 bulls	70	00
Value of 4 rubber rollers	1,300	00
Value of rubber in hand	620	00
Value of 150 bags of paddy	825	00
Cash in hand	600	00
		<u>8,940</u>	<u>00</u>

Immovable Property

Lands at Walagedera

No. 3
Affidavit of
the Petitioner
8-12-42
—continued.

		Rs.	cts.	
10	1. All that and these the house and premises called "Siri Niwasa" (comprising five allotments of land called Delgahalanda alias Alubogahalanda and Galwattewatte, Galwatta alias Gediwatta and Galwattewatta) together with the three boutiques and the rubber plantations thereon situated at Walagedera in Iddagoda Pattu of Pasdun Korale West in extent 16 acres ...	30,000	00	
	2. An allotment of land called Delgahalanda Udumulla alias Waturawaketiya lot No. 45 situated at Walagedera aforesaid in extent A 1. R 0. P 13. Value ...	300	00	
	3. An allotment of land called Delgahawatte Deniya alias Egodawatte Deniya situated at Walagedera aforesaid in extent 8 perches. Value ...	20	00	
20	4. An allotment of land called Waturawa lot No. 46 situated at Walagedera aforesaid and containing in extent 6 acres. Value ...	1,200	00	
	5. An allotment of land called Waturawa lot No. 47 situated at Walagedera in extent 2 roods. Value ...	100	00	
	6. An allotment of land called Waturawa lot No. 49 situated at Walagedera in extent 1 rood. Value ...	50	00	
30	7. An allotment of land called Waturawa lot No. 50 situated at Walagedera aforesaid and containing in extent 3 roods. Value ...	150	00	
	8. An allotment of land called Waturawa lot No. 51 situated at Walagedera aforesaid and containing in extent 3 roods. Value ...	150	00	
	9. An allotment of land called Kebelleduwewela lots Nos. 41 and 42 situated at Walagedera aforesaid and containing in extent 5 acres 1 rood. Value ...	1,100	00	
40	10. An allotment of land called Manekettawela lot No. 53 situated at Walagedera aforesaid in extent 2 acres. Value ...	300	00	
	11. An allotment of land called Kebelleduwewela situated at Walagedera aforesaid in extent 1 acre 2 roods. Value ...	150	00	8,940 00

No. 3
Affidavit of
the Petitioner
8-12-12
--continued.

		Rs.	cts.
12.	An allotment of land called Polduwewela situated at Walagedera aforesaid in extent. A. 1 R. 3 P. 16. Value ...	300	00
13.	An allotment of land called Polduwa situated at Walagedera aforesaid in extent one acre. Value ...	200	00
14.	An allotment of land called Polduwa situated at Walagedera aforesaid and containing in extent 4 acres. Value ...	600	00
15.	The 2 allotments of land called Pahala Waturawa lot No. 59 and Pahala Waturawa lot No. 60 situated at Walagedera aforesaid and containing in extent 1 acre. Value ...	150	00
16.	An allotment of land called Maneketta Pahala Kattiya situated at Walagedera aforesaid in extent 2 perches. Value ...	25	00
17.	An allotment of land called Pahala Waturawa Kattiya situated at Walagedera aforesaid in extent 1 rood. Value ...	1,400	00
18.	An allotment of land called Delgahalande Udumulla alias Waturawa Kattiya situated at Walagedera aforesaid in extent one acre. A. 1 R. 0 P. 0. Value ...	400	00
19.	An allotment of land called Delgahalande Narangastuduwa situated at Walagedera aforesaid in extent two roods and thirty-two perches. A. 0 R. 2 P. 32. Value ...	300	00
20.	An allotment of land called Dewenigurugewatte alias Godaporagatawatta situated at Walagedera aforesaid in extent A. 0 R. 2 P. 16. Value ...	250	00
21.	An allotment of land called Delgahalande alias Molpeddagahawatta situated at Walagedera aforesaid in extent three acres. A. 3 R. 0 P. 0. Value ...	2,000	00
22.	An allotment of land called Kirimettiyadeniya situated at Walagedera aforesaid in extent A. 5 R. 3 P. 20. Value ...	4,500	00
23.	An allotment of land called Polduwetuduwa situated at Walagedera aforesaid in extent A. 1 R. 3 P. 09. Value ...	1,400	00
24.	An allotment of land called Polduwedeniya situated at Walagedera aforesaid in extent twenty perches. A. 0. R. 0 P. 20. Value ...	200	00

		Rs.	cts.	
	25. An allotment of land called Polduwe miduwa situated at Walagedera aforesaid in extent two roods. Value ...	200	00	
	26. An allotment of land called Kalutuduwa situated at Walagedera aforesaid in extent two acres. Value ...	1,500	00	
10	27. An allotment of land called Parakattiyamulla situated at Walagedera aforesaid in extent A. 0 R. 2 P. 0. Value ...	400	00	
	28. An allotment of land called Delgahawattedeniya situated at Walagedera in extent ten perches. Value ...	40	00	
	29. An allotment of land called Delgahawatte situated at Walagedera aforesaid in extent thirty-six perches. Value ...	100	00	
	30. An allotment of land called Millagaha Kattiya situated at Walagedera and containing in extent one acre. A. 1 R. 0 P. 0. Value...	600	00	
20	31. An allotment of land called Millagaha Kattiya situated at Walagedera aforesaid in extent. A. 2 R. 1 P. 07. Value ...	1,000	00	
	32. An allotment of land called Keenawariyamulla situated at Walagedera aforesaid in extent one and a half acres. A. 1 R. 2 P. 0. Value ...	1,200	00	
	33. An allotment of land called Getapussegodalande situated at Walagedera aforesaid in extent one acre. A. 1 R. 0 P. 0. Value...	400	00	
30	34. An undivided five-seventh (5/7) share of the land called Getapussegodalanda aforesaid situated at Walagedera and containing in extent. A. 2 R. 2 P. 25. Value ...	500	00	
	35. An allotment of land called Bataketyawatta situated at Walagedera aforesaid in extent one acre two roods and ten perches. A. 1 R. 2 P. 10. Value ...	750	00	
40	36. An undivided 22/27 share of Dolabodawatta situated at Walagedera aforesaid in extent. A. 9 R. 1 P. 24. Value ...	800	00	
	37. An allotment of land called Pelanghawatta alias Batuwatta situated at Walagedera aforesaid in extent. A. 1 R. 2 P. 10 Value...	200	00	

No- 3
Affidavit of
the Petitioner
8-12-42
—continued.

No. 3
Affidavit of
the Peti-
tioner
8-12-42
—continued.

		Rs.	cts.
38.	An allotment of land called Puwakwatheduwatta alias Godaporagahawatta situated at Walagedera aforesaid in extent one acre one rood. A. 1 R. 1 P. 0. Value ...	200	00
39.	An allotment of land called Getapussegodellawatta alias Paulukattiya situated at Walagedera aforesaid in extent A. 0 R. 1 P. 06. Value ...	25	00
40.	An allotment of land called Kajugahawatta situated at Walagedera aforesaid in extent A. 0 R. 2 P. 05. Value ...	125	00
41.	An undivided 2/3rd share of the land called Potuwita Mulledeniya alias Kosgahaowita situated at Walagedera aforesaid in extent A. 0 R. 0 P. 36. Value ...	50	00
42.	An allotment of land calleed Diriture-watta situated at Walagedera aforesaid in extent two roods. A. 0 R. 2 P. 0. Value ...	75	00
43.	An allotment of land called Kosgahadeniya alias Kajugahawatta situated at Walagedera aforesaid in extent thirty perches. A. 0 R. 0 P. 30. Value ...	20	00
44.	An allotment of land called Saputantriyawatta situated at Walagedera aforesaid in extent one acre. Value ...	200	00
45.	An allotment of land called Godaporagahawatte situated at Walagedera aforesaid in extent two roods and thirty one perches. A. 0 R. 2 P. 31. Value ...	150	00
Lands at Henpita			
46.	An allotment of land called Palle owita (Lots 6 & 7) situated at Henpita in Iddagoda Pattu of Pasdun Korale West in extent A. 2 R. 0 P. 21. Value ...	400	00
47.	An undivided ½ share of the land called Kollugodawatta situated at Henpita aforesaid in extent twenty-eight perches. A. 0 R. 0 P. 28. Value ...	20	00
48.	An allotment of land called Andiyamullewatta situated at Henpita aforesaid in extent A. 0 R. 0 P. 12. Value ...	10	00
49.	An undivided ½ share of the land called Mahawatta alias Kehelgahawatta situated at Henpita aforesaid in extent A. 0 R. 0 P. 28. Value ...	20	00

		Rs.	cts.	No. 3. Affidavit of the Petitioner 8-12-42 —continued
	Land at Kurudippita			
	50. An allotment of land called Gorakagahawela situated at Kurudippita in Iddagoda Pattu aforesaid and containing in extent A. 1 R. 1 P. 20. Value ...	200	00	
	51. An allotment of land called Keenegaha owita situated at Kolahekada in Iddagoda Pattu aforesaid in extent A. 1 R. 1 P. 30. Value...	300	00	
10	52. An allotment of land called Delgahawalagawa owita situated at Kolahekada aforesaid in extent thirty-two perches A. 0 R. 0 P. 32. Value ...	30	00	
	53. An allotment of land called Galkatiya hene kumbura situated at Kolahekada aforesaid in extent A. 6 R. 3 P. 34. Value ...	1,400	00	
	54. An allotment of land called Kebelladuwa situated at Kolahekada aforesaid in extent ten perches. Value ...	40	00	
20	55. An allotment of land called Ketakerellagahawattepita kattiya situated at Kolahekada aforesaid in extent one rood and twenty-three perches A. 0 R. 1 P. 23. Value ...	200	00	
	56. An allotment of land called Ketakerellagahawatta situated at Kolahekada aforesaid in extent two roods and ten perches A. 0 R. 2 P. 10. Value ...	100	00	
30	57. An allotment of land called Ambagahawatta alliessa situated at Kolahekada aforesaid in extent ten perches A. 0 R. 0 P. 10. Value...	15	00	
	58. An allotment of land called Galketiyehena Aswedduma Kumbura situated at Kolahekada aforesaid in extent A. 2 R. 2 P. 0. Value...	1,500	00	
	59. An allotment of land called Galketiyadurewatte situated at Kolahekada aforesaid in extent one rood and twenty-three perches. A. 0 R. 1 P. 23. Value ...	150	00	
40	60. An allotment of land called Millagahawatta situated at Kolahekada aforesaid in extent two roods. Value ...	100	00	
	61. An allotment of land called Duwewatta situated at Kolahekada aforesaid in extent twenty-six perches A. 0 R. 0 P. 26. Value ...	20	00	
	62. An allotment of land called Henpolawatta situated at Kolahekada aforesaid in extent twenty perches. A. 0 R. 0 P. 20. Value...	20	00	

No. 3
Affidavit of
the Petitioner
8-12-42
—continued

		Rs.	cts.
63.	An allotment of land called Hikgahawatta situated at Kolahekada aforesaid and containing in extent A. 1 R. 1 P. 29. Value ...	750	00
64.	An allotment of land called Narangahalanda situated at Kolahekada aforesaid and containing in extent A. 1 R. 2 P. 4. Value ...	750	00
65.	An allotment of land called Gorakagahawatta situated at Kolahekada aforesaid in extent three roods and twenty perches. A. 0 R. 3 P. 20. Value ...	200	00
66.	An undivided $\frac{1}{2}$ share of the land called Kahata-gahawatta Pittakalliya situated at Kolahekada aforesaid and in extent two roods and eighteen perches. A. 0 R. 2 P. 18. Value ...	100	00
67.	An undivided $\frac{1}{2}$ share of the land called Atabanhewatta situated at Kolahekada aforesaid in extent three roods and twelve perches A. 0 R. 3 P. 12. Value ...	200	00
68.	An allotment of land called Lattawatta situated at Kolahekada aforesaid in extent one rood. A. 0 R. 1 P. 0. Value ...	50	00
69.	An allotment of land called Nattawagahawatta situated at Kolahekada in extent A. 0 R. 2 P. 20. Value ...	125	00
Land at Pallegoda			
70.	An allotment of land called Kajugaha owita alias Galabodawatta situated at Pallegoda in Iddagoda Pattu aforesaid in extent one acre three roods and twenty perches. A. 1 R. 3 P. 20. Value ...	200	00
71.	An allotment of land called Uggalakanda Pauladeniya situated at Pallegoda in extent three acres. Value ...	2,000	00
72.	An allotment of land called Gallanwiladuwwatta situated at Pallegoda aforesaid in extent twelve acres. A. 12 R. 0 P. 0. Value ...	7,200	00
73.	An allotment of land called Kajugaha owita alias Galabodawatta with three boutiques situated at Pallegoda aforesaid in extent one rood A. 0 R. 1 P. 0. Value ...	1,500	00
Land at Meegama			
74.	An allotment of land called Hathhaul Kumbura situated at Meegama in Iddagoda Pattu aforesaid in extent thirty perches A. 0 R. 0 P. 30. Value ...	25	00

		Rs. cts.	No. 3 Affidavit of the Petitioner 8-12-42 —continued.
	75. An allotment of land called Tunhaul owita situated at Meegama aforesaid in extent two roods and twenty perches. A. 0 R. 2 P. 20. Value ...	60 00	
	76. An allotment of land called Pandigewatta situated at Meegama aforesaid in extent thirty perches. A. 0 R. 0 P. 30. Value ...	30 00	
	Land at Ladduwa		
10	77. An allotment of land called Goiwala owita situated at Ladduwa in Iddagoda Pattu aforesaid in extent A. 0 R. 0 P. 22. Value ...	150 00	
	Land at Nauttuduwa		
	78. The rubber land called Kalukitulagodaland situated at Nawuttuduwa in Iddagoda Pattu aforesaid in extent A. 4 R. 2 P. 29. Value...	4,500 00	
	79. An allotment of land called Eragedarawatta situated at Mora in Pasdun Korale East in extent four acres. A. 4 R. 0 P. 0. Value ...	1,500 00	
20	Land at Pussahena		
	80. The plumbago pit at Pussahena in Uniyawa in Pasdun Korale West. Value ...	1,000 00	
	Land at Ittapana		
	81. The field called Medawila Karawa situated at Ittapana in Iddagoda Pattu aforesaid in extent ten acres. A. 10 R. 0 P. 0. Value ...	500 00	
	Land at Kalawana		
30	82. The rubber estate situated at Kalawana in the District of Ratnapura in extent twelve acres A. 12 R. 0 P. 0. Value ...	2,000 00	
	Value of half share of the Sundry Goods business carried on as D. F. S. and A. D. Carthelis Appuhamy at Induruwa. ...	200 00	
	TOTAL ...	91,285 00	

40 The foregoing affidavit having been duly read over and explained by me to the within named affirmant in Sinhalese his own native language and he appearing to understand the contents thereof wrote his signature affirming to the truth thereof at COLOMBO on this 8th day of December 1942.

Sgd. A. D. KARTHELIS

Before me.

Sgd. L. H. DE KRETSEK,
Comr. For Oaths.

No. 4

Affidavit of the Witnesses to the Last Will

IN THE DISTRICT COURT OF COLOMBO.

In the matter of the Last Will and Testament of Katri Aratchige Don Frederick Siriwardena of "Siri Nivasa", Walagedera in Iddagoda Pattu of Pasdun Korale West, deceased.

ARATCHI APPUHAMILLAGE DON
KARTHELIS APPUHAMY of Wala-
gedera.....*Petitioner.*

10

We, Don Sammy Jayasinghe of Walagedera in Iddagoda Pattu of Pasdun Korale West, Kamburawala Kankanange Allis alias Thomas of Pahambagoda in Iddagoda Pattu aforesaid, Don Peter Jayasinghe of Walagedera, Galatarage Don Handy Singho, Vel Vidane of Halwala in Iddagoda Pattu, Induruwage Don Parlis Goonetilleke of Bodimaluwa, Bentota in Bentota Wallalawita Korale aforesaid, not being Christians. do solemnly, sincerely and truly affirm and declare as follows:—

1. We are the witnesses to the Last Will and Testament of Katri Aratchige Don Frederick Siriwardene of Walagedera in Iddagoda Pattu of Pasdun Korale West, in the District of Kalutara, deceased, dated the 5th day of October, 1942. 20
2. On the said 5th day of October, 1942, we the said Don Sammy Jayasinghe, K. Allis alias Thomas, D. P. Jayasinghe, G. D. Handy Singho and I. D. P. Goonetilleke were personally present at Galmatta in Walagedera aforesaid and saw the said Katri Aratchige Don Frederick Siriwardene subscribe his name to the paper writing marked 'A' now produced and shewn to us and at the same time and place the said Katri Aratchige Don Frederick Siriwardene declared the same to be his Last Will and Testament and in testimony thereof and at the request of the said Katri Aratchige Don Frederick Siriwardene and in the presence of one another we the said Don Sammy Jayasinghe, Kamburawala Kankanange Allis alias Thomas, Don Peter Jayasinghe, Galatarage Don Handy Singho and Induruwage Don Parlis Goonetilleke subscribed our names thereto and the signature of the said Katri Aratchige Don Frederick Siriwardene is in the handwriting of the said Katri Aratchige Don Frederick Siriwardene and our signatures in our respective handwriting. 30 40

3. We further make oath and say that the said Katri Aratchige Don Frederick Siriwardene, deceased, at the time of the execution of the said Last Will and Testament appeared to us to be of sound mind, memory and understanding.

No. 4
Affidavit
of the
Witnesses
to the
Last Will
4-12-42
—continued

10 The foregoing affidavit having been duly read over and explained to the within-named affirmants in Sinhalese their own native language by the Interpreter Mudaliyar of D. C. Colombo and they appearing to understand the contents thereof wrote their signatures affirming to the truth thereof at Colombo on the 4th day of December, 1942.

- 1. Sgd. D. S. JAYASINGHE
- 2. Sgd. In Sinhalese (K. D. THOMAS)
- 3. Sgd. D. P. JAYASINGHE
- 4. Sgd. In Sinhalese (G. D. HANDY SINGHO)
- 5. Sgd. In Sinhalese (I. D. P. GOONETILLEKE)

Explained by me.

20 Sgd. ABDUL AZEEZ,
Interpreter Mudlr.
D. C. Colombo.

Before me
Sgd. C. EMMANUEL
Justice of the Peace.

No. 5
Order Nisi

No. 5
Order Nisi
6-1-43

ORDER "NISI" DECLARING WILL PROVED &c.
IN THE DISTRICT COURT OF COLOMBO.

30 ARATCHI APPUHAMILLAGE DON
CARTHELIS APPUHAMY of Walagedera
in Iddagoda Pattu of Pasdun Korale
West.....*Petitioner.*

vs.

Testamentary
Jurisdiction
No. 10277

1. KATRI ARATCHIGE DON VELIN
SIRIWARDENE of Kolahekada in
Katugahahena in Iddagoda Pattu afore-
said.....*Respondent.*

In the matter of the Estate of the late Katri Aratchige Don Frederick Siriwardene deceased, of "Siri Nivasa" Walagedera in Iddagoda Pattu of Pasdun Korale West.

No. 5
Order Nisi
6-1-43
—continued

This matter coming on for disposal before James Joseph Esq. Additional District Judge, Colombo on the 9th day of December, 1942, in the presence of Mr. J. S. Paranavitane, Proctor on the part of the petitioner, and the affidavits of the abovementioned petitioner dated 8th December, 1942 and of the attesting witnesses dated 4th December, 1942 having been read.

It is ordered that the Will of Katri Aratchige Don Frederick Siriwardene, deceased, dated 5th October, 1942, the original of which has been produced and is now deposited in this court, be and the same is hereby declared proved unless the respondent or any other person or persons interested shall on or before the 21st day of January, 1943 show sufficient cause to the satisfaction of this court to the contrary.

10

It is further ordered that the abovenamed petitioner is the executor named in the said Will and that he is entitled to have Probate of the same issued to him accordingly unless the respondent or any other person or persons interested shall on or before the 21st day of January, 1943, show sufficient cause to the satisfaction of this court to the contrary.

This 6th day of January, 1943.

Sgd. S. C. SWAN,
Additional District Judge.

20

No. 6
Motion
10-2-43

No. 6
Motion

IN THE DISTRICT COURT OF COLOMBO.

Testamentary
Jurisdiction
No. 10277

In the matter of the Last Will and Testament of Katri Aratchige Don Frederick Siriwardene of "Siri Nivasa" Walagedera in Iddagoda Pattu of Pasdun Korale West, deceased.

ARATCHI APPUHAMILLAGE DON
CARHELIS APPUHAMY of Walagedera
aforesaid.....*Petitioner.*

30

vs.

KATRI ARATCHIGE DON VELIN
SIRIWARDENE of Kolahekade in Katugaha-
hena in Iddagoda Pattu of Pasdun Korale
West.....*Respondent.*

I file Petition and Affidavit of the Petitioner abovenamed and, upon the materials contained therein, move

1. that the Court be pleased to appoint a Receiver in respect of the Estate of the said deceased pending the determination of the conflicting claims to Probate or Administration respectively.

40

- 2. that the Respondent be removed from the possession and custody of the said properties.
- 3. that the said Receiver be given the management and the custody of the said properties, or,
- 4. In the alternative, that the Court be pleased to appoint an Administrator pendente lite as aforesaid and direct that such Administrator do have the management and custody of the said properties, and
- 5. for costs of suit and for such further and other relief in the premises as to this Court shall seem meet.

No. 6
Motion
10-2-43
—continued

10

Colombo, 10th February, 1943.

Sgd. J. S. PARANAVITANE,
Proctor for Petitioner,

Received notice for February, 25th 1943,
with copies of Petition and Affidavit.

Received notice. It may be called on
the 25th instant for a date to be fixed for
inquiry into this matter. Mr. Parana-
vitane agrees to this.

20

Sgd. J. A. W. KANNANGARA,
Proctor for Respondent.

No. 7

Petition of the Petitioner

No. 7
Petition
of the
Petitioner
10-2-43

IN THE DISTRICT COURT OF COLOMBO.

In the matter of the Last Will and Testament
of Katri Aratchige Don Frederick Siriwardene
of "Siri Nivasa" Walagedera in Iddagoda Pattu
of Pasdun Korale West, deceased.

30 Testamentary
Jurisdiction
No. 10277

ARATCHI APPUHAMILLAGE DON
CARTHELIS APPUHAMY of Walagedera
aforesaid.....*Petitioner.*

vs.

KATRI ARATCHIGE DON VELIN
SIRIWARDENE of Kolahekada in Katugaha-
hena in Iddagoda Pattu of Pasdun Korale
West.....*Respondent.*

On this 10th day of February, 1943.

The Petition of the Petitioner abovenamed appearing by his
Proctor, John Samuel Paranavitane, states as follows:—

No. 7
Petition
of the
Petitioner
10-2-43
—continued

1. The Petitioner is the Executor named in the Last Will and Testament of the said Frederick Siriwardene dated the 5th October, 1942, and has applied in this Case for Probate of the said Last Will. The Court has made order entering Order 'NISI' in respect of the Petitioner's said application against which the Respondent has taken time to shew cause.
2. The Respondent is a step-brother of the deceased and has applied for Letters of Administration of the Estate of the deceased in Case No. 10238 of this Court alleging that the deceased died intestate. The Court has in the said Case No. 10238 made order that the application should await the order in these proceedings. The deceased was up to the date of his death on the 12th October, 1942, in possession of the immovable properties owned by him which were of considerable value and extent and have been valued at Rs. 91,085/- in these proceedings and at Rs. 52,000/- by the Respondent in the said Case No. 10238. 10
3. For a period of about 20 years prior to his death the Petitioner had been living with the deceased and assisting him in all his personal and business affairs including the management of his properties during the few years immediately preceding the death of the said deceased, the Petitioner was his trusted Manager and Steward. The Petitioner used to visit the deceased's Estate, pay all his labourers and was also entrusted with the control both of his domestic and business matters. 20
4. Shortly after the death of the deceased the Respondent who had never lived nor was on intimate terms with the deceased and who was for over 30 years been residing at Kolahekada on different pretexts ousted the Petitioner by use of force and undue influence and took possession of the Estate of the deceased. The Respondent also got rid of the men who had been employed by the deceased on his lands and entered into forcible possession of the same and has since been appropriating all the income from the said properties without rendering any accounts in respect of them. 30
5. Twenty of the said properties are planted in rubber and were for the purpose of the Rubber Control Ordinance assessed at about 18,000 pounds a year. The Petitioner was at all times during the life-time of the deceased in full control and management of the said properties and to his certain knowledge the monthly output of rubber is not less than 2,000 lbs. 40
6. Some of the remaining properties of the deceased are planted in coconut while others are paddy fields.

7. The Respondent, who is himself not possessed of any valuable property, is neglecting the lands belonging to the Estate of the deceased. The rubber trees are being tapped ruthlessly with a view to obtaining the utmost output without due regard to the consumption of bark and preservation of the trees. There is also want of supervision in the management of the properties.

No. 7
Petition
of the
Petitioner
10-2-43
—continued

10 8. There is now a conflict of claims inasmuch as the Petitioner asks for Probate of the Last Will and the Respondent alleges that the deceased died intestate. The litigation in respect of the conflicting claims of the Petitioner and the Respondent is likely to be protracted, during which time unless a suitable order is made by Court the Respondent will remain in possession of the Estate of the deceased and appropriate the entire income from and neglect the said properties.

20 9. It is essential that, for the preservation of the Estate of the deceased, for the proper collection the income therefrom, for the proper management of the said properties and for the proper rendering of accounts, that a receiver should be appointed by Court in respect of the said properties and that the Respondent be removed from the possession of the same and that the custody and management of the said properties be handed over to such Receiver.

10. The Petitioner further has reason to apprehend that the Respondent will commit waste in respect of the said lands and misappropriate the income thereof which will be lost to the estate and that the estate will suffer irreparable loss.

30 11. In the alternative the Petitioner says that it is essential that until the termination of the litigation and the decision in regard to the conflicting claims an Administrator pendente lite be appointed by Court and that such administrator be given the management and custody of the lands of the deceased.

Wherefore the Petitioner prays that

- 40
1. The Court be pleased to appoint a Receiver in respect of the estate of the deceased pending the determination of the conflicting claims to Probate or Administration respectively.
 2. The Respondent be removed from the possession and custody of the said properties.
 3. That the said Receiver be given the management and the custody of the said property.

No. 7
Petition
of the
Petitioner
10-2-43
—continued

- 4. In the alternative, that the Court be pleased to appoint an Administrator pendente lite as aforesaid and direct that such Administrator do have the management and custody of the said properties.
- 5. For costs and for such other and further relief in the premises as to this Court shall seem meet.

Sgd. J. S. PARANAVITANE,
Proctor for Petitioner.

No. 8
Affidavit of
the Petitioner
10-2-43

No. 8

Affidavit of the Petitioner

10

ARATCHI APPUHAMILLAGE DON
CARTHELIS APPUHAMY of Walagedera.
.....*Petitioner.*

vs.

KATRI ARATCHIGE DON VELIN SIRI-
WARDENE of Kolahakada.....*Respondent.*

I, Aratchi Appuhamillage Don Carthelis Appuhamy of Walagedera, aforesaid, not being a Christian, do solemnly, sincerely and truly affirm and declare as follows :—

- 1. I am the Petitioner abovenamed and Executor named in the Last Will and Testament of Don Frederick Siriwardene, the deceased abovenamed, dated the 5th day of October, 1942 and I have applied in this case for Probate of the said Will. This Court has made order entering order 'Nisi' and the Respondent has taken time to shew cause against the said order being made absolute.
- 2. The Respondent is a step-brother of the abovenamed deceased and had applied for letters of Administration to the same Estate in Case No. 10238 of this Court, alleging that the deceased had died intestate. This Court has in the said proceedings No. 10238 made order that this application should await the order in these proceedings. The deceased was up to the date of his death on October 12th, 1942, in possession of the immovable properties owned by him. These were of considerable value and extent and have been valued by me at Rs. 91,085/- in these proceedings. They are also valued at Rs. 52,000 by the Respondent in the said Case No. 10238.

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30

3. For a period of about 20 years prior to his death I had been living with the deceased and assisting him in all his personal and business affairs, including the management of his properties. During the few years immediately preceding the death of the said deceased, I was his trusted Manager and Steward. I visited his Estates, paid all the labourers and was also entrusted with the control both of his domestic and business matters.
- 10 4. Shortly after the deceased's death, the Respondent who had never lived nor was on intimate terms with the deceased and who was for 30 years or more residing at Kolahakada, on different pretexts ousted me by use of force and undue influence and took possession of the deceased's house and all his belongings. He also got rid of the men who has been employed by the deceased and has now taken forcible possession of his entire Estate. He has also been appropriating all the income from the properties since without rendering any accounts in respect of them.
- 20 5. Twenty of the said properties are planted in rubber and were for the purposes of the Rubber Control Ordinance assessed at about 18,000 pounds a year. I was for several years up to the date of his death in full control and management of the said rubber properties and to my certain knowledge the monthly output of rubber is not less than 2500 lbs.
6. Some of the remaining properties of the deceased are planted in coconut while others are paddy fields.
7. The Respondent, who is himself not possessed of any valuable property, is neglecting the lands belonging to the estate of the said deceased. The rubber trees are being tapped ruthlessly with a view to obtaining the utmost output without due regard to the consumption of bark and preservation of the trees. There is also want of supervision in the management of the properties.
- 30 8. There is now a conflict of claims, in as much as I have asked for Probate of the Last Will and the Respondent alleges that the deceased died intestate. The litigation in respect of these conflicting claims of the Respondent and myself is likely to be protracted, during which time unless a suitable order is made by Court the Respondent will remain in possession of the Estate of the deceased and appropriate the entire income from the said properties and neglect them.
- 40 9. It is essential that, for the preservation of the estate of the deceased, for the proper collection of the income therefrom, for the proper management of the said properties and the proper rendering of accounts, that a Receiver should be appointed by Court in respect of the said properties and

No. 8
Affidavit of
the Petitioner
10-2-43
—continued

that the Respondent be removed from the possession of the same and that the custody and management of the said properties be handed over to such Receiver.

- 10. Further, I have reason to apprehend that the Respondent will commit waste in respect of the said lands and appropriate to himself the income thereof which will be lost to the estate and that accordingly the Estate will suffer an irreparable loss.
- 11. In the alternative, I say that it is essential that until the termination of the litigation and the decision in regard to the conflicting claims an Administrator pendente lite he appointed by Court and that such Administrator be given the management and custody of the lands of the deceased.

10

The foregoing affidavit having been duly read over and explained to the within-named affirmant in Sinhalese his own language and he appearing to understand the contents thereof wrote his signature affirming to the truth thereof at Kalutara on this 10th day of February, 1943.

Sgd. A. D. KARTHELIS
Explained by me.
Sgd. Illegibly
Interpreter D. C. Kalutara.
Sgd. Illegibly
C. O.

No. 9

No. 9
Petition
of the
Respondent
25-2-43

Petition of the Respondent

20

In the matter of the Estate of the late Katri Aratchige Don Frederick Siriwardene deceased. KATRIARATCHIGE DON VELIN SIRIWARDENE of Kolehekada.....*Petitioner.*

AND

Testamentary
Jurisdiction
No. 10277

- 1. ARATCHI APPUHAMILLAGE DON CARTHELIS JAYAWARDENA of Induruwa.....*Respondent.*
- 2. THE COLOMBO BUDDHIST THEOSOPHICAL SOCIETY LTD., of Colombo, Buddhist Head Quarters, Norris Road, Colombo... ..*Added-Respondent.*

30

On this 25th day of February, 1943.

The Petition of the Petitioner abovenamed appearing by J. A. W. Kannangara his proctor, states as follows:—

1. That the petitioner denies that the deceased Katriaratchige Don Frederick Siriwardene left a Last Will and Testament and says that the document produced in this case by the Respondent abovenamed as the Last Will and Testament of the deceased Katri Aratchige Don Frederick Siriwardene is a forgery.

No. 9
Petition
of the
Respondent
25-2-43
—continued

10 2. The Petitioner also says that the witnesses to the said document produced by Respondent as the Last Will and Testament of the said deceased Katriaratchige Don Frederick Siriwardene did not sign the same in the presence of the said deceased Katriaratchige Don Frederick Siriwardene or in the presence of one another all being present at the same time and place.

3. The Respondent abovenamed is not entitled to have the said alleged Will declared proved or probate issued to him.

20 4. The Petitioner denies that Katriaratchige Cecilia Siriwardene and Katriaratchige Lily Siriwardene mentioned in paragraph 3 of the Petition dated 8th December, 1942 filed by Respondents are heirs of the said deceased Katriaratchige Don Frederick Siriwardene and he further says that none of the devisees on the alleged Will are heirs of the deceased Katriaratchige Don Frederick Siriwardene.

5. The Petitioner further says that the said Katriaratchige Don Frederick Siriwardene died intestate on the 12th day of October, 1942 in Colombo within the jurisdiction of this Court leaving as his heirs the following to wit :—

(a) The Petitioner a brother

(b) Katriaratchige Eminona Siriwardene a sister

(c) Katriaratchige Premawathie Siriwardene

30 (d) Katriaratchige Piyasena Siriwardene

(e) Katriaratchige Edwin Lionel Siriwardene

(f) Katriaratchige Upali Weinman Siriwardene

(g) Katriaratchige Puspa Ailinee Siriwardene

(h) Katriaratchige Nandisena Siriwardene

the latter six persons being children of a deceased brother Davith Siriwardene

No. 9
Petition
of the
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25-2-43
—continued

- (i) Cicilia Kannangara
- (j) Eminona Kannangara
- (k) Asilin Nona Kannangara
- (l) Joslyn Nona Kannangara

the latter four persons being children of a deceased sister Jane Nona Siriwardene.

6. The Petitioner being the only surviving brother of the deceased Katriaratchige Don Frederick Siriwardene claims Letters of Administration to this Estate as such.
7. Before the Respondent produced the alleged Last Will and claimed probate the Petitioner filed all necessary papers in Case No. 10238 of this Court praying that Letters of Administration be issued to him in respect of this Estate. 10
Wherefore the Petitioner prays :—
 - (a) That the Order Nisi entered in this case declaring the said Will proved and the Respondent entitled to probate be discharged.
 - (b) That the Petitioner be declared entitled to Letters of Administration of the Estate of the said deceased Katriaratchige Don Frederick Siriwardene and that the same be issued to him in this case or in the alternative that Case No. 10238 of this case be restored to the roll and Letters of Administration be issued to Petitioner in respect of the said Estate in the said Case No. 10238. 20
 - (c) That the Respondent be ordered to pay all costs incurred by the Petitioner in this case.

And the Petitioner also prays for such other and further relief as to this Court shall seem meet.

Sgd. J. A. W. KANNANGARA, 30
Proctor for Petitioner.

Affidavit of the RespondentNo. 10
Affidavit
of the
Respondent
24-2-43

I, Katriaratchige Don Velin Siriwardene do hereby solemnly, sincerely and truly affirm and declare as follows :—

1. I am the Petitioner abovenamed.
2. I deny that the deceased Katriaratchige Don Frederick Siriwardene left a Last Will and Testament and the document produced in this case by the Respondent abovenamed as the Last Will and Testament of the deceased Katriaratchige Don Frederick Siriwardene is a forgery.
3. I also say that the witnesses to the said document produced by the Respondent as the Last Will and Testament of the said deceased Katriaratchige Don Frederick Siriwardene did not sign the same in the presence of the said deceased Katriaratchige Don Frederick Siriwardene or in the presence of one another all being present at the same time and place.
4. I say that the Respondent abovenamed is not entitled to have the said alleged Will declared proved or probate issued to him.
5. I deny that Katriaratchige Cicilia Siriwardene and Katriaratchige Lily Siriwardene mentioned in paragraph 3 of the Petition dated 8th December, 1942 filed by Respondent are heirs of the said deceased Katriaratchige Don Frederick Siriwardene and I further say that none of the devisees on the alleged will are heirs of the deceased Katriaratchige Don Frederick Siriwardene.
6. I further say that Katriaratchige Frederick Siriwardene died intestate on the 12th day of October, 1942 in Colombo within the jurisdiction of this Court leaving as his heirs the following to wit :—
 - (a) me the Petitioner a brother
 - (b) Katriaratchige Emi Nona Siriwardene a sister
 - (c) Katriaratchige Premawathie Siriwardene
 - (d) Katriaratchige Piyasena Siriwardene
 - (e) Katriaratchige Edwin Lionel Siriwardene

No. 10
Affidavit
of the
Respondent
24-2-43
- continued

- (f) Katriaratchige Upali Weiman Siriwardene
- (g) Katriaratchige Puspa Ailinee Siriwardene
- (h) Katriaratchige Nandisena Siriwardene

the latter six persons being children of a deceased brother Davith Siriwardene

- (i) Cicilia Kannangara
- (j) Eminona Kannangara
- (k) Asilin Nona Kannangara
- (l) Joslyn Nona Kannangara

the latter four persons being children of a deceased sister Jane Nona Siriwardene. 10

6. I being the only surviving brother of the deceased Katriaratchige Don Frederick Siriwardene claim letters of Administration to this Estate as such.
7. Before the Respondent produced the alleged Last Will and claimed probate I filed all necessary papers in Case No. 10238 of this Court praying that Letters of Administration be issued to me in respect of this Estate.

Affirmed to at Kalutara
on this 24th February, 1943. }

Sgd. D. V. SIRIWARDENE
(In Sinhalese)

20

Before me.

Sgd. Illegibly
S. T. (D. C. Kal.)

Before me.

Sgd. Illegibly
C. O.

No. 11

Affidavit of the Respondent

No. 11
Affidavit
of the
Respondent
24-2-43

ARATCHI APPUHAMILAGE DON
KARTHELIS APPUHAMY of Wala-
gedera.....*Petitioner.*

vs.

KATRIARATCHIGE DON VELIN SIRI-
WARDENE of Kolehekada.....*Respondent.*

10 I, Katriaratchige Velin Siriwardene of Kolehekada do hereby
solemnly, sincerely and truly affirm and declare as follows :—

1. I am the Respondent abovenamed.
2. Save as hereinafter admitted I deny the truth of the averments made in the Affidavit and Petition of the Petitioner abovenamed.
3. Replying to paragraph 1 of the affidavit in support of the application for the appointment of a Receiver or Administrator pendente lite I deny that the document produced in this case as the Last Will and Testament of the deceased Katriaratchige Don Frederick Siriwardene is his Last Will and Testament. It is a forgery.
- 20 4. I admit the truth of the averments in paragraphs 2 and 6 of the Affidavit.
5. I deny the truth of the averments in paragraphs 3, 4, 7, 9, 10 and 11 of the said Affidavit.
6. Replying to paragraph 5 of the Affidavit I say that the average monthly output of rubber from lands belonging to the deceased is approximately 1300 pounds.
7. Replying to paragraph 8 of the Affidavit I admit there is a conflict of claims for administration and probate between myself and Petitioner but deny the remaining averments in the said paragraph. Further in this behalf I say that the legal heirs of the deceased intestate are myself and my sister Katriaratchige Eminona Siriwardene who are together entitled to $\frac{1}{2}$ share of the said Estate and Katriaratchige Premawathie Siriwardene, Katriaratchige Edwin Lionel Siriwardene, Katriaratchige Upali Weiman Siriwardene, Katriaratchige Puspa Ailinee Siriwardene and Katriaratchige Nandisena Siriwardene children of a predeceased brother Katriaratchige Davith Siriwardene who are entitled to $\frac{1}{4}$ of the Estate and Cicilia Kannangara, Emi Nona Kannangara,
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- 40

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Affidavit
of the
Respondent
24-2-43
—continued

Eslyn Nona Kannangara and Joslyn Nona Kannangara children of a predeceased sister Jane Nona Siriwardene who are entitled to the balance $\frac{1}{4}$ share of the said Estate.

9. I deny that the Petitioner or any of the devisees of the alleged Last Will are legal heirs of the deceased or that they or any of them have any right or interest in or to any of the properties left by the deceased.
10. I deny that I forcibly or by any undue influence or by any improper means took possession of any of the properties belonging to this Estate. I further say that I peacefully and lawfully took possession of the said properties without any protest or objection from the Petitioner or anybody else and I have since then maintained and managed the same in the best interests of all heirs. 10
11. I specially deny that I am neglecting or ruthlessly tapping the rubber properties or that any damage has been caused or likely to be caused to the same.
12. I am possessed of considerable property including rubber lands and I am worth about Rs. 30,000/-.
13. I deny that I am committing waste in respect of the said properties or misappropriating the income therefrom. I am keeping proper accounts of all income and expenditure of the properties of this estate and I shall render proper accounts in due course. 20
14. I deny that in the circumstances of this case the Petitioner is in law entitled to have me removed from the possession and custody of the said properties or to have a Receiver or an Administrator pendente lite appointed in respect of the same.
15. I say that the pleadings filed by the Petitioner in support of this application are not in order inasmuch as they are not properly stamped. 30

Affirmed to at Kalutara
on this 24th February, 1943. }

Sgd. D. V. SIRIWARDENE
(In Sinhalese)

The foregoing Affidavit having
been duly read over etc.

Sgd. Illegibly
S. T. (D. C. Kal.)

Before me.

Sgd. Illegibly
C. O.

15th April 1943.

Petitioner DON KARTHELIS APPUHAMY present.

Respondent DON WELIN SIRIWARDENE present.

MR. ADVOCATE N. E. WEERASOORIYA, K. C., with MR. ADVOCATE CHELVANAYAGAM and MR. ADVOCATE RAJARATNAM instructed by MR. PARANAVITANA for the Petitioner.

10 MR. ADVOCATE U. A. JAYASUNDERA with MR. ADVOCATE MALALGODA instructed by MR KANNANGARA for the Respondent.

MR. N. T. S. COORAY files proxy of the Buddhist Theosophical Society Ltd. Let his client be made a respondent to the case.

I hear counsel.

Parties now arrive at a settlement.

20 Of consent Mr. E. S. de Kretser of Pahan Estate, Dodanduwa to be placed in charge of the rubber properties from 1st May, 1943. All the other properties to be in charge of the respondent. Mr. de Kretser to be directed not to employ the petitioner or the respondent in this case or any of the witnesses to the will.

Petitioner to advance in the first instance half the charges payable to Mr. de Kretser, the other half to be paid out of the income from the lands. If the will is upheld in this case the petitioner will be entitled to be reimbursed the half expenses that he is now advancing to Mr. de Kretser. If the will is not upheld he will not have it.

Respondent to submit periodic accounts to Court, such period not to exceed three months, of income received from the lands in his charge.

Mr. de Kretser to submit monthly accounts.

30 The costs of this inquiry to be decided on at the final adjudication of the case.

Sgd. D. V. SIRIWARDENE
(In Sinhalese)
Respondent.

Sgd.
Addl. District Judge.

No. 13**Issues Framed**

June 23, 1943.

Petitioner present.

MR. ADVOCATE R. L. PEREIRA, K. C., with MR. ADVOCATE N. E. WEERASOORIYA, MR. ADVOCATE CHELVANAYAGAM and MR. ADVOCATE RAJENDRAM for him, instructed by MR. PARANAVITANE.

1st Respondent present.

MR. ADVOCATE J. E. M. OBEYSEKERA with MR. ADVOCATE U. A. JAYASUNDERA and MR. ADVOCATE WIJETUNGA, instructed by MR. KANNANGARA, for him. 10

Mr. Advocate R. L. Pereira raises the following questions for decision in the case:

1. Is the Last will produced in Court the act and deed of the deceased, Don Frederick Siriwardene?
2. Was the said Last Will duly executed?
(Mr. Adv. Obeyasekera raises the following further question)
3. Is the signature "D. F. Siriwardene" appearing on the document marked "A", annexed to the petition the signature of the deceased? 20

No. 14**Petitioner's Evidence**

Petitioner's case:

Mr. Advocate R. L. Pereira calls:

A. A. DON CARTHELIS APPUHAMY: Affd. 32, Merchant, Induruwa.

I am the petitioner in this case. I knew the deceased Don Frederick Siriwardena for about 20 years. At the outset I lived with him as a servant. I was first taken to his house by my brother. As time progressed, the deceased entrusted me with most of his work. He entrusted me with his estate work and also with the charge of his books and the management of his boutique. That was five years after I came to live with him, about 15 years ago. 30

The business in connection with the boutique was started in 1940 at Induruwa in partnership between the deceased and myself, under name of D. F. S. and A. A. D. Carthelis Appuhamy. I produce a bill of that boutique, dated 8th April, 1941. (Production of the document objected to as it has not been listed. I allow the document to go in, marked P 1, but an opportunity will be given to Mr. Obeysekera to call any fresh evidence necessary to meet this document.)

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Petitioner's
Evidence.
A. D. Car-
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Examina-
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—continued

(P 1 shown): The handwriting in the body is that of a man employed in the boutique. I am producing the document to show the designation of the boutique. I am Carthelis Appuhamy.

The deceased left about 20 rubber lands. I looked after all these estates. I visited them. He had a number of paddy lands, and I looked after those lands also with the assistance of others. I supervised them. The deceased also owned a plumbago business. I attended to that also with Handy Singho, Vel Vidane, who was a shareholder in that business.

The deceased was of an enterprising nature. When I joined him, he was a headman. Over some land dispute, he was called upon to resign. That was in 1928, as far as I can remember. He was not married, and he did not leave any children.

At the time of his death, Cecilia was living in his house. She was married to Lewis Appuhamy Vedamahatmaya. She was got down to the deceased's house at Galmatte from her husband's village, and she lived there for the last six years prior to the death of the deceased. Her sister Lily also lived in that house. After her marriage Lily left the house, but she returned there three or four months after her husband's death, at the request of the deceased. That was five or six years ago. Cecilia and Lily are present in Court.

The deceased was of a generous disposition. He helped temples and Ananda College also. Whenever there were appeals for subscriptions, he subscribed. He told me that he had given rubber to Ananda College more than any one else. I did not send rubber to the College at his request. I know that he gave rubber to the College.

The deceased fell ill on the 29th of September, 1942. He had some stomach trouble. At the beginning he tried Ayurvedic treatment. Not finding any progress, he called in Dr. Ratnayake of Beruwala. Two days after Dr. Ratnayake started attending on him, the doctor said that the deceased's condition was serious, and advised that he should go to the Colombo Hospital, and also gave the deceased a letter to a Doctor in Colombo, namely, Dr. Jayasuriya of the General Hospital.

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Evidence.
A. D. Car-
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Examina-
tion
—continued

The deceased, therefore, left Walagedera for Colombo on the 7th of October, accompanied by me, B. D. Lewis Appuhamy who is Cecilia's husband, and Thomas Appuhamy, a signatory to the Will. We travelled to Colombo in a hired car. On the way the car was stopped first near the dispensary of Dr. Ratnayake for the purpose of obtaining a report to Dr. Jayasuriya and the next opposite the Magistrate's Court, Kalutara, where the deceased spoke to Mr. Wilson de Silva, Proctor. At that time, the deceased had a big case pending in the Kalutara courts as well as other pending cases. He rather liked going to court. He had several cases. He was the guardian of one Lily in the Balapitiya Courts. I produce, marked P 2, a certified copy relating to D. C. Balapitiya Case No. 25 in which Lily's husband's estate was administered. She was the applicant in that case and the deceased Don Frederick Siriwardene was the guardian of her minor children. When the deceased spoke to Mr. Wilson de Silva, his clerk was also present. The deceased gave directions to Mr. de Silva about his pending cases.

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Thereafter, we continued our journey to Colombo. The car was also stopped at the Maliban Hotel, Norris Road, Pettah. We had also stopped at Colpetty to enable the deceased to answer a call of nature. At the Maliban Hotel, the deceased and I got down, leaving the driver, Lewis and Thomas in the car. Then the car was driven off for the purpose of getting petrol with Lewis and Thomas in it, in addition to the driver. Only the deceased and I went into the hotel. As there was a little delay in the car returning to the hotel, I went in search of it, whilst the deceased was in the hotel. When I had proceeded a little distance I saw the car turning at the Bo-tree junction at Norris Road and coming in my direction. I then returned to the hotel walking along the pavement whilst the car went there along the road. The hotel is almost opposite the Fort Railway Station.

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When I returned to the hotel, the deceased got into the car, and we all went to Dr. Jayasuriya's bungalow. There the deceased was examined by Dr. Jayasuriya who gave the deceased a chit to enable him to enter the hospital. We then proceeded to the hospital, and the deceased was duly admitted there. We reached the hospital at about 1 p.m. I remained there at the request of the deceased, and Lewis and Thomas went back to the village in the car.

The deceased asked me to remain in Colombo, to see him frequently in hospital and he also told me that I would have to find out medicines at the request of the doctors. He further asked me to remain by him always, and I did so for five days. He died on the 12th. I was not in Colombo then. On the 11th I had gone back to the village at the request of the deceased. I returned to the hospital on the 12th with clothes, prepared to take the deceased to a native physician for treatment. When I returned, I heard from D. B. Perera, a rubber dealer, that the deceased had died. I went to his store as I had left Rs. 400/-

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with him, and there I learnt of the deceased's death. The news was a shock to me; I did not expect it. Thereafter, I went to the hospital and made arrangements for removal of the corpse to Walagedera. I had the body embalmed. D. B. Perera helped me in the removal of the corpse to Walagedera. It was he who gave me all the directions in that connection.

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Petitioner's
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10 After the body was removed to the deceased's house at Walagedera, I had a notice published in the newspapers. The cremation was fixed for the 15th. On the 13th, the respondent Welin came to the house. Prior to that date, the deceased and Welin had nothing to do with each other; they were not associating. The deceased had a case against Davith, Welin's brother. Davith died leaving six minor children. I produce the plaint, answer and decree in D. C. Kalutara, case No. 14318 (marked P 8) in which Davith Siriwardene sued the deceased. When Welin came to the house on the 13th, he spoke to me about the corpse. He said "In the cremation and all these other matters, we all must join". I said "Good". Then he replied: "I'll get everything done that has to be done outside". He further said: "I have no idea of the friends of the deceased. When they come ask them to remain in the house and attend on them". He also spoke about the cost of the cremation.

Q. Did he demand any money?

A. Yes.

I gave him Rs. 500/-. He did not ask for more. He wanted to know whether I had more money, whereupon I said: "I have got even more; not mine". Then he demanded from me the keys of the almirah. Eventually I handed the keys to the headman, who was brought there by somebody.

30 Up to the 13th, I did not know about the will. I first came to hear about it on the 13th from the deceased's clerk, Sammy Jayasinghe. He was the deceased's clerk for about a year. Welin did not ask me for the keys direct: He sent me "messages" twice or thrice asking for the keys. With regard to the will, Sammy told me that the deceased wrote a last will and asked me whether I had got it. I replied that I did not get the will and that was not the time to think of wills. I did not ask him for particulars about the will.

40 The cremation took place on the 15th. Thereafter, I asked Sammy what sort of a will it was, and who the attesting witnesses were. I asked him that on the 15th itself, in the evening. The cremation took place at about 4 p.m. On that occasion Sammy told me that all the witnesses had attended the cremation. He gave me the names of the witnesses. He did not tell me who the executor was. He told me that a last will had been written and signed by the deceased on the 5th of October. The other four witnesses also told me about the will.

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Examina-
tion
—continued

Sammy was one of the witnesses the others being Peter Jayasinghe, Handy, Vel Vidane, Parlís Gunatilleke and Thomas Appuhamy. Thereafter, I searched for the last will but could not find it. I asked witnesses where it was. When I questioned Thomas Appuhamy, he told me that when we were travelling to Colombo on the 7th, the deceased had put it in his suit case. The size of the suit case is 18" x 12". I looked for the will in the suit case, but it was not there. Later, when several customers were in the boutique at Induruwa, I spoke about the last will. Then the headman of Induruwa told me: "I will tell you a fine way by which you can find it". On the 16th, I consulted Mr. N. de Alwis, Crown Proctor of Balapitiya, who resides in Warahena Walauwa, Bentota, and on his advice, I took certain steps.

10

In consequence of what the headman of Induruwa told me, I had a notice published in the newspapers. I produce a copy of the "Daily News" of the 5th of March, 1942, marked P 4, which contains that advertisement. The wording of that advertisement is mine. The words "Between Colpetty and the General Hospital" were written in view of the fact that I had opened the suitcase at Colpetty. On that occasion I had taken out from the suitcase an old cloth for the purpose of wiping the deceased, as he had to answer a call of nature. I thought that when I had taken the cloth out, the document must have got lost, that it must have fallen out. Thomas, one of the signatories to the will, told me that the will was in an envelope bearing the name of Mr. Wilson de Silva, Proctor.

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I also produce P 5, the same advertisement in the "Dinamina" of the 6th of November. The notice was published in the "Dinamina" of the 7th also, but at the moment I am not having a copy of it. In the advertisement published in the "Daily News", my address was given as J 8364, c/o "Daily News" and in the "Dinamina" as 8738 c/o that paper.

30

Thereafter, on November 18th, I received a letter directed to me by the "Daily News" Office, dated November 12th, addressed to me from Maliban Hotel by D. A. John Perera. I produce that letter, marked P 6. The envelope in which it was enclosed was addressed to the "Dinamina" and bore a post-mark of November 13th, 1942. I produce that envelope also, marked P 6A, as well as another envelope (marked P 6B) addressed to me by the "Daily News" Office in which the letter P 6 and its envelope (P 6A) were enclosed. I actually received the letter on the 18th of November. The post-mark on P 6B bears the date 16th November.

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Thereafter, on the 20th, I came to Colombo. Before that I had not received a second letter. Having come to Colombo, I met John Perera and recovered the will from him. That is the document marked "A" which I have filed in Court through my proctor.

When I returned to Induruwa, a second letter from John Perera was awaiting me there. I produce that letter, marked P 7, dated November, 17th. It was enclosed in a registered envelope, addressed to the "Dinamina", Lake House and bore a post-mark dated November 17th. I produce the envelope (marked P 7A). P 7, enclosed in P 7A, was sent to me by the "Dinamina" Office in another envelope which also I produce, marked P 7B. I returned to Induruwa either on the 20th or 21st.

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10 (Show the Last Will marked "A"): This is the document which John Perera gave me. It was in an envelope with other documents, viz: a letter written in English and a copy relating to a case.

(Envelope marked P 8 shown): This is the envelope. It has gone through the post. I do not know how the deceased got it. I have myself signed the Will, speaking to its identity. I produce, marked P 8, the envelope enclosing the Will and also the documents enclosed in the envelope, viz: the letter and the copy, marked P 8A and P 8B respectively. According to P 8B, the plaintiff in that case was the deceased and the defendant R. H. de Alwis Seneviratne.

20 I have stated that I signed to the identity of the Last Will. I am familiar with the signature of the deceased, and I am, therefore, able to state positively that he signed the Will with his normal signature.

(To Court: When he died, the deceased was about 66 years old).

Having obtained the Last Will I handed it to Mr. Paranavitarne on the 30th of November and instructed him to apply for probate. That was done on the 8th of December.

30 In February last, my Proctor informed me that Welin Siriwardene was challenging the Will as a forgery and on the proctor's advice, I submitted to him a number of signatures of the deceased for the purpose of obtaining the opinion of an expert. I have altogether about 15 signatures of the deceased on rubber coupon cards. I gave six of the cards to my Proctor. I produce six prevention of theft forms, marked P 9—P 14 all of which are signed by the deceased. I am aware that these forms were submitted to Mr. Mc Intyre. P 9—P 14 have been signed in 1942 and P 14 in 1941. Mr. Mc Intyre was also given a number of coupon issue cards. I produce them, stitched in a bundle, marked P 15. Some of the signatures on those cards are in copying pencil and the others in ordinary pencil. I identify the signatures on each of the pages in P 15; there are 11 signatures. I identify them as being the deceased's.

40 Mr. Mc Intyre also looked into certain records at the Kalutara Courts. I produce a copy of an application in D. C. Kalutara Testamentary Case No. 1584 in which the deceased's father Cornelis Siriwardene's estate was administered by Don Frederick Siriwardene, the deceased in this case. In Case No. 1584, Alpi Nona Weerakoon

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 Evidence
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was the 1st respondent, that person being the mother of Lily and Cecilia, the 15th and 16th respondents in that case. The application referred to (marked P 16) was made by Mr. D. J. Kannangara on behalf of the deceased.

I next produce P 17: certified copy of the plaint and answer of Welin in Partition Case No. 13560 in which Dona Alpina Nona and Dona Cecilia were the 1st and 2nd plaintiffs respectively. Cecilia's husband was the 3rd plaintiff and the deceased Frederick Siriwardene the 5th plaintiff. Lily Nona was the 14th defendant and Welin the 1st defendant. I am not aware that in that case the rights of Cecilia and Lily were disputed by the 1st defendant.

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(Paragraph 5 of the plaint referred to).

A. D. Car-
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 Cross-
 Examination

Cross-examined: I am a man of Gampaha. When my brother took me as a servant to the deceased's house, I was about 12 years old. At that time the deceased was a headman, and he was possessed of a certain number of lands. Those lands were planted and looked after by him and his younger brother, Brampy Siriwardene. Brampy is a son of an aunt of the deceased and a brother of Lily Siriwardene. Brampy is a son of Alpinona, the third wife of the deceased's father. I do not know whether Cecilia and Lily are Alpinona's children by a previous husband. They are Karanelis' children. What I learnt was that they are children of the deceased's father. I do not know that they are children of Alpinona by a previous husband.

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(To Court. I know that the father of these two women is Karanelis Siriwardene).

The deceased as well as his mother told me that. I do not know that in Case No. 13560, it was stated that Lily and Cecilia are not Karanelis' children.

(Mr. Advocate Obeysekera produces document marked R 1. Production objected to. I allow the document to go in subject to the objection).

30

The deceased was an energetic man. Right up to the time of his last illness he did not continue to display that same energy. He got his work done always through others. He spent a good deal of his time on his duties as a headman and also on litigation and had no time to spare for looking after his property. The lands were looked after by Brampy. Right up to the time of his death, the deceased was able to look after his affairs. He gave up the headmanship in 1928. His lands are in blocks situated in one area, all within the radius of two miles.

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The boutique I referred to is at Induruwa, about 9 miles from Galmatte. That business was started at the end of 1940, and I was the managing partner. I lived in the boutique two days every week.

My time was partly spent there and partly in visiting the lands. For about two months before the deceased's death, I remained at Galmatte where also the deceased had a boutique. That boutique was managed by Lewis Vedamahatmaya, Cecilia's husband. I remember the deceased also carried on a contract business at Matugama in partnership with one Haramanis Wijesinghe. I supervised in connection with that business and also made the entries in the books with regard to the supply of goods to labourers. In connection with that business there was a boutique at Matugama. That business was carried on in 1936. I was also in charge of the boutique. I did not remain there. In the evenings I used to go to the deceased's house about 6½ miles from the boutique. The deceased had given me a bicycle and ordered me to come home in the evenings. I am not married. The deceased gave me the bicycle because he did not like my spending the nights in the boutique.

I remember the case brought by the deceased against Wijesinghe in connection with the partnership business, viz: No. 29047, D. C. Kalutara. I gave evidence in that case. The deceased was the plaintiff and Wijesinghe the defendant. It was stated in that case that there was an arrangement that I should keep the accounts and that Simon should help in the supervision. It was also stated that the plaintiff established the boutique to supply provisions for the labourers engaged under the contract. That statement is correct. When I stated in that case: "The defendant and I lived in that boutique" I meant that I remained there when the business was being carried on. I was not residing there permanently. In that case I also said: "The monthly rent was Rs. 5/-. My salary was Rs. 20/-". These statements are correct. I further said: "I had my meals in the boutique. I was not paid my salary for six months. I had only my meals at the defendant's expenses." All these statements are correct. (Extract from the evidence produced and marked R2). In 1937, I was not a 20 rupee employee of the deceased. That salary was paid to me only for the work done in the boutique. During the time I was employed in the boutique I had no time to attend to any other work. The boutique at Matugama was run for about 5 or 6 months. The sum of Rs. 20/- a month was extra payment to me for work done in connection with the contract. During that period of 5 or 6 months I attended to other work also. I had leisure to do so.

Sammy Jayasinghe was the deceased's clerk. Whenever necessary he may have visited the deceased's lands. He was not the rubber conductor of the deceased. He did not do conductor's work only. He visited lands occasionally, whenever the deceased asked him to do so. He was not the conductor; he was the clerk. At the time of his death the deceased had in all about three or four people working under him. There were about 20 or 25 tappers in his employ. I am unable to say how many labourers worked under him daily. All the accounts were kept by Sammy Jayasinghe. For the greater part of his life the

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deceased did not live alone. Towards the end of his life Cecilia, Lily, Lewis Appuhamy and I were living with him. Generally either Cecilia or Alpinona were always living with him. Cecilia may have married in 1935.

The deceased always had large sums of money in his house. There were times also when he had no money; that was during the depression. When he had money he kept it in an almirah and in the drawers of his writing desk. He had a calamander almirah in which it was possible to keep the money safely; it had a secure lock. At various times the deceased kept large sums of money in that almirah and in the writing desk drawers also. The keys of the almirah and the drawers were more with me than with the deceased. It was I who opened the almirah and the drawers always.

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(After the luncheon interval)

The deceased had deeds as well as other important papers and those were kept in the almirah.

If the deceased was not previously ill he would not have gone to the hospital. On the 7th of October when we left for Colombo the deceased did not appear to be in a serious condition. He was in a sorrowful state. I am aware that on the 20th of October, he had a case in the Kalutara Courts, and that Mr. Wilson de Silva was his proctor in that case. I would not say that the deceased was fond of litigation; he had several cases. He was forced to litigate. In this connection he had retained several proctors. He was well known to a number of proctor-notaries. He did not have a standing proctor whose services he retained generally. He did not engage the services of one proctor more than others. He also engaged the services of several advocates. There was a proctor notary living less than half a mile from his house namely Mr. Wijesekera, who was very well known to him. I do not know whether Mr. W. F. Perera who is living at Welipenne about two miles from the deceased's house also well-known to the deceased. That proctor is also a notary. I know Mr. Samarana-yake, notary, and the deceased also knew him. He lives at Alutgama about 5 or 6 miles from the deceased's house. He has attested 5 or 6 deeds to which the deceased was a party.

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In the document "A" the deceased has left the land called Katukitullande to Ananda College. I do not know whether the deceased owned that land on a Crown Grant, nor do I know whether there is a title plan attached to the deed. I am also not aware that the title plan shows the extent of the land as 4 acres and 4 roods.

40

Opposite the deceased's house there is a school called Prince of Wales School. The deceased spent a large sum of money on that institution—more than Rs. 10,000/-. The account relating to that school was kept by me. At or about the time of his death, the

foundation had been laid for certain extensions to the school. That had been done at the instance of the deceased. The extension in question was abandoned. Only the foundation was laid. A cadjan shed has been put up there by someone else.

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10 Cecilia Siriwardene's husband is a man of Bodimaduwa which is $4\frac{1}{2}$ miles from Galmatte. There is a road to that place. Bodimaduwa is a portion of Bentota. By cart road the distance to that place is 8 miles. Originally Cecilia lived there and 5 or 6 years before the deceased's death, she came to his house. During her stay in the
10 deceased's house she used to visit Bodimaduwa. Her husband had a boutique at Galmatte. He held a licence to purchase rubber.

I know the temple called Walagedera Vihare. When the deceased was living the incumbent of that Vihare was Jinaratana. The deceased had a great deal of trouble with that priest. I know there was a case between the deceased and Jinaratana. In that case I do not know whether Jinaratana made a claim on behalf of the temple as against the deceased. The case was in respect of temple land. I remember that the priest sent a petition against the deceased to the Assistant
20 Government Agent, and that in consequence of that petition, the A. G. A. made a certain order against the deceased. As a result of that dispute, there was a talk that the deceased was dismissed from his post of Headman, but that later he spent a large sum of money and obtained the option of retiring. It is to that self-same Walagedera Vihare that he has bequeathed Rs. 300/- for the purpose of constructing a "dharmasalava".

The deceased fell ill on the 29th of September, I cannot remember whether on the 1st of October Welin visited the deceased in his house. I used to go out of the deceased's house sometimes. Between September 29 and October 7, I was not in attendance on the deceased
30 constantly. I had to go to other places frequently for the purpose of fetching doctors, and medicines and also to attend to various other matters. I am not aware who came to the house in my absence. I am certain that Welin did not come there on the 1st of October owing to the fact that I did not go out on that day. A native physician was treating the deceased on that day. I do not know whether Welin came there after the 1st of October. The deceased would not have sent a message asking Welin to visit him. He disliked even Welin's coming near him.

40 I know Gomis. He was not in attendance on the deceased. He (Gomis) was suffering from an infectious disease. He was not a permanent servant under the deceased; he was a cooly. He was not living in the deceased house. During the last illness of the deceased, he was employed under the deceased as a rubber maker.

I know Amarasinghe too. He was employed under the deceased during the last illness. At the time of the deceased's death, Amara-

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singhe had gone to his village. James Vedisingho was a tapper employed under the deceased.

I have said that I accompanied the deceased to Colombo on the 7th and that on that day he entered the hospital. From the 7th till the 11th I went home on two days. To my knowledge, Welin did not visit the deceased in hospital. I deny that he visited the deceased there and also that his son, who is known as Ukkun Mahatmaya did so. Welin's son is called by that name by everyone; he is not called Dharmasena. Only now I hear that his name is Dharmasena. I deny that he visited the deceased in hospital at any time. When the deceased died I was not in the hospital. I went home on the 11th, in the night.

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At that time the deceased's condition was somewhat serious. He was not "in extremis"—he was not dying. He asked me to go home immediately and return with his clothes and also to bring "rubber kadde mahatmaya's" car as he wanted to leave the hospital for the purpose of taking ayurvedic treatment.

When we travelled to Colombo on the 7th I brought the deceased's suitcase with me. At the time I returned home after that journey, I had that suitcase with me.

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(To Court: When I left the hospital to go back to the village, I did not remove the deceased's keys from his possession. They were always with me, for about 15 years. I deny that I removed the keys from the deceased's possession for the purpose of opening the almirah. I had not the slightest expectation of the deceased's dying. I deny that I went back from Colombo to the deceased's house to rifle the almirah.

I have stated that on the 7th I and the others left for Colombo in a hired car. I know the owner as well as the driver of that car. I have not taken any steps to summon the driver.

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On that journey the deceased brought with him cash and a number of sheets, in addition to the suitcase. The cash (Rs. 500/-) was in my pocket. I do not know by whom the suitcase had been packed. I did not pack it. I do not know who was in his room shortly before the deceased's left. On the 5th of October I was not at home the whole day. On that day most of my time was spent out of home. In the morning I went out to fetch Dr. Ratnayake and returned with the doctor. Then I went back in the same car to fetch medicine and returned home at about 6 p.m. I was out practically the whole day. I had also on that day to go to a boutique.

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I have said that on the 7th of October the deceased and I went to Maliban Hotel. Before we left for Colombo I myself put the suitcase in the car. On the way I did not see the deceased opening the suitcase. At Colpetty I opened it to take out a cloth. After we left the

deceased's house, the bag was opened only at Colpetty by me. The car was also stopped on the way at Kalutara opposite the Magistrate's Court and the deceased spoke to Mr. Wilson de Silva. Mr. de Silva came up to the car and spoke to the deceased, I heard the conversation. I did not see Mr. de Silva giving anything to the deceased. The suit-case was not opened by the deceased at Kalutara.

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When the deceased and I got down at the Maliban Hotel, we went inside. We did not engage a room there. I helped the deceased over the steps. He was able to walk. He occupied a chair in the hotel. I had been there previously; I cannot remember how many times. I had gone there several times. I never stayed there. I do not know whether John Perera is the manager of the hotel. I had seen him in the hotel, but I did not know him. He may have seen me; he was not acquainted with me. Whenever the deceased came to Colombo, he used to take his meals at the Maliban Hotel and he used to stay there also. He did not visit Colombo frequently. He had to come to Colombo about twice a month to buy goods and to sell rubber. On those occasions he usually took his meals at the Maliban Hotel and also stayed there. By "frequently" I meant 7 or 8 visits a month. At the time of the visit in question to the hotel, I was not aware whether the deceased was acquainted with John Perera. I cannot remember whether John Perera ever visited the deceased in his house. He did not attend the deceased's funeral.

(To Court: I do not know whether chits were sent out in connection with the death of the deceased. That matter was attended to by Welin).

On the journey to Colombo I was in attendance on the deceased. I was with him throughout till I went to look for the car. He asked me to find out why the car was delaying to return. When I went to look for the car I saw it returning. I did not stop it, but I came back to the hotel along the pavement. I was away from the hotel for about 10 or 15 minutes. The deceased must have given the document "A" to John Perera whilst I was away—that is my belief. I think that the deceased wanted to get rid of me for the purpose of giving the document to John Perera.

The deceased died on the 12th of October, in the morning. On the journey to Colombo he was occupying the back seat at one end and I sat next to him. At the other end, was Vedamahatmaya. I got down from the car at Beruwala also. There I went inside a house. That was before Mr. Wilson de Silva spoke to the deceased. So far as I know Mr. Wilson de Silva did not visit the deceased between the 5th and the 7th. At Kalutara, when Mr. de Silva was speaking to the deceased, I was in the car seated by the deceased.

On the 12th, when I heard of the deceased's death, I went to the hospital and made arrangements for removal of the body. When I

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went there on the 12th, Amarasinghe was there. It was he who signed the necessary documents in connection with the registration of the death. He did so on instructions from the "Rubber Kadde Mahatmaya".

After the deceased died, I sent a telegram to the respondent Welin on the 12th evening, informing him of the death. (Telegram produced, marked R 3). (Telegram shown): This may be the telegram. My name appears there. I send the telegram to D. V. Siriwardene, Welipenne, to a place called Kolahagoda. I do not know whether the postal address so far as Welin is concerned is Katugahahena, not Welipenne. (Document sent by the Post Office produced, marked R 4).

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The deceased and Welin were at daggers drawn. During his illness, the deceased did not want Welin anywhere near him. I sent the telegram to Welin because I thought it was my duty to inform him. One reason why the deceased and Welin were at enmity was this: The incumbent of the Walagedera Temple, who is Welin's brother, was always against the deceased and putting obstacles in his way, and Welin was always taking the part of the priest. I do not know whether there was a case between the deceased and Welin. The case I referred to was one between Davith Singho (Welin's brother) and the deceased. I do not know whether there was litigation between Welin and the deceased. To my knowledge there was no such litigation. The case brought by Davith against the deceased (No. 14318) was settled when the former could not proceed with it and when he failed to prove his case. I do not remember when Davith died. He died about two or three months before the death of the deceased. When Davith died, the funeral notice was issued in the name of the deceased. That was done by Welin without the deceased's consent. The deceased wanted to take legal steps against Welin because that was done.

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(To Court: Welin got the notice published without the deceased's consent).

I do not know why he did that; I cannot suggest the reason.

I was not aware of the execution of the will at the time of its execution. Although I was in attendance on the deceased, he kept it a secret from me. He, however, took into his confidence Sammy Jayasinghe, amongst others. (Last Will shown): The body of the will is in the handwriting of Sammy Jayasinghe. He has signed the document as a witness. Till the 13th, Sammy did not disclose to me that a will had been executed. On that day, he told me of the fact that a Last Will had been made. On that occasion he did not tell me that I had been bequeathed a third of the estate. He did not give me details of the will, nor did I ask for them.

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Peter Jayasinghe is also a witness to the will. He is a leader in the village, and he earns his own living. I do not know whether he has been convicted. The witness Thomas is a contractor in a big way. Handy Singho is a Vel Vidane. I do not know whether he quarrelled with the deceased about two months before the deceased died, and that he gave up visiting the deceased. I do not know much about Goonetilleke. I know that he is a timber contractor. I do not know whether the deceased was more intimate with a number of others than with the witnesses. There were people of better status than the witnesses, but I do not know whether they would have been suitable for witnessing the will. The deceased had no association with any of his equals. My impression is that the witnesses were of the same status as the deceased because he was associating with them daily.

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(Shown book marked R6): This book is in my handwriting. (Shown Draft of the last will, marked R7). The writing encircled in blue in this document is not mine. (Witness says so after having read the portion). (Body of R7 shown): As far as I know I think the handwriting is not Sammy's. I cannot swear and say that it is not his handwriting.

(To Court: I had nothing to do with R7).

I do not know whether it is an initialled draft of the last will.

(To Court: I did not see R7 at any time before today. I never made any notes, alterations or initiallings on this document).

Q. The words encircled in blue form a clause which appears in the last will?

(I disallow the question. The witness has already answered).

I know the land Kirimetiya Udumulladeniya. That land was leased to me by the deceased in 1936 or 1937. (Deed No. 425 dated 17th September, 1940, marked R8 shown): This may be the deed on which the land was leased to me by the deceased. I do not know whether it is the deed. I admit that the land was leased to me by the deceased. The notary was Mr. V. L. Wijemanne. By deed No. 3740 dated 23rd March 1943, R9, I assigned that lease to one U. Don Peiris. I do not know whether that person is a close relative of Peter Jayasinghe, nor do I know whether he lives in Peter Jaysinghe's house. I know that Peiris lives in Uragala. I know him. I do not go to Peter Jayasinghe's house frequently. I have gone there now and again. There is no ill-feeling to prevent me going there. I have not seen Peiris there. I do not know whether Peiris is a nephew of Peter Jayasinghe's wife.

I know there is a case pending against Peter Jayasinghe. There is no cattle theft case against him. I have sold a bull of mine to

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Jayasinghe and Welin has falsely charged Jayasinghe in that connection. I sold the bull to Jayasinghe long before the deceased died, I sold it because it was not good enough for me.

I know the land called Paraketiyamullewatte. I leased that land to a man called Bandara on deed No. 783 of 13th May, 1943, marked R 10. I do not know whether that person is Sammy's wife's brother. I deny that he is Sammy's borther-in-law.

I also know the land called Ketikala Petakatiy at Kolahakade. I sold that land by deed No. 3441 of May 6th, 1943 (R 11) to one Done Peter Siriwardene. I do not know whether the transferee is a step-brother of the witness Thomas's mother. I know Peter Siriwardene. I know that he is a gentleman employed in the Railway, and that he is a man of money. 10

I do not know Punchinona Siriwardene. I know the witness Thomas as well as his mother. I do not know her name. I do not know that her name is Punchinona, nor do I know that Don Peter Siriwardene is a step-brother of Punchinona Siriwardene. There is no need for me to know their relationship. I do not know whether that land is possessed by Thomas. There is no need for him to possess it. I deny that the deeds referred to were given in consideration of the singing of the will by the witnesses. I sold the lands because I wanted money for this case. 20

On the 13th Welin came to the deceased's house and took charge of the funeral arrangements. He bore the funeral expenses out of the money I gave him. That money was the deceased's, not mine.

(Shown R 12): The handwriting resembles that of Sammy Jayasinghe. I do not know whether the signature is his. The handwriting resembles Sammy's on the last will. As he told me that the signature on the will is his, I identify it. I wont deny that the handwriting in R 12 is his, if he says so. According to the document, it shows all the expenses borne by D. V. Siriwardene on account of the deceased's funeral. The expenses relate to publication in the "Dinamina" and "Daily News", etc. I admit that the funeral was advertised in the newspapers. I do not know how much was spent on the funeral. 30

On the 13th of October, Welin had sent Sammy Jayasinghe to me for the purpose of inducing me to part with the keys. He had not wanted Sammy Jayasinghe to inform me that he (Welin) wanted the keys from me. The request for the keys was made to me. At that time Jayasinghe had told me about the last will, but I did not know that I was a beneficiary under the will. I refused to hand over the keys unless the headman came to me. I refused to give the keys to anyone. I did so because I had been managing and looking after the deceased's property as my own and not my master's. I told Davith Silva that he was not the only relative, that there were other relatives of the deceased, and that therefore I would give the keys only to a 40

proper assembly in due course. Then Sammy told me that a testament had been written. Later when the headmen came, I handed the keys to him. Then I did not tell the headman: "Sammy Jayasinghe tells me: There is a last will". Having given over the keys, I did not leave the deceased's house and take up residence in the boutique till the 15th. I deny that after giving the keys to the headman, I lived in the boutique. I left the house after the cremation on the 15th. I say that on that day, at the place of the cremation, I came to know the terms of the last will. Till then I was not aware that I was the executor and a beneficiary. Then, after the 15th, I searched for the last will.

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Q. Where did you search for it?

A. I knew very well that it was not in the house. After I received the information on the 15th, I searched for it. I came to Colombo and did so.

On one occasion I went to Maliban and searched for the will. John Perera was not there at the time. There was no one known to me there, but I questioned some of the people there.

(To Court: There I asked: "Where is that stout man with the conde"? Some of those in the hotel said that he had gone home because he was ill. I also asked the waiters whether they knew Galmatte Ralahamy. They replied that they had no idea who he was. When I reminded them that it was the "ralahamy" who had come there sick, one of the men replied. "It is not only one Ralahamy who put up at this hotel". Then I went back to my boutique at Induruwa. A number of people were there, and I told them about the will).

I searched for the will in the suitcase. I knew that it was not there. After the deceased was admitted to the hospital on the 12th, I sent back the suitcase to his house. At the time of his death, it was in the deceased's house. Before the 15th, on the 12th, I searched the suitcase there. On the 11th I was asked to bring the clothes from Induruwa for the purpose of the deceased going to a native physician for treatment. I put the clothes in the suitcase and brought them to Colombo. On the 12th I had access to that suitcase, and I knew there was no document in it. There was only a diary and a letter in it. There was no will in the suitcase. After the 15th I did not search for the last will in the suitcase. Before the 15th I searched the suitcase on the 12th.

(To Court: I went to Maliban Hotel after the 15th, I cannot remember how many days after—about 5 or 6 days after the 15th. When I was told at the Maliban Hotel that the proprietor was ill, I did not ask for his address, but I left my address there so that the Manager, on his return, could communicate with me, if he had any information to give about the will. I did not tell the hotel servants that I had come in search of the will left behind by the deceased).

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When I inquired for the man with the "konde", I was referring to John Perera whose name I did not know at that time. I did not meet John Perera that day. I did not go in search of him.

(To Court: When the envelope containing the will was handed to me by John Perera, the flap was pasted).

Sgd. JAMES JOSEPH,
Adl. District Judge.

It is now 4 p.m.

Further hearing is therefore adjourned for 25-6-43.

Sgd. JAMES JOSEPH,
Adl. District Judge.
23-6-43.

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Inquiry resumed.

25th June, 1943.

Appearances and parties present as before.

A. D. CARTHELIS, Re-called, affirmed.

On the 13th, I gave Welin Rs. 500/- from deceased's almirah. I opened the almirah in the presence of Welin, took out the money and gave it to him. There was Rs. 600/- more in the almirah; I do not know what happened to it. I do not know whether the headman drew up an inventory of the movables. I gave him all the keys. I do not know whether, thereafter, the almirah was opened in the presence of the headman and the Police.

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On the 12th, as I had no information about the will, I had no occasion to search the suitcase. On that day I opened the suitcase and put clothes into it. I am certain that there were no papers in it at the time.

(To Court: I opened the suitcase at home).

I had an intention of removing the deceased from the hospital to a vedarala's house at Kelaniya. I do not remember the vedarala's name. I went to his house on the 11th. On that day, I first went to Kelaniya and then to Galmatte. I went to Kelaniya in the morning. Goonewardene, a man in Colombo told me where the vedarala was living. I believe Goonewardene is a trader. He had been brought by Amarasinghe to attend on the deceased. On the 11th, I had known Goonewardene for about two weeks. He is not a man of Colombo. I met him casually at Walagedera. He is an uncle of Sammy Jayasinghe. He (Goonewardene) is known to me very well. It is true I came to know him only two weeks before the 11th, I did not know him previously. I did not say that Amarasinghe brought him to the

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hospital to attend on the deceased. It was I who made the arrangements with regard to Amarasinghe and Goonewardene attending on the deceased when he was a patient in hospital. Before I left Colombo on the 11th, an arrangement was made that I should take the deceased to Kelaniya on the 12th. Until I went to the "Rubber Kada Mahatmaya's" store on the 12th, I was not aware of the deceased's death. I returned from my village to Colombo prepared to remove the deceased to Kelaniya for treatment there.

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10 The deceased's ward in the hospital was a non-paying one. Visitors are admitted to those wards only at particular hours. A doctor had granted me permission to visit the deceased at any time. That permission had also been granted to anyone who had to attend on the deceased. Although I was not given written permission, I was allowed to enter the hospital by the gate-keeper.

When I returned to Colombo on the 12th, I brought the suitcase with me. My intention at the time was to keep the deceased at the vedarala's.

20 On the 15th, Thomas told me that he saw the deceased putting the last will in the suitcase; I do not remember where he said that. I have said that I received details of the will on the day of the cremation. I do not remember whether Thomas made the statement referred to voluntarily, or whether he did so on being questioned by me. My statement with regard to Thomas telling me that he saw the deceased putting the last will in the suitcase is a correct one. Before he made that statement, I did not search for the will in the suitcase. I learnt from Sammy Jayasinghe also that there was a last will. Before I questioned the witnesses, I did not search for the will. Before the 15th, I did not search for it. On the 15th, the only information I had about the will was what Thomas told me, namely, that
30 he had seen the deceased putting it in the suitcase.

I went to the Maliban Hotel five or six days after the cremation. I had not thought of going there earlier. I was satisfied at the time I went there that the will was not in the deceased's house. The only information I had was that the deceased had put it in the suitcase. In the circumstances, I supposed the will had been lost between Colpetty and the General Hospital.

40 When the advertisement in the "Daily News" of November 5th was published, I had no further details of the last will. I did not know what had happened to it. All the information I had was that given to me by Thomas. He had also told me he had taken a letter to the deceased, addressed to Mr. Wilson de Silva, and also that the deceased had put the last will in it. When Thomas said that, he did not use the word "envelope". He said that the letter was one which

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referred to a pending case. I am quite certain he did not say that he had taken an envelope to the deceased. He used the words: "Envelope in which there were letters about a case". All that he said was that he had taken to the deceased a letter with the cover addressed to Mr. Wilson de Silva.

In the advertisement referred to, I did not mention a last will. I did so advisedly: My friends had advised me not to mention it. I was given that advise by the headman and other customers of mine.

On the 16th, I went for advice to Mr. N. de Alwis, the Crown Proctor of Balapitiya. On that occasion, he said: "If the will is not found, nothing can be done". Further, he asked me whether I could bring before him all the five witnesses who had signed the will. I replied I could do so. He further said that I should get a letter signed by the witnesses, and that the letter would be useful if I found the will. I did not obtain such a document before the last will was found. The will was found on the 20th of November. Before that date, I did not get any documents signed by any of the five witnesses. Except the letter signed before the "Judge", I did not get any other letter signed by them. By "Judge", I mean Mr. de Alwis.

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I accepted Mr. de Alwis's advice, and before the will was found, I took the witnesses before him. On the 20th of October, I told them that they were wanted by Mr. de Alwis at his residence "Warahena Walauwa". Accordingly, they went there, and I too went there from my boutique. On the 20th of October, they signed a document in the presence of Mr. de Alwis. That document was signed on a stamp. I have given it to my proctor. It was signed after I had gone to the Maliban Hotel and inquired about the Manager.

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The notice in the newspapers was published not only on the headman's advice but also on the advice of others. Apart from having that notice published, I was always thinking of how to find the will. Then on a visit to Colombo, it struck me that I should make inquiries about the will at the Maliban Hotel. It did not strike me that it had been destroyed by anyone. What I thought was that it had been lost. It did not strike me that I should inform the Police of the loss, nor that I should inform the headman about it. When I handed the keys to the headman, I did not inform him of the loss, because I thought that if I did so, I would not be able to trace the will at all, that my chances of recovering it would be lost. At that time I was a helpless man, and my opponents, who were more influential men, would have used their influence to prevent me from recovering the will.

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It is correct to say that right up to the time of his death, the deceased had every confidence in me. I cannot explain why he failed to tell me that he had executed a last will. He had more confidence in me than in Sammy Jayasinghe.

Q. During his lifetime, did the deceased say anything about the disposition of his property?

A. No; I never heard him speaking about it.

The deceased did not pay me a salary. When I was a little boy, I was paid a salary by him only for some months.

Although I received the letter from the "Daily News" on the 18th, I went to see John Perera only on the 20th. On the 18th I was ill, and I had been advised not to leave my house without a body wash. On the 19th also I was in the same condition. At the time I went to the hotel, I did not know that I was known to John Perera. When I visited the hotel on the 20th, I did not introduce myself as Carthelis. When I met John Perera there on that occasion, he did not question me. I showed him his letter, and then he gave me the last will. As soon as I met him, I asked: "Are you the man who is known as John Perera?" When he replied, I asked him whether it was he who had written the letter, whereupon he replied "Yes". Then I said: "I am the man who published that notice", and I asked him to kindly hand over the letter to me. Then we went downstairs, and he handed me the letter. Thereupon, I paid him the reward of Rs. 50/-, and he accepted the money. I had taken that amount with me. I had come to the hotel with Rs. 300/- or Rs. 400/-, which I had taken from my boutique. A receipt for the sum of Rs. 50/- was given to me by John Perera, but I am not sure whether I am having it now. It was dated— It must have been dated.

(Shown P 9—P 14): I got these documents from the boutique at Galmatte. They refer to properties of the deceased. Those documents were at the boutique, and I got them from there. The boutique belongs to Lewis Vedamahatmaya, Cecilis's husband.

Lily is a widow. I cannot remember whether under the will the residing house has been bequeathed to me and Cecilia. I cannot say why Lily was excluded with regard to the residing house.

There is a pending case in which I am charged with the theft of a bicycle. I did not steal any bicycle. The case was instituted at the instigation of Welin, the 1st respondent.

Re-examined:

I heard that Peter Jayasinghe was fined owing to an affray with a relative. It was suggested to me that Sammy Jayasinghe had a relative known as H. M. Bandara to whom I assigned a lease. Bandara is not a relative of Sammy Jayasinghe, nor of his wife. I received the consideration on that assignment. The land I dealt with was not assigned to Bandara. I leased it to him for three years at Rs. 75/- a year, the total amount being Rs. 225/-. Before the notary, a sum of Rs. 75/- was paid to me. The lease was given because I could not take the produce, as I was living at Induruwa.

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Evidence.
A. D. Car-
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Cross-
Examina-
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A. D. Car-
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Re-Exami-
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Petitioner's
Evidence.
A. D. Car-
thelis Appu-
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Re-Exami-
nation
—continued

With regard to my transfer to Peter Siriwardene, it was suggested to me that he is a cousin of the witness Thomas' wife. I do not know about that relationship. Peter Siriwardene addresses Welin Siriwardene as "Aiyar". The land was transferred for Rs. 750/-, and the whole amount was paid to me before the Notary. I accepted Rs. 500/- before the Notary, I had received the balance previously. Thomas is possessed of property worth Rs. 10,000/- or 15,000/-.

It was also suggested to me that I had assigned the lease of a land to one U. D. Peeris. To my knowledge, he is not a relative of Peter Jayasinghe or his wife. The rent was Rs. 600/- for a period of six months. At the attestation, one month's rent (Rs. 100/-) was paid. I received the rent every month. The lease is worth more than Rs. 100/- a month. The income from the land would be more than Rs. 150/- a month. I did not make inquiries whether I could lease it for more than Rs. 100/- a month. 10

Welin Siriwardene did not allow me to possess the properties in question. I consulted Mr. Paranavitane in this connection, and he advised me to lease the lands, and he also asked me not to go there.

Proctor Wijesekera was not employed by the deceased at any time. As far as I am aware, the deceased had nothing to do with him. They were not on friendly terms. Mr. W. F. B. Perera was a candidate at the election of a member for the Pasdun Korale constituency in the State Council. Mr. Kannagara was also a candidate. In that election, the deceased worked for Mr. Seneviratne, another candidate. There were altogether five candidates. Though Mr. Perera was living only two miles from his house, the deceased did not support him. He did not engage his services as a proctor in any of his cases. The proctors he employed were Mr. P. F. A. Goonetilleke, Mr. Wilson de Silva, Mr. Abeyesekera, Mr. D. J. K. Goonetilleke and others whom I cannot remember. 20 30

Welin's son, Dharmasena, has always been known as "Ukkun Mahatmaya"; that is a term of affection. He was never present at the hospital. When a photograph was taken at the hospital, he was not present. Amarasinghe and Gomes appear in the photograph.

When the five witnesses went before Mr. de Alwis, they signed the document required. I asked them to go before Mr. de Alwis, and they went there independently. They signed this document (shown). It took the form of an affidavit. It was prepared by Mr. de Alwis. (Document marked P 18).

I also produce the photograph referred to, marked P 19. It was taken by the undertakers as an advertisement for them. Dharmasena does not appear there. The persons appearing there are myself, Lewis Vedamahatmaya, Mr. Perera who sold rubber to the deceased, Goonewardene, his wife and daughter, Lily, Siriwardene, Amarasinghe and 40

Gomes. These were the people present at the hospital before the corpse was removed to Walagedera. I was told that it was usual to take such photographs.

It is not true that the deceased did not at any time recognise Lily as his sister. I produce P 20, dated 26th June 1934; notice of marriage of Lily in which she is described as a daughter of Caranelis Siriwardene, Police Headman, and Dona Alpinona Hamina. (Production objected to. I uphold the objection).

10 It is quite true that Jinaratana and the deceased were at loggerheads. That priest disrobed himself seven or eight years ago. He is Welin's wife's brother. Jinaratana was succeeded by a priest on whose education the deceased had spent, namely, Lulbadde Uparatana. At one time that priest was residing at the Maligakande Pirivena. He is now the incumbent of the Walagedera Temple. After he became the incumbent, the deceased visited the temple frequently for the purpose of offering flowers and performing other religious rites. He has left to the temple only a sum of Rs. 300/-.

(To Mr. Obeysekera): The persons on the extreme left of the photograph are Amarasinghe and Gomes.

20 (To Court: I did not make inquiries about the will from Mr. Wilson de Silva. I inquired from him about the letter sent to the deceased through Thomas. I do not remember when I made that inquiry; it must have been made before the advertisement was inserted in the newspapers. I did not tell Mr. de Silva that a last will had been lost. When I questioned him, he did not ask me: "Why are you inquiring about a letter I sent on to the deceased." I asked him whether he had sent on a letter to the deceased. He said "no", and I was satisfied with that answer, and there was no further talk with him. He said that he had sent the letter by Thomas. He did not ask: "Why is that letter lost?").

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Sgd. JAMES JOSEPH,
Addl. District Judge.
25-6-43.

D. JOHN PERERA, Affirmed, 52, Manager, Maliban Hotel, Colombo.

The late Frederick Siriwardene was known to me. From time to time, he used to visit my hotel and take his meals. He never occupied a room there. I was on speaking terms with him; I knew him very well.

40 I remember his visit to the hotel in October last year. I remember the date, namely, October 7th. On that occasion he came there in a car. He appeared to be ill. After he entered the hotel, he spoke to

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me and then went to the lavatory. When he returned he occupied a seat and called for a soda, which I got down for him. After he had taken the soda, he said: "I am somewhat ill". He had come there with another man; he is present in Court (points out the petitioner).

In the absence of that man, the deceased handed me a letter in a long pasted envelope. After handing me the letter, he told me that he was going to the hospital, and that he would return in three or four days' time. He also asked me to take charge of the envelope, to keep it till that time. When I took the envelope, there was a gentleman near the cashier. Later I showed the envelope to that gentleman and asked him: "What is this?" It was addressed to Mr. Wilson de Silva, Proctor, Kalutara. I cannot read English. I did not look at the contents of the envelope; the flap was pasted. Thereafter, I put the envelope in a drawer of the counter. The key of that drawer is in my possession. After the deceased left the hotel, he did not return. 10

Subsequently on the 18th of October, I went home to Panadura, as I was suffering from Rheumatism. I remained there till the 11th of November. Whilst I was there, I read a notice in the "Dinamina" headed "Lost". (Shown P 5): This is the notice. When I read it, it struck me that I was having the document addressed to Mr. Wilson de Silva. The notice expressly mentions an envelope addressed to Mr. Wilson de Silva, Proctor, and contains the offer of a reward of Rs. 50/-. 20

When I returned to the hotel on the 11th, I communicated with the number given in the advertisement. I got my reply typed by the clerk at the hotel. (Letter dated 12th November shown): This is the letter. I addressed it to the number. Four days later, as I had not received a reply, I sent another letter. (Shown P 7): This is the letter. It was sent on the 17th of November, by registered post.

Subsequently, after about four days, the petitioner came to the hotel. I had seen him before. Prior to the 7th of October, I had seen him, but I am not certain of his identity on that date. On that occasion I had not spoken to him: he had come in search of me. When he came to the hotel after the second letter was sent, he inquired for me downstairs. At that time I was upstairs. He came there and asked me whether I was John Perera. When I said "yes", he asked me whether I had sent the letters. I replied: "Yes", and added "There is a reward offered. If it is given, I'll give the document". Then I came downstairs, opened the drawer and handed the document to the petitioner. Then he opened the letter, and we read it. Next he gave me the reward and removed the document. I did not give him a receipt. I had nothing further to do with him. 30 40

Cross-Examined :

My hotel is opposite the Fort Railway Station. There are rooms for people to stay there. There is also a register where the names of visitors are entered. I transact my business in English as well as in Sinhalese. All the books are kept in Sinhalese. The correspondence is in Sinhalese as well as in English. I have bill books, and bills issued show the names of the visitors. There are counterfoils of those bills.

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10 I knew the deceased as a person who used to visit my hotel. Numerous other people also come there. Special attention was paid to the deceased. We spoke to each other. Sometimes he gave articles to be kept by me. He was a respectable and well-to-do man, and as the Manager of the hotel, I showed him the respect due to a man of his position. There was no other relationship between us. He was one of my more respected customers—nothing more than that. The articles which he sometimes left in my custody included clothes. I did not unpack the parcels. He used to hand over the parcels to me and ask me to keep them safely. That happens in the case of many other customers.

20 On the 7th of October, the deceased came to the hotel in an unusual manner: He was ill. That is why I remember the date, and also because I went home that month owing to illness. The deceased was a good man, and he was ill: that fact was working in my mind. With regard to the reason why I remember the date, all I can say is that he came to my hotel ill in the month of October when I also fell ill. His name does not appear in any register or bill book.

On the 7th of October, the deceased brought a small suitcase with him.

30 (To Court: The deceased had it in his hand, and the petitioner walked along with him to the hotel. They came there together).

I cannot swear to the fact that the petitioner was that other man. Later when he gave me the reward, I asked him: "Was it you who came with the Ralahamy?", and he said "yes". I am not certain who was carrying the suitcase on the 7th of October. The two men came to the hotel at about 11 a.m., and they remained there for about half an hour. I do not know whether the deceased had any particular reason for coming there. On that occasion he did not take his meals there, nor did he occupy a room. The other man also did not do so; he went somewhere. I did not ask the deceased whether he had come to take a meal. He got the soda through me. Thereafter I attended to my work.

40 I have said that the deceased gave me an envelope for safe keeping. He was dressed at the time in a white coat and white cloth. I cannot say from where he took out the envelope for the purpose of handing it to me; I cannot say whether he took it out from his coat

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pocket. When he called me and handed the envelope to me, he had in it his hand. At that time he was seated in a chair in the hotel. There are screened apartments in the hotel each furnished with a table and four chairs. At the time in question the deceased was seated at a table where people ordinarily take meals. Lots of other people were also there at the time. When the deceased called me and gave me the envelope, he did not tell me what it contained. He said: "There is very valuable 'liyun' in this envelope". He asked me to keep the envelope with me, saying that there were very valuable writings in it.

There is an iron safe in the hotel. I do not use it. That safe is used by the proprietor. The deceased had nothing to do with the proprietor. 10

I said that I got a customer to read out the writing on the envelope. That was not a sudden act. One of those who had taken meals at the hotel came up to the counter to pay his bill; then I showed him the envelope and asked him what was written on it. I had no special reason for asking that. When the deceased handed me the envelope, I noticed the writing on it. Then I did not ask the deceased: "What is this writing"? There was no necessity for me to ask that from him. I asked the casual visitor because the address appeared on the envelope. Then I put the envelope in my drawer. 20

The deceased told me that he would call for the envelope three or four days later. He did not do so. I did not know where he was living; I did not know his address. I knew nothing of the man. He addressed me as "Ralahamy", and when I addressed him, I also used the same word. I did not know his name. I do not know whether he knew my name; he may or may not have known my name. He addressed me as "Manager Unnaya". He did not know from where I was. He knew that I was a paid employee of the hotel, and that I might leave it at any time. As the manager of the hotel I knew him for about eight years. But I did not know where he was living; I only knew that he was coming from the Kalutara District. I also did not know what his occupation was; I knew however that he used to bring rubber to Colombo. 30

If I was not in the hotel, the deceased could have ascertained my whereabouts from the proprietor. I did not try to find out why the deceased did not return after he had entrusted me with the envelope; there was no necessity for me to do so. There is no necessity to inquire for visitors. I usually read the newspapers. I did not read the deceased's obituary notice there. I did not hear of his death. When I read the notice in the "Dinamina" of the 6th of November, even then I did not know that the deceased was dead. I was at home at the time. When I read the notice, I connected it with the packet merely because the address had been read out to me as "Mr. Wilson 40

de Silva, Proctor". It did not occur to me as strange that the "Ralahamy" who had handed the packet to me was advertising to recover it. When I read the advertisement, I did not know that he was dead. Then it did not strike me that he was advertising to recover the packet. At that time I was only thinking of the proctor's name. It did not strike me as to who had advertised. The advertisement was there, and I sent a reply. The Ralahamy had entrusted the packet to me with the injunction that I should return it to him. I had no authority to give it to any one else. I replied to the advertisement without caring to whom I was sending the reply. I sent a reply on the 12th and next on the 17th. I invited attention to my reply of the 12th five days later. My one anxiety was to secure the reward.

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—continued

When the petitioner came to the hotel and met me upstairs, I did not know who he was. When in reply to him I said: "I am John Perera", he said: "I have brought the letter you sent in response to the advertisement published in the papers". When I handed the envelope to him, I told him: "This was given to me by the Ralahamy. Why are you asking for it?" Then he replied: "Ralahamy died".

Q. Apart from that statement, as he was paying you the reward, you gave him the packet?

A. If he had brought the letter I had sent, I would have given him the packet, irrespective of whether I knew the "Ralahamy" was dead or not.

His statement that the Ralahamy was dead did not influence my decision to give the packet. Before I gave it to him, I asked him, "Who are you," and he replied that the deceased had been his master, and that it was under him he had worked. I did not ask the petitioner for his name and address. I did not tell him that the packet had been handed to me by the deceased, and that I should be given a receipt for it.

(To Court: I did not ask him what right he had to get the document).

I had been placed in a position of trust by the deceased.

(To Court: If the Ralahamy was dead, it was his heirs who would have been entitled to the document. But the petitioner said: "The deceased was my master". When he said that, I handed him the document. I did not ask him who the heirs were. I am a very busy man; I had no time to go into details). I did not verify whether the deceased had died.

Q. If the Ralahamy turned up for the letter after you had given it to the petitioner, what would you have told him?

(No answer).

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The petitioner said that he was a man of status, and that the Ralahamy was dead. Therefore I gave him the packet. He also told me that he was related to the deceased.

(To Court: He did not tell me that he had come to the hotel with the deceased on the 7th of October. I questioned him whether he was the man who had come there with the Ralahamy on that day.

I asked the petitioner: "What is the document you are in search of?" He replied: "They are some letters in my name. It may be a writing in my favour or letters in my name." He did not say that the document he was searching for was a last will. 10

Before handing over the document to him, I did not open the envelope to see whether there were any letters addressed to him. After I handed the envelope to him, he opened it and took out the contents which consisted of a last will and a paper in English. When he saw those papers, he did not say anything).

On the envelope being opened, I discovered that it contained a very valuable document—a last will. I had no proof whatever that the petitioner was entitled to that document. Nevertheless, I handed the packet to him without further inquiry. I did not think that somebody was desirous of getting possession of the document and destroying it. 20

I did not reply to the notice in the "Dinamina" of the 7th till the 12th. I delayed to reply because I was ill. After I read the notice, I thought of going to the hotel and getting the reply written by the clerk. I can write in Sinhalese; there was nothing to prevent my replying in Sinhalese on the 7th itself.

In my absence there is another man who acts for me at the hotel. When I went home, I did not leave the keys of my desk behind. I took with me the keys of the drawer in which I had put the document. I did not tell anybody: "The famous Ralahamy who comes here has left an important packet with me. If he comes tell him I have fallen ill and gone away." I did not tell anyone in the hotel at any time that the packet was with me. 30

When the petitioner told me: "I am the Ralahamy's servant and also a relative," I did not ask him what the relationship was. There was no necessity for me to do so.

My salary is Rs. 60/- a month. I am possessed of property worth about Rs. 3,000/-. I am married.

(Notice Shown): This notice refers to a document which was lost. When I read it, I had in mind only the proctor's name; I did not think of anything else. The notice could have referred to some other packet addressed to Mr. Wilson de Silva, which had been lost. So far as I remembered, the Ralahamy had told me: "These are some of my documents. Keep them with you." He has not told me that he had picked up a lost document. The document he gave me was his. 40

Re-Examined :

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tion

The hotel bills give the names only of the visitors who put up there in the nights. No receipts with names are issued to those who come there for meals only.

If I see the last will, I can identify it.

(To Court: I read only the words at the top, viz: "This is the last will....." Then the petitioner took the will).

10 I noticed that some ink had dropped on it. I cannot remember how the will was written. I cannot say that there is anything wrong with my memory.

(Shown receipt for Rs. 50/- given to the petitioner, marked P 21): The signature is mine. I issued that receipt to the petitioner. I had forgotten about it.

(To Court: I cannot say whether the Ralahamy tried to conceal from his companion the fact of his delivering the document to me. I did not tell the deceased's companion when he returned that the deceased had given me the document. The Ralahamy told me that he was going to the hospital from the hotel.)

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-6-43

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NEIL DE ALWIS, Affirmed, J.P., U.P.M., Crown Proctor, Balapitiya. N. de Alwis
Examina-
tion

I have been the Crown Proctor of Balapitiya for the last 18 years. I live at Bentota, about 2 miles from the Alutgama Railway Station, closer to the Induruwa Station.

30 I have seen the petitioner in this case. I have seen him in a boutique. He was carrying on business at Induruwa. Once he came to me and told me that a certain will had been lost or that it was not forthcoming—that there was a will, and that it was not forthcoming. This is the man who told me that (petitioner shown). I asked him whether the document was a notarially attested will. He said "no", and that it had been signed by five witnesses. Then I told him that it would be safe to obtain an affidavit from the witnesses. On that occasion I do not remember whether I asked him to bring the witnesses to me, or whether he offered to bring them,

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 Petitioner's
 Evidence
 N. de Alwis
 Examination
 —continued

A few days later, he brought the witnesses. Then I questioned them myself, and I embodied their statements in the form of an affidavit. On what they told me, I drafted an affidavit, and it was typed by my clerk. Before getting the signatures of the five witnesses, I explained to them the contents of the document. After it was typed, I again explained the contents to them, before it was signed. I myself attested the document as a Justice of the Peace. (Affidavit shown): I identify this as being the document. It bears the date 20th October, 1942. It was four days before that date the petitioner saw me.

It is stated in the affidavit that the first affirmant was the deceased's clerk, and that he (the first affirmant) was asked to prepare a document by way of a last will. That is what I was told. I do not know that as a fact. It is also stated in the affidavit that all the instructions were given by the deceased. I asked the witnesses whether the deceased was able to give those directions.

10

N. de Alwis
 Cross-
 Examination

Cross-Examined :

At the time I attested the affidavit, I had not done any legal work for the petitioner previously. I did not know the deceased. I had not acted for him either. I practice at Balapitiya. Ordinarily, people of Galmatte would transact their business at Kalutara. Galmatte is within the jurisdiction of the Kalutara Courts. Normally, inhabitants of Galmatte would consult proctors living at Kalutara. Sometimes, some of those people come to me also. My residence is some distance from Balapitiya, 11 miles this side of Balapitiya. It is between Balapitiya and Kalutara, about 13 miles from Kalutara. The distance between my residence and Galmatte across the river would not be so far; it is about 8 miles; may be about 10 miles. I think it is 8 miles.

20

I embodied in the affidavit all the statements made to me by the witnesses. They did not tell me what the terms of the last will were, what the dispositions were, not even who had been appointed executor. The petitioner did not tell me: "I am the executor under the last will, which is lost"; I do not think he told me that. If he had made that statement, I would have included it in the affidavit.

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Q. He did not tell you what his interest was in the testator?

A. I do not remember whether I went into the details. I did not go into the details of the contents of the will.

After the affidavit was signed, the petitioner came and told me that his lawyers had told him that without my evidence the affidavit would be useless; that was recently. After the signing of the affidavit, he did not come to me and ask for advice; he did not ask me what steps he should take. I did not ask him to advertise in the papers; nor did I ask him to look out for the will in a particular place. I do not exactly remember every part of the conversation I had with him, but I do not think he asked me the question whether it is possible to prove a

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last will without production of the document itself. To the best of my recollection, I told him it would be safe to have an affidavit. The contents of the will were essential, and I would have included them, if they had been given to me. All the advice I gave the petitioner was that he should get the witnesses to state that they had signed the will. Afterwards, the petitioner never returned and told me, "I found the last will".

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Petitioner's
Evidence
N. de Alwis
Cross-
Examina-
tion
—continued

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-6-43.

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N. R. PERERA: Affirmed, 36, Clerk, Associated Newspapers of Ceylon, Ltd.

N. R.
Perera
Examina-
tion

I am not in charge of the Registers with regard to advertisements, but I have been deputed to produce those books on behalf of the Manager, "Dinamina". I have brought the "Dinamina" advertisement register as well as the postage book.

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The register of advertisements shows that an advertisement was inserted in the "Dinamina" of the 6th and 7th of November by A. D. Carthelis Appuhamy of Induruwa under the heading "Lost". "D" stands for "Dinamina". The number allotted to the advertiser is 8738. That advertisement appeared in the Dinamina of the 6th and 7th of November. A sum of Rs. 4/30 was charged for the two insertions, and that amount was duly paid. (Certified extract to be produced from the register, marked P 22).

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I have also brought the register of despatch. That book shows that under the date 16-11-42 a letter addressed to A. D. Carthelis Appuhamy, Induruwa, was posted, and that a second letter was also posted to him on 18-11-42. Most probably they were replies sent in response to the advertisement. I cannot identify them. (Extracts to be produced from the register, marked P 23, P 24 and P 24A).

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-6-43.

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Petitioner's
Evidence
Don Sammy
Jayasinghe
Examina-
tion

DON SAMMY JAYASINGHE, affirmed. 34, Trader and cultivator, Walagedera.

For a number of years I was running a tailoring, shoemaking and clothing establishment in the Pettah, at Maliban Street. In the beginning of 1942, owing to the war, I closed down the establishment. The value of the stock was about Rs. 2,000/-. Apart from that business, I had also some inherited property, which is still being owned by me.

Having closed down the business, I went to my village, Walagedera. Thereafter, I put up a house there. I did not search for employment. I had known the deceased D. F. Siriwardene for a long time. Having learnt that I returned to the village, he sent for me and said: "Mahatmaya, I am unable to give you a job suitable to your status, but I can give you a clerkship under me. Will you accept the work"?

(To Court: He knew that I had done business). I consented, and I worked under him till his death. He paid me at the rate of Rs. 25/- a month.

After the deceased died, I worked for three months under the 1st respondent. In January last, he discontinued me. He paid me Rs. 30/- a month.

The work I did was this: I had to keep the check roll: I was in charge of the accounts relating to the labourers. The deceased owned a large number of small rubber lands. The Latex from those lands was brought to a store near his residing house "Siri Nivasa". The land on which the house stands is 15 acres in extent. He had also a factory for drying and smoking rubber, and all the rubber from his lands was brought there for that purpose. I had to keep the check roll showing the names of the workmen etc. The rubber-maker was Gomes.

I was so employed till the deceased fell ill on the 30th of September last year. From that time, his condition grew worse. Dr. Ratnayake was attending on him at the time.

On the 5th of October, the deceased called me in the morning and said: "Bring a paper and pencil and note down what I dictate." I took a pencil and paper to him; then he dictated at the start what he intended, and I noted that down. It was a last will he dictated. I wrote in pencil entirely to his dictation. When he finished dictating, he asked me to make a fair copy in ink, and I did so in the same room. The deceased was lying there at the time on a bed. Thereafter, I read out the contents of the fair copy. Next, I handed the copy to him, and he also read it, and then he asked me to put it in the drawer of a writing table in the room. The time then was 10-30 or 11 a.m.

Thereafter, I went out and attended to my work. At about 1 p.m. he called me again and asked me to fetch the Police Headman. I went to bring the headman, but he was not at home. I reported that to the deceased and resumed my work.

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tion.
—continued

At about 2-30 p.m., he again called me into his room and inquired whether Thomas, Peter Jayasinghe, Parlis Goonewardene and Handy Singho, Vel Vidane, had come to the house. I went out of the room and ascertained this, and on my return, I told the deceased that, except Thomas Appuhamy, the others had come. Then the deceased said: "When Thomas also comes inform me". Apparently, he was expecting him and the others. I had not asked any one of them to come to the house at that time. Thomas arrived at about 3-30 or 4 p.m. The deceased was related to him.

When I informed the deceased of his arrival, he (the deceased) wanted all the four men to enter his room. After they did so, he asked me to close the door of the room.

(Evidence objected to. The only section under which the evidence of the deceased is relevant is section 32. I allow the evidence subject to the objection). Then I closed the door, whereupon the deceased said: "I am lying ill, and I have made a last will about my properties. It is to sign that I have sent for you people". Next, he asked me to take out from the drawer the document I had put there and to read it out. I did so, reading out the contents loud, to be heard by those present. Thereafter, the deceased asked me to find out the full names of the witnesses and write them down, and I did so. I read out the names also, to be heard by the deceased. After that I handed the last will to the deceased, and he read it again. Then he got up and sat on the bed. There was a teapoy in the room, and he asked me to bring it near him. I did so. Then he kept the document on the teapoy and signed it. Next, I signed the document, and then Peter Jayasinghe did so. It was next signed by Handy Singho, Vel Vidane, and then by Parlis Goonewardene. (Shown document marked "A"): This is the document the deceased and the others signed. It is all in my handwriting.

After the will was signed, the deceased asked us not to tell anyone that the will had been signed. (Witnesses' signatures on the will shown): The first signature is mine. The second signature is K. D. Thomas', the third Peter Jayasinghe's, the fourth G. P. Handy Singho's and the fifth I. G. P. Nanayakkara's. We all signed at the same time. The last three lines were written just before the deceased signed. The body of the will had been written in the morning. After the will was signed, Thomas Appuhamy and I remained in the room and the others left it.

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tion.
—continued

Goonetilleke was a timber contractor. He supplied timber to the deceased for a school. I do not know whether the deceased had any interest in that timber business. After the will was signed, the deceased handed me the document and said: "Put this back in the drawer", and I did so. There is a key to the drawer. I did not lock the drawer, after I had put the will in it. The deceased's bunch of keys was on a table at the time. Thereafter, I left the room. Thomas remained in the room, talking with the deceased. Thomas, who is a nephew of the deceased, was in his company very frequently. I do not know what happened to the will thereafter.

10

In the morning of the 7th of October, the deceased left his house in a car, intending to go to the General Hospital. He was accompanied by Carthelis Appuhamy, Thomas Appuhamy, and Badde Vidana Vedamahatmaya, also known as Lewis Appuhamy, husband of Cecilia and brother-in-law of the deceased. When they left they said they were going to the General Hospital.

I next saw Carthelis Appuhamy on the 9th or 10th; I am not certain when. I do not know why he had returned to the village. I learnt that the deceased had died on the 12th at about 9-30 or 10 a.m. I saw Cecilia Siriwardene and others crying, and I learnt from them that a telegram had been received intimating that the deceased had died. The corpse was brought to the deceased's house on the 12th, at about 9-30 or 10 p.m.

20

On the 13th, the 1st respondent Welin came there, and after having looked at the corpse, he called the petitioner and questioned him as to whether there was money for cremation expenses. From March, 1942, up to the 13th of October, I had not seen Welin in the deceased's house. Carthelis said there was money. Then both of them discussed as to how much would be necessary. The 1st respondent said that the funeral expenses would cost about Rs. 500/-. Then Carthelis took out Rs. 500/- from an almirah and handed it to the 1st respondent, who then gave money to various persons and sent them out. I was asked by Welin to make a clear note of all the monies that were given to people, and I did so.

30

Later, the 1st respondent called me and said: "You and Carthelis Appuhamy were all working under my brother. Now I am the chief, and you must do according to what I want." Generally, Welin calls the petitioner Carolis. Welin told me: "Carolis must now hand over the keys of the almirah to me". I told that to the petitioner, and I also told him at the same time that the deceased had signed a last will on the 5th and asked him whether he got it. He said: "I did not get it. There is no use of talking about these things now. What is now required is not the last will or the bunch of keys. Now the deceased's funeral must be attended to". Thereafter,

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the 1st respondent came to the petitioner and asked him for the bunch of keys. The petitioner refused to give it. Later, the headman came, Then the petitioner closed all the almirahs, and after putting all the keys in a drawer, handed the key of the drawer to the headman.

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tion.
—continued

10 The cremation took place on the 15th. On the 19th, the petitioner asked me to go to the residence of Mr. Neil de Alwis, the Crown Proctor of Balapitiya. When I went there, I found the other witnesses also there. On being questioned by Mr. de Alwis, I told him that I had signed a last will, and that it was duly signed on the 5th of October by the deceased also. Mr. de Alwis had an affidavit prepared, and I signed it.

(Shown P 18): The first signature on this document is mine. The other four signatures are those of the other witnesses to the will. I did not know what had happened to the last will. When I asked the petitioner why the affidavit was being prepared he said that the will had been lost, and that the affidavit was to be signed to testify to the fact of the will having been signed. I do not know about the advertisement in the papers. I know that the will was discovered subsequently.

20 *Cross-examined :*

I am 34 years old. I started life as a Buddhist priest, and I served in that capacity for about five years. In my hearing I am not called "Heeraluwa" (contemptuous term for ex-priest). I was attached to the Walagedera Temple. I cannot remember when I left that temple; I left it about 15 years ago. I joined the priesthood when I was about 14 years old and gave up the robes at the age of 19. Then I did not run away to Colombo with some of the temple belongings; I went home for about a year. Before I gave up the robes, I told the priests and also my "home people" that I had decided to do so. I gave up the priesthood because I became disgusted with the life of a priest. I deny that I took away temple cash or anything else belonging to the temple.

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tion.

30 After I gave up the priesthood, I came to Colombo where I took up employment as a compositor on a monthly salary of Rs. 30/- or Rs. 35/-. That was about 15 years ago. At that time, except the salary, I had nothing of my own. I continued as a compositor in a Sinhalese Press for eight years. My knowledge of the Sinhalese language is good. I had a pansala training, in addition to experience at the printing office. I was a compositor till about 1937.

40 I gave up that employment, and immediately thereafter, I opened the tailoring establishment. I had no knowledge of tailoring; I employed tailors. I started the business with my savings, amounting to Rs. 200/-. In the meantime I married. At that time, I had that business. I married after I opened the tailoring establishment. In January 1942, I sold that business. At the start it was paying; later

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tion.
—continued

the profits were lesser. In January 1942, I sold what was a losing business. The establishment was at Maliban Street, near the Maliban Hotel. I know where that hotel is. I do not know its Manager, John Perera.

(To Court: I have never gone to that hotel).

Between the hotel and my tailoring establishment, there were about six boutiques. I had no dealings with that hotel. I was patronising a hotel opposite my establishment known as Saraswathie Hotel. I did not go to the Maliban except with a friend. I am unable to say whether that hotel is good or bad. I do not know John Perera; I have not seen him till today.

10

(To Court: I saw him today for the first time when he came here to give evidence).

I have said that the deceased knew me when I was in Colombo. His business brought him to Colombo. I do not know whether he went to the Maliban Hotel for meals sometimes. I never saw him there. He used to come to the tailoring establishment.

I sold the business for Rs. 2,000/-; the stock-in-trade was sold to various people for that amount in lots. I took the money with me when I left for the village.

20

The house has been completed except for the tiling. The roof has been temporarily thatched. I spent about Rs. 800/- on the house. As tiles are expensive now, I did not buy them.

Shortly after I went to the village, the deceased employed me. He asked me to confer on him the favour of being his servant; it was for my benefit also that I took up employment under him. He told me that he was unable to pay me a salary equal to my status. He asked me to work under him for a reasonable salary, and the salary he paid me was Rs. 25/- a month. Till three months after his death, I was content with that salary. I worked till I was dismissed by Welin. I worked under Welin for three months after the deceased's death.

30

During the period of my employment, I kept all the accounts relating to the rubber lands of the deceased. I was not in the position of a rubber conductor; I was a clerk. Only in an emergency, I was asked to visit the lands by the deceased. My brothers have been rubber tappers under the deceased. I have not said that I was in charge of the labourers. I did not live in the deceased's house. I lived in the house I put up, about a mile from the deceased's house. Ordinarily, I worked in the deceased's house from 6-30 or 7 a.m. till about 5 or 5-30 p.m. My meals were brought there from my house.

40

During the deceased's last illness, Lewis Vedamahatmaya and his wife Ceçilia were always in his house. An aunt of the deceased and

another woman also used to come there; I do not know their names. There was also a servant woman in the house. The deceased was living about $\frac{1}{4}$ mile from my house. Amarsinghe did not live in the deceased's house. He was working in the plumbago pits of the deceased; not in the house. He was an employee of the deceased. James Vedisinghe was a tapper under the deceased. The house and the boutique were managed by Carthelis Appuhamy, and he attended to work relating to the rubber also.

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tion.
—continued

10 Till he fell ill on the 30th of September, the deceased was looking after his own affairs. He was a very energetic man. Except for that last illness, he was a well-preserved old man. He was a bachelor. He was a fairly popular man, well-known to influential people. He did not associate with "big" people, nor did he associate with any one in his village.

20 I worked in an office room in the verandah of the deceased's house. There were almirahs in the house. I did not see an iron safe there. The deceased may have had large sums of money, but I had no knowledge of it. His accounts were kept by me. I do not know whether the assessment of his rubber lands alone was Rs. 18,000/- a year. He had a large income. Sales of rubber brought him about Rs. 3,000/- a month. He did not have much expenses. He was a fairly careful old bachelor. He had no bank account. I do not know whether all his money was kept in his house.

30 When the deceased fell ill, Sangawatte Vedamahatmaya first attended on him. That "vedarala" was brought by Carthelis Appuhamy. Shortly before he died, the deceased did not send for his brother Welin—I do not know whether he did so. Shortly after the deceased fell ill, Welin did not visit him. From morning till evening, I was in the house, but I did not see Welin there. If he says that during that time he visited the deceased, I can swear to the contrary. I was concerned with the deceased's accounts even during his last illness. I had nothing to do with his domestic arrangements. I was not required to attend on his illness. Carthelis was with him most of the time. He always attended to the out-door work as well as the work at home. If he did not go out, he was at home. That was so till the deceased entered the hospital. During that, he was not always at home; he used to go to his boutique also near his house.

40 On the 5th of October, the deceased had not spoken to me previously with regard to writing a last will. I should not be described as a confidant of the deceased. I was just his clerk who kept his accounts. He trusted Carthelis more than me. I was never given the keys of the deceased's almirah. I did not know of any previous arrangement made by the deceased for the witnesses to turn up on the 5th, nor did Carthelis know anything about it. From about the 30th, the deceased was not bed-ridden. He did not go out of the house. At the start he was suffering from diarrhoea, not dysentery. Lewis Vedamahat-

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tion.
—continued

maya knew nothing about the preparation of the last will. In fact, no one in the house knew about it. I do not know how the deceased made arrangements with the other witnesses for their coming to the house to sign the will. The witnesses were constantly visiting the deceased, and during those visits, the deceased may have made the arrangements. I cannot say who came to the house on the 4th. The witnesses were frequent visitors, but I cannot remember the dates of their visits. Thomas lives 10 miles from the house. He is mostly in his wife's house which is only a mile from the deceased's house.

It is a fact that the deceased wanted the will kept a secret. He asked me and the other witnesses not to disclose it to anyone. When he made that request, he did not particularise the petitioner. At the time the door of the room was closed after the other witnesses and I had entered it, Cecilis was in the house. The door was not locked with a key. It was bolted from inside, and it could not be opened from outside. That was done on the deceased's instructions. On the day the will was signed, I think Carthelis had gone to Beruwala. He went out in the morning, returned at noon, and went out again in the afternoon; I am not certain about this. He brought the doctor, and then went out again with him to bring medicine. Apart from that, he was in the house. The doctor used to visit the deceased every morning.

I took down what the deceased dictated to me in the precise language in which it was dictated, in actual words. What appears in the last will "A" is not my composition; it is what the deceased dictated to me. I did not put in a single word of mine to improve the language. When he was dictating, now and then he was correcting. When I was taking down to his dictation, now and then he got what he was dictating corrected. He asked me to delete and substitute. The draft was entirely his. The dictation took about 1 or 1½ hours. During that time, only the deceased and I were in the room; no one else came there at the time. I gave the pencilled draft to the deceased; I do not know what happened to it. After the draft was prepared, I made a fair copy. That copy is the original ("A"). That is the only copy I made; I am quite certain that no other copy was made.

I have said that at the deceased's request, I put the fair copy in the drawer. The pencilled draft was also not put there. The deceased did not give it to me; I do not know what he did with it. I did not see him tearing it up. The fair copy was lying in the drawer till all the witnesses entered the deceased's room.

The will was read out to the other witnesses by me very clearly. We therefore knew what the dispositions were. It was a prominent fact that the executor was the petitioner Carthelis.

Q. It must have occurred to you at the time that a rather unusual feature of the instrument was that $\frac{1}{3}$ of the estate was being left to a servant?

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tion.
—continued

A. It was the intention of the deceased; it was his desire.

The petitioner was not called "servant". He was always called "manager". He was a general manager.

I do not know much of the deceased's brothers and sisters. At the time the will was written, I knew that Welin was a brother of the deceased. It did not occur to me that Welin had been left out.

10 (Shown R 13): This is a book of accounts kept by me partly. The accounts in my handwriting commence from the 1st of April.

(First and last pages of accounts in the witness' handwriting initialled by Court.)

(Shown R 14): There are accounts in this book also in my handwriting, up to the time I left employment.

(First and last pages in the witness' handwriting also initialled by Court.)

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-6-43.

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. It is now 4 p.m.

Further hearing is therefore adjourned for 20th, 25th and 27th August, 1943.

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-6-43.

Call case on 5th July, 1943, to consider the question of appointing a new Receiver.

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-6-43.

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No. 15

Petition of the Intervenients

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Estate of the late Katriaratchige Don Frederick Siriwardene.

.....*Deceased.*

KATRIARATCHIGE DON VELIN SIRIWARDENE of Kolahakade.....*Petitioner.*

1. ARATCHI APPUHAMILLAGE DON CARTHELIS JAYAWARDENE of Induruwa.....*Respondent.* 10

2. THE COLOMBO BUDDHIST THEOSOPHICAL SOCIETY LTD., Colombo.*Added-Respondent.*

1. KATRIARATCHIGE PREMAWATHIE SIRIWARDENE of Kolahakade.

2. CECILIA KANNANGARA of Kalutara.*Intervenients.*

On this 23rd day of August, 1943.

The Petition of the Intervenients abovenamed appearing by Edgar Lionel Gomes their proctor states as follows:— 20

1. The Intervenients are two of the heirs of the deceased Katriaratchige Don Frederick Siriwardene as stated hereinafter.
2. The Intervenients deny that the deceased Katriaratchige Don Frederick Siriwardene left a Last Will and Testament and state that the document produced in this case by Aratchiappuhamillage Don Carthelis Jayawardene as the Last Will and Testament of the deceased Katriaratchige Don Frederick Siriwardene is a forgery and is not the act and deed of the said deceased. 30
3. The Intervenients deny that the witnesses to the said document produced by the said Aratchiappuhamillage Don Carthelis Jayawardene as the Last Will and Testament of the said deceased Katriaratchige Don Frederick Siriwardene was signed in the presence of one another all being present at the same time and place.

- No. 15.
Petition of
the Inter-
venients-
23-8-43.
—continued
4. The said Aratchiappuhamillage Don Carthelis Jayawardene is not entitled to have the said alleged Will declared proved or probate issued to him.
5. The Intervenients deny that Katriaratchige Cecilia Siriwardene and Katriaratchige Lily Siriwardene mentioned in paragraph 3 of the petition dated 8th December 1942 filed by the said Aratchiappuhamillage Don Carthelis Jayawardene are heirs of the said deceased Katriaratchige Don Frederick Siriwardene and further state that none of the devisees of the alleged will are heirs of the deceased Katriaratchige Don Frederick Siriwardene.
6. The Intervenients further state that the said Katriaratchige Don Frederick Siriwardene died intestate on the 12th day of October, 1942 in Colombo within the jurisdiction of this Court leaving as his heirs the following :—
- (1) Katriaratchige Don Velin Siriwardene, a brother
 - (2) do Eminona Siriwardene, a sister
 - (3) do Premawathie Siriwardene, 1st Interveniient
 - (4) do Piyasena Siriwardene
 - (5) do Edwin Lionel Siriwardene
 - (6) do Upali Weiman Siriwardene
 - (7) do Puspa Ailinee Siriwardene
 - (8) do Nandisena Siriwardene
 - (9) Cecilia Kannangara (2nd Interveniient)
 - (10) Eminona Kannangara
 - (11) Asline Nona Kannangara
 - (12) Joslin Nona Kannangara

The Intervenients state that the abovementioned 3 to 8 are the heirs being the children of a deceased brother Davith Siriwardene and the abovementioned heirs 9 to 12 are the children of a deceased sister Jane Nona Siriwardene.

7. These intervenients state that their names and the names of the other aforesaid heirs were disclosed by the said Katriaratchige Don Velin Siriwardene in his petition and affidavit dated the 25th February, 1943 filed in this case.
8. These Intervenients state that before the said Aratchiappuhamillage Don Carthelis Jayawardene produced the alleged Last Will and claimed Probate the said Katriaratchige Don Velin Siriwardene filed all necessary papers in Case No. 10238 of this court for Letters of Administration in respect of this case.

No. 15.
Petition of
the Inter-
venients.
23-8-43.
—continued

9. These Intervenients state that the said Katriaratchige Don Velin Siriwardene is the only surviving brother of the deceased and is entitled to Letters of Administration.

Wherefore these Intervenients pray :—

- (a) that the Order Nisi entered in this case declaring the said will proved and the said Aratchiappuhamillage Carthelis Jayawardene entitled to probate be discharged.
- (b) that the said Katriaratchige Don Velin Siriwardene be declared entitled to Letters of Administration of the Estate of the said deceased Katriaratchige Don Frederick Siriwardene and that the same be issued to him.
- (c) that the said Aratchiappuhamillage Don Carthelis Jayawardene be ordered to pay costs and for such other and further relief in the premises as to this court shall seem meet.

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Sgd. E. L. GOMES,
Proctor for Intervenients.

No. 16

Affidavit of the 2nd Interveniient

IN THE DISTRICT COURT OF COLOMBO.

20

In the matter of the Estate of the late KATRIARATCHIGE DON FREDRIC SIRIWARDENE.....*Deceased.*

Testamentary
Jurisdiction
No. 10277.

KATRIARATCHIGE DON VELIN SIRIWARDENE of Kolehekade.....*Petitioner.*

1. ARATCHIAPPUHAMILLAGE DON CARTHELIS JAYAWARDENE of Induruwa.....*Respondent.*

2. THE COLOMBO BUDDHIST THEOSOPHICAL SOCIETY LTD., Colombo.*Added Respondent.*

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1. KATRIARATCHIGE PREMAWTHIE SIRIWARDENE of Kolehekade,

2. CECILIA KANNANGARA of Kalutara*Intervenients.*

I, Cecilia Kannangara, of Kalutara, not being a Christian do hereby solemnly, sincerely and truly declare and affirm as follows :—

1. I am the 2nd Intervenant abovenamed.
2. The 1st named Intervenant and myself are two of the heirs of the deceased Katriaratchige Don Frederick Siriwardene as stated hereinafter.
3. I deny that deceased Katriaratchige Don Frederick Siriwardene left a Last Will and Testament and state that the document produced in this case by Aratchiappuhamillage Don Carthelis Jayawardene as the Last Will and Testament of the deceased Katriaratchige Don Frederick Siriwardene is a forgery and is not the act and deed of the said deceased.
4. I deny that the witnesses to the said document produced by the said Aratchiappuhamillage Don Carthelis Jayawardene as the Last Will and Testament of the said deceased Katriaratchige Don Fredrick Siriwardene signed in the presence of one another all being present at the same time and place.
5. The said Aratchiappuhamillage Carthelis Jayawardene is not entitled to have the said alleged Will declared proved or probate issued to him.
6. I deny that Katriaratchige Cecilia Siriwardene and Katriaratchige Lily Siriwardene mentioned in para 3 of the petition dated 8th December 1942 filed by the said Aratchiappuhamillaga Don Carthelis Jayawardene are heirs of the said deceased Katriaratchige Don Frederick Siriwardene and further state that none of the devisees of the alleged Will are heirs of the deceased Katriaratchige Don Frederick Siriwardene.
7. I further state that the said Katriaratchige Don Frederick Siriwardene died intestate on the 12th day of October 1942 in Colombo within the Jurisdiction of this Court leaving as his heirs the following:—

No. 16.
Affidavit of
the 2nd
Intervenant.
28-8-43.
—continued

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- (1) Katriaratchige Don Velin Siriwardene, a brother
- (2) do Eminona Siriwardene, a sister
- (3) do Premawathie Siriwardene
- (4) do Piyasena Siriwardene
- (5) do Edwin Lionel Siriwardene
- (6) do Upali Weiman Siriwardene
- (7) do Puspa Ailinee Siriwardene
- (8) do Nandisena Siriwardene

No. 16.
Affidavit of
the 2nd
Inter-
venient.
23-8-43.
—continued

- (9) Cecilia Kannangara (2nd intervenient)
- (10) Eminona Kannangara
- (11) Aslin Nona Kannangara
- (12) Joslin Nona Kannangara

8. The abovenamed heirs mentioned 3 to 8 are the children of a deceased brother Davith Siriwardene, and the above-mentioned heirs 9 to 12 being the children of a deceased sister Jane Nona Siriwardene.

9. I state that the names of all the heirs aforesaid are disclosed by the said Katriaratchige Don Velin Siriwardene in his petition and affidavit dated the 25th February 1943 filed in this case.

10

10. I state that before the said Aratchiappuhamillage Don Carthelis Jayawardene produced the alleged Last Will and claimed probate the said Katriaratchige Don Velin Siriwardene filed all the necessary papers in Case No. 10238 of this Court for Letters of Administration in respect of this Estate.

11. I state that the said Katriaratchige Don Velin Siriwardene is the only surviving brother of the deceased and be entitled to letters of Administration.

20

The foregoing affidavit having been duly read over and truly interpreted by me to the affirmant in Sinhalese her own language and she appearing to understand the contents hereof wrote her signature and was thereto duly affirmed to at Kalutara on this 23rd day of August 1943.

Sgd. CECILIA KANNANGARA
(In Sinhalese)

30

Before me.

Sgd. GOONÉTILLEKE

C. O.

No. 17

Caveat under Section 535 of the Civil Procedure Code.

IN THE DISTRICT COURT OF COLOMBO.

No. 17.
Caveat
under
Section 535
of the Civil
Procedure
Code.
25-8-43.

In the matter of the Estate of the Late
KATRIARATCHIGE DON FREDRICK
SIRIWARDENE.....*Deceased.*

Testamentary
Jurisdiction
No. 10277.

KATRIARATCHIGE DON VELIN SIRI-
WARDENE of Kolehekade.....*Petitioner.*

10

1. ARATCHI APPUHAMILLAGE DON
CARTHELIS JAYAWARDENE of
Induruwa.....*Respondent.*

2. THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., Colombo
.....*Added Respondent.*

1. KATRIARATCHIGE PREMAWATHIE
SIRIWARDENE of Kolehekade

2. CECILIA KANNANGARA of Kalutara.
.....*Intervenients.*

Caveat under Section 535 of the Civil Procedure Code.

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Let nothing further be done in the above case or in the above estate unknown to me Edgar Lionel Gomes of No. 161/4 Hulftsdorf, Colombo, Proctor for the Intervenients abovenamed who have interests in the above estate and who declare that the abovenamed deceased did not die leaving a Last Will and Testament as will appear on reference to the Petition and Affidavit hereto annexed marked "A" and "B", respectively.

Sgd: E. L. GOMES,
Proctor for Intervenients.

Colombo, 25th August 1943.

No. 18**Petitioner's Evidence.**

August 25, 1943.

Trial resumed.

MR. ADVOCATE R. L. PEREIRA, K. C., with MR. ADVOCATE RAJENDRAM and MR. ADVOCATE MAHADEVA for petitioner instructed by MR. PARANAVITANA.

MR. ADVOCATE J. E. M. OBEYSEKEKA with MR. ADVOCATE U. A. JAYASUNDERA and MR. ADVOCATE MALALGODA for 1st respondent. 10

MR. ADVOCATE W. S. DE SARAM instructed by MR. GOMES for K. Premawathie Siriwardene and Cecilia Kannangara, intervenients (All parties agreeing, I allow the intervention).

Don Sammy
Jayasinghe.
Cross-
Examina-
tion.
—continued

SAMMY JAYASINGHE: Recalled, Affirmed.

(Cross-examined by MR. ADVOCATE OBEYSEKERA): The deceased used to keep on a table the key of the drawer in which the last will was locked up. I do not know whether the petitioner Carthelis had access to that drawer. I have not seen him opening it at any time. I cannot say that he would have seen the will if the drawer was opened between the 5th and 7th of October. I do not know whether the deceased's keys were more with the petitioner than with the deceased. 20

After the will was signed, I rolled it up and placed it in the drawer: I went to the deceased's house on the 7th of October. That was before the deceased left for Colombo. I was present when the deceased left. I did not go to his room that day. I did not see what preparations were made for his journey. When I went to the house I found him seated in a chair in the hall, ready for the journey. I did not see him taking anything with him in the car. I saw the petitioner carrying a suitcase. It was more an attache case than a suitcase. I do not remember whether any other luggage was taken in the car. Before he left he asked me to look after certain matters and occupied a seat in the car. On that occasion he did not ask me to keep the will a secret. It was not known at the time when he would return. 30

The deceased died on the 12th of October. I came to know of the death on the 12th itself. I was in his house when the body was brought there from Colombo. On the 12th I did not mention to anybody that the deceased had left a will. On the 13th, at the time the keys were asked for by Welin from the petitioner, I told the petitioner about the will. The keys were handed by the petitioner in the presence of the headman. When Welin was asking for the keys I told the 40

petitioner that a last will had been written by the deceased and signed by him and five witnesses, and I asked him whether he had not got it. I also told him that it had been written in his favour and that he ought to have got it. The deceased had asked me to keep the will a secret during his lifetime. It was after his death that I told the petitioner about the will. As the 1st respondent was pressing for the keys, I asked the petitioner: "Have you got the last will"? What I thought was that the petitioner was the owner of the will and that he ought to get it. At that stage, on the 13th, I told the petitioner: "You are the executor under the will as well as the principal devisee". I did tell him that he was the executor and I also asked him to get hold of the will. When I told him that there was a last will, he said: "I have not got it. There is no use talking about it. Now our duty is to attend to the burial". I did not tell Welin about the will. The headman came to the deceased's house, and in his presence the keys were handed over. I did not tell the headman that the deceased had left a last will. I told nobody about the will other than Carthelis. I did not tell Carthelis that I had placed the will in a drawer. I only mentioned to him that the last will had been written in his favour. I was not concerned about his getting it. It is correct to say that the only occasion on which I mentioned the will to him was on the 13th.

I remember the cremation on the 15th. At the place of cremation I did not ask the petitioner: "What about the last will?" I have no recollection whether at the place of cremation I told him what the terms of the last will were. It is not usual to talk about these matters at a place of cremation. I know Thomas, one of the attesting witnesses. To my knowledge he did not say anything about the last will at the place of cremation. I did not hear him say anything there about it. After the cremation, after Welin was given the keys he was carrying on the management of the deceased's estate. The petitioner made himself scarce after the cremation. The management of the deceased's rubber lands and other affairs were in the 1st respondent's hands after the cremation. I worked under the 1st respondent for three months, continuing the work I had done under the deceased. During those three months I was paid a salary by the 1st respondent. While I was working under him, I did not mention a word to him about the last will. I knew the terms of the will, and under that will Welin had no right to manage or administer the deceased's property. My concern was to work under anybody. I did not make special mention of the will to Welin, but I told him that when the deceased was living I carried out his orders and that whatever orders he (Welin) gave me, I would carry them out also. Welin asked me whether there was a last will. Then my reply was "I worked loyally under the deceased. Now I'll work under you".

(Shown R 12): This document is in my handwriting. The superscription is also in my handwriting. It reads: "List of expenses

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tion.
—continued

incurred on account of the funeral of D. F. Siriwardene³. There are two headings. The superscription referred to is the second heading. Welin insisted that I should show in the document that the expenses had been incurred by him. Then I inserted his name at the top in a different ink. The name was inserted at his express request.

(Shown R 7): This document is not in my handwriting. I have said that in the first instance a draft of the last will was written in pencil.

(Shown R 14): This is in my handwriting.

(Shown R 13): The handwriting is mine. I have two fists. Sometimes I write in a slanting way and sometimes round letters. 10

I am distantly related to Peter Jayasinghe. I cannot say how I am related to him. He is one of the attesting witnesses to the last will. I do not know U. Don Peiris. I know the land called Kirime-tiya Udumulla Deniya. That land was taken on lease from the deceased by Carthelis. I do not know whether the land is now in the possession of Peter Jayasinghe. I do not know who is possessing it. I am not aware that Peter Jayasinghe has a relation by the name of U. Don Peiris.

Don Sammy
Jayasinghe.
Re-Exami-
nation.

Re-examined :

When I told Carthelis about the will and he said: "This is not the time for discussing about the will, I did not give him the names of the witnesses. I do not know whether after the 13th there was a talk about the will. 20

Q. Subsequent to the 13th was there a talk about the last will?

(Question objected to. I allow the question subject to the objection).

A. On the 20th all the witnesses were present at Proctor Alwis' house, and there was a talk there about the will.

On the 19th the petitioner did not ask me to go there. I do not know how he obtained the names of the other witnesses. I do not know whether R 7 has anything to do with the deceased's last will. I say definitely that it is not in my handwriting. 30

The dictation of the will by the deceased took about 1½ hours. It took so long because the deceased was substituting words. There were interpolations and some portions struck off in the draft. There are no interpolations in the document R 7; it is a continuous writing.

It is not true that I got any benefit out of the land Udumulla Deniya.

Sgd. JAMES JOSEPH, 40
Addl. District Judge.
25-8-43.

K. D. A. THOMAS, Affirmed, 35, Contractor, Puhambugode.

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tion.

The deceased was an uncle of mine,—a first cousin of my mother. I used to call him “uncle”. When I came to hear that he was ill, I visited him in his house at Galmatte. That was on the 1st of October. On that occasion he made a request to me.

Q. What did he request ?

(Question objected to. Objection upheld).

My home is some distance away from the deceased's house. My wife's house is a little over quarter mile from the deceased's house. When I visited the deceased on the 1st of October, I remained at Galmatte for about 20 days. During that period I went out of the deceased's house now and then, carrying messages for him.

Q. On the 5th did the deceased send for you ?

(Question objected to. I allow the question).

A. On the 4th I was asked to go to the deceased's house on the 5th morning. I went there on the 5th, and on that day the deceased told me something. I therefore paid a visit to Mr. Wilson de Silva, Proctor, for the purpose of conveying a message to him from the deceased. On that occasion I paid Mr. de Silva a sum of Rs. 10/-. I returned to Galmatte the same day. I had not been asked by the deceased to return soon. I returned to Galmatte at about 4 p.m. Then I went to the deceased's house. Handy Singho, Katumahatmaya alias Peter Jayasinghe were there at the time as well as Sammy Jayasinghe and Parlis Goonetilleke. They were in the sitting room of the house. Sammy Jayasinghe said that the deceased wanted us and invited us to the deceased's room. After we entered the room the door was closed at the request of the deceased. I think that was done by Sammy Jayasinghe. Thereafter the deceased said that he had written a last will and asked us to read it. Then Sammy Jayasinghe read out the contents of the will. Next the deceased asked Sammy Jayasinghe to obtain the full names of the witnesses present and write them down in the will. After that was done, the deceased took the last will and looked at it. Then he signed it and asked me and the other witnesses to sign it. Thereupon the will was signed first by Sammy Jayasinghe next by me and thereafter by the other three witnesses, viz: Peter Jayasinghe, Vel Vidane, Handy Singho and Parlis Goonetilleke. After we signed the will the deceased asked us not to tell anyone about the will. Thereafter the clerk and I remained in the room and the others left it. I remained there because the deceased asked me to do so for the purpose of talking with him.

On the 7th I travelled to Colombo by car in the company of the deceased, the petitioner Carthelis and Veda Mahatmaya who is married to a sister of the deceased. On the way we first stopped at Beruwala and next at Kalutara. At Kalutara the car was stopped

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—continued.

opposite Mr. Wilson de Silva's office and Mr. de Silva came up to the car and spoke to the deceased. Mr. de Silva was asked by the deceased to telephone to Colombo and obtain the opinion of Counsel in Colombo with regard to a case. Thereafter we proceeded to Colombo. The car was again stopped somewhere near Colpetty as the deceased wanted to answer a call of nature. It was next stopped at the Maliban Hotel. There Carthelis and the deceased got down. Then the Veda Mahatmaya, the driver and I proceeded in the car to the Bo Tree Junction in the Pettah for the purpose of getting petrol. After that we returned in the car to the hotel. Then the deceased got into the car and we proceeded to Dr. Jayasuriya's bungalow. There the doctor examined the deceased and advised him to enter the General Hospital. We therefore proceeded to the General Hospital and the deceased was admitted there. Then the Vedamahatmaya and I returned to the village.

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On the 11th, Carthelis returned to the village and said that the deceased must be removed to a native physician. Then Carthelis, I and the Vedamahatmaya came back to Colombo, and near about the Hospital we heard that the deceased had died. I remained in Colombo till the corpse was removed to the village. It was removed there the same night.

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On the 13th I was in the deceased's house. There was some trouble there on that day: The trouble arose as a result of Welin asking for the deceased's keys from Carthelis. The headman was sent for and the keys were handed over to him by Carthelis. The cremation took place on the 15th. On that day I must have spoken to Carthelis. On the 13th when the headman was going from the deceased's house, I followed him and at his house I told him that the deceased had left a last will. After the cremation, the petitioner questioned me about the will. He asked me whether I knew anything about it. I said: "A will was executed. Have you not received it"? I also told him that I saw the deceased taking the will with him on his last trip to Colombo. Before he left for Colombo I saw the deceased taking a rolled paper from the drawer and putting it in an envelope. Then he put the envelope in a suitcase. I do not remember who took the suitcase to the car. When the deceased left for Colombo the suitcase was in the car. The envelope had been handed to me on the 5th by Mr. Wilson de Silva. I brought that envelope to the deceased on the 5th. When he opened it, I found that it contained an opinion in connection with a case. (Shown P 8): This is the envelope.

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On the 19th there was an almsgiving, and on that occasion, Carthelis told me that the last will was not forthcoming, and he therefore asked me to accompany him to Mr. de Alwis. On the 20th I went to Mr. de Alwis's bungalow and I signed an affidavit there before Mr. de Alwis. (Shown P 18): This is the document I signed. The second signature K. D. A. Thomas is mine,

Cross-examined :

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My mother is Punchi Nona Siriwardene. Her father was Don Davith Siriwardene Vidane Aratchi. Davith and the deceased were brothers. I cannot say anything more about the relationship. The deceased called my mother's father "uncle". Whether in fact my mother's father was his uncle I do not know.

10 My village Puhambugode is about 8 miles from Galmatte. I am now living at Puhambugode. Formerly I was residing at Galmatte. I am a native of Puhambugode. After my marriage I lived at Galmatte, and I have even voted as a resident of Galmatte. When I visit Gal-
matte I live in my father-in-law's house. My residence has always
20 been at Puhambugode. My wife has lived with me always in that village. I am a contractor for clearing and weeding rubber lands. In 1939, I had a 13,000 rupees contract. I am worth about Rs. 12,000/-. I receive a monthly income of about Rs. 150/-. I do not spend most of my time in the Kalutara courts. I had litigation in connection with damage caused to a rubber land of mine. On the 18th of this month I was in the Kalutara Courts in connection with a partition action relating to one of my lands. I deny that I am a tout. I do not give
30 legal advice to my fellow villagers. They do not consult me to get legal opinions. I own paddy lands about 10 pelas in extent. I deny that till recently I have been getting rice coupons. I never took rice coupons. I have sold 20 bushels of paddy to Government.

Before the 1st of October I have been running errands for the deceased. Whenever I had time I used to comply with requests he made to me. I did not regularly work for him. I did not go to Galmatte on the 1st of October casually. I went there purposely to visit the deceased. I visited him on that occasion in connection with a land case in which I had been listed as a witness. I had taken the
30 land on lease. I did not visit the deceased to discuss the evidence. My name was on the list of witnesses before the 1st of October. A European gentleman Mr. Foote had inspected the land along with me. I visited the deceased on the 1st because he had asked me to do so.

Q. At that visit he told you that he was not well and asked you to attend to the work in connection with the case ?

A. I cannot say whether he asked me to attend to work in connection with the case. He asked me to remain in the house and attend to his work. The first work I did thereafter was to go to Mr. Wilson de Silva. It is not true that I came to Galmatte having heard of the
40 deceased's illness. I learnt of his illness after I came there.

I left Galmatte for the purpose of conveying the message to Mr. Wilson de Silva at about 7 a.m. on the 5th. Galmatte was about 15 miles from my destination. I travelled by bus and reached Kalutara at about 12 noon. Before I left Galmatte there were no prepara-

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tions in connection with the last will on the 5th morning. At no time before that had the deceased discussed with me about a will, nor am I aware of any previous discussion on the subject with anyone else. I reached Kalutara before 12 noon. I cannot say exactly when I reached Kalutara. I cannot say whether I went first to Mr. Wilson de Silva after I reached Kalutara. Apart from seeing Mr. de Silva I had other work to attend to such as speaking to a clerk about an income tax return. I cannot remember the other work I did. I saw Mr. Wilson de Silva in his office. I do not know whether he practices largely in the Magistrate's Court. I am also not aware that normally he would be in the courts at 9-30 a.m. I am sure I met him in his office, may be at about 12-30 p.m.

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I returned to Galmatte by bus in the afternoon. I cannot remember when I left Kalutara. There were buses running to Galmatte available at any time. I got into a bus at Kalutara and got down at the deceased's house. There are buses to Meegahatenna at any time. I returned to Galmatte at about 4 p.m. I do not know English. When I went to the deceased's house I found the other four witnesses to the will seated in the hall. I cannot remember whether the first person to whom I spoke was Sammy Jayasinghe. When I saw the four persons seated in the hall I did not think they were there for a particular purpose. None of them told me that they had come there for a particular purpose. They were frequent visitors to the house. I went into the deceased's room after I and the others were asked to enter it. Although I had gone to Kalutara on a particular work of the deceased, I did not go into the room before that. I had a message to give the deceased. After the will was signed I remained in the room and gave him that message. Immediately after I came into the house, we were called into the room. Until then I did not know that a last will was going to be signed. The deceased said that he was going to sign a last will.

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Q. That came as a bolt from the blue ?

A. I was not surprised when he made that statement. I have not signed other wills or deeds as a witness. The deceased said: "I have written a last will and I want it signed". Then Sammy Jayasinghe took out the will from the drawer of a table in the room, and thereafter he read out the contents. It did not strike me at the time that the terms of the will were rather unusual. The deceased asked us to sign it, and we did so. He was not well disposed towards his relatives. The terms of the will did not strike me as unusual. He left his property to his two sisters and to a man who was like an adopted son to him. I was a relative of the deceased. I had no expectation of getting anything from him. At the time the will was read out, he was seated on his bed. Sammy read out the will to be heard by

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all the persons in the room. The will was read out only once. Then Sammy wrote the names of the witnesses in full in the will. Before the will was signed, the deceased read it. He signed it seated on his bed. The will was placed on a teapoy, and then it was signed. (Shown document "A"): This is the last will of the deceased. I identify my signature on it as well as the deceased's signature. I cannot remember who fetched the pen and ink. What I remember is that the will was signed with an ordinary pen. One pen was used by the deceased and all the five witnesses. After the deceased, Sammy Jaysinghe and I had signed the will, Katumahatmaya, Handy Singho and Parlis Goonetilleke signed it. The last witness who signed it was Parlis Goonetilleke. After the will was signed the deceased requested that it be put in a drawer. Then the document was rolled and put in the drawer. That was done by Sammy Jayasinghe. After it was rolled, it was not put in an envelope. The will was put in the drawer in the rolled state. I cannot remember whether Sammy Jayasinghe locked the drawer after he put the will there.

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tion.
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After the will had been signed, I gave the deceased the letter I had brought from Mr. Wilson de Silva. I cannot read English at all.

(Shown P 8): I do not know what is written on it. The deceased told me that Mr. de Silva had sent him the letter in the same envelope that had been sent to him (Mr. de Silva). I say that P 8 is the envelope which was handed to me by Mr. de Silva. When he gave it to me I saw this mark (points out "P 8" on the document). When I gave the envelope to the deceased the mark P 8 was there, and it was there when Mr. Wilson de Silva also handed it to me. The deceased was able to read English well. After I gave the envelope to him, he placed it on a table. On the day the will was signed, he was able to walk about. He was ill at the time but not to the extent of not being able to walk. On the 5th I did not see him getting out of the bed at any time. At the time I handed the envelope to the deceased after the signing of the will, I do not remember whether Sammy Jaysinghe was in the room. I cannot say whether Sammy heard the deceased telling me anything about it. There was no secrecy about the letter I brought from Mr. Wilson de Silva. The deceased asked me and the other witnesses to keep the last will a secret. He did not ask us to keep it a secret particularly from the petitioner. The deceased was not a very secretive person. But he did not like to talk about his affairs. On the 5th morning I did not see the petitioner in the deceased's house; he may have been there. I saw him there in the morning of the 5th. I cannot remember when I next saw him. I am not definite whether I saw him or not on the 5th after I saw him in the morning.

On the 7th I went to the deceased's house early in the morning; I cannot remember the exact time. When I went there everything had been arranged for the deceased's departure to Colombo. I cannot

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remember whether I went there on the 6th. The arrangements for the deceased to go to Colombo on the 7th were not made by Carthelis. When I went to the house on that day, Carthelis was not there. On the 7th I did not see him till he brought the car. It was before Carthelis brought the car I saw the deceased putting the last will into the envelope. When the will was put into the envelope, there was no one else in the room except the deceased and myself. When the deceased took out the will from the drawer, it was in the same state; it was rolled. I saw the deceased unrolling the will, folding it and putting it in the envelope. The document put into the envelope was the last will. I saw the will at the time. I did not ask him why he was taking it to Colombo. Neither the deceased nor I made any observation in this connection. I did not know at the time that the deceased was going to hospital. When he left I only knew that he was going to Colombo for treatment. Till we came to Colombo I did not know that the deceased wanted to enter the General Hospital. When I went to the deceased's house on the 7th I knew that he was going to Colombo. He asked me to accompany him to Colombo and I agreed to do so. Before we left there was no discussion as to what the deceased was going to do in Colombo. He only said that he was going there to obtain medicines, to take treatment. As far as I know the arrangement was for us to return to Colombo the same day. I do not know whether the decision to enter the General Hospital was taken in consequence of the visit to Dr. Jayasuriya.

On the way, at Kalutara, when the deceased spoke to Mr. Wilson de Silva, Mr. de Silva did not show a letter to the deceased. I heard the conversation between them. It was with regard to obtaining an opinion about the case from Mr. H. V. Perera.

At the Maliban Hotel the deceased and the petitioner got down and I and the others in the car proceeded to take in petrol. We did not take long to return to the hotel. The Maliban Hotel is opposite the Fort Railway Station. It was there the deceased got down. Then the others in the car, consisting of myself, the Veda Mahatmaya and the driver proceeded to the Bo Tree Junction in the car. From there we turned and went a little distance to the petrol station. After getting the petrol the car was turned and driven back to the hotel. When we came back the deceased and the petitioner were in the hotel. Shortly afterwards they got into the car and we proceeded to Dr. Jayasuriya's bungalow. Veda Mahatmaya and I returned to Galmatte that day. Carthelis remained behind. I cannot remember whether he kept back the suit case with him. What I remember is that when we returned to Galmatte the suit case was in the car. I next came to Colombo alone on the 10th for the purpose of visiting the deceased. On the 12th when the deceased's body was removed to Galmatte I accompanied it. On the 13th Welin had taken possession of the deceased's house. He took charge of the situation as a close relative of the deceased. He attended to the funeral arrangements with Carthelis and

others. I do not know whether the petitioner seemed to resent Welin taking charge of the deceased's affairs. I do not know whether he was reluctant to part with the keys. The headman was sent for because he refused to give the keys to Welin. He was reluctant to give the keys to Welin. The keys were surrendered by him to the Headman. At the time the keys were handed to the Headman, Sammy Jayasinghe was also present. At that time no one told the headman that the deceased had left a will. I had signed the will and I was aware of its contents.

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10 (To Court: I knew that Welin had not been left anything by the deceased. I did not tell the Headman "there is a will". Why should the keys be handed over to Welin? If I had said that there would have been a big commotion; bloodshed. I wanted to keep the will a secret).

The headman was brought there to prevent that kind of dispute.

20 (To Court: Welin claimed from his brother's estate as an heir. The only manner in which his claim could be resisted was by will, and there was such a will. I did not say "although you are the deceased's brother you are not entitled to any share of his estate. He has given away all his property to others". I do not know why Sammy Jayasinghe also did not say that. I did not tell Sammy Jayasinghe that nothing had been bequeathed to Welin. Carthelis was the person appointed executor under the last will, and he was entitled to retain the keys. I did not intervene and tell him "you are executor appointed under the will. You have the right to keep the keys, don't give them over").

(After Lunch).

30 (To Court: If I disclosed the will at the time the keys were handed over, the petitioner, the respondent and Vedamahatmaya would have fought and there would have been bloodshed. I did not anticipate a challenge to the genuineness of the will, if I mentioned about it. I feared that if I mentioned the will in spite of it Welin would have said he was the owner of the estate. Welin is as closely related to me as the deceased. My relations with him are as cordial as my relations were with the deceased. I did not go to Welin and say "Uncle, why all this, a will has been made". I knew the dispositions in the will when I signed as a witness. I knew that Welin was not getting anything. I did not think of going to Welin and telling him
40 "a will has been made by which nothing has been left to you".) I did not do so because the deceased had asked me not to disclose the existence of the will. Welin and the deceased were not well-disposed towards each other. There was a dispute over their father's estate and litigation in that connection. I have not seen them visiting each other. I have visited Welin whenever there was any occasion to

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do so or whenever I had to visit the village. I am personally aware of the litigation between Welin and the deceased. That was about 12 years ago. At one time they were not doing business together).

When I told the Headman after the keys were handed over to him that the deceased had left a last will he said "Please keep the will a secret". I was present at the place of cremation. There the question of the last will was not discussed. I do not know whether a few days after the cremation, an Inspector of Police came to the deceased's house. I do not know whether two days after the death of the deceased a list of his property was made by the Police Inspector and the headman. I told the petitioner what the terms of the last will were when he questioned me. 10

(To Court: I cannot remember when he questioned me. That was after the keys were handed over to the headman. I do not know whether at the time the keys were handed over Carthelis did not know about the existence of the will).

I cannot say how many days after the keys were handed over, Carthelis questioned me about the will. My recollection is that he questioned me on the day of the cremation, in the evening. On that occasion he told me that he had heard that a last will was written by the deceased, and I said that it was so. Then I did not tell him what the terms of the will were. I did not want to give him a shock by saying that under the will he had been given the major part of the estate. I also did not tell him that he has been appointed executor. I told him "the last will was left inside a drawer and I saw the deceased taking it with him when he left for Colombo on the 7th". Between that date and the 20th when I appeared before Mr. de Alwis, I had no conversation with the petitioner about the last will. 20

On the 20th when I was before Mr. de Alwis a certain document was read out. On that occasion I cannot remember whether I told Mr. de Alwis that the petitioner had been appointed executor. I cannot remember whether I told him that a third share of the estate had been left to the petitioner. Mr. de Alwis was not told what the terms of the last will were. 30

I know Don Peter Siriwardene. I do not know the land called Kettikelagahawatte Kettikeliya. I do not know the two lands bearing that name. The Headman of Walagedera is not related to me.

Cross-examined by Mr. W. S. De Saram:

The deceased was about 70 years old when he died. He did not carry on any business. I was not present when the will was dictated. That document was signed about 4-30 p.m. At that time the deceased was quite in his senses. Welipane is about 3 miles from Galmatta. There is a Proctor Notary at Welipane. The deceased was not on 40

good terms with him. I cannot remember the Proctor's name. There are Proctor Notaries at Kalutara also. I do not know whether the deceased wanted to put through a number of transactions through Notaries. I do not know why the deceased did not employ a Proctor Notary to attest the will.

No. 18.
Petitioner's
Evidence.
K. D. A.
Thomas.
Cross-
Examina-
tion.
—continued

Re-examined :

10 The suggestion that I am a tout is false. When the will was read out I knew who the legatees were. Two of them were half-sisters of the deceased. It did not strike me as improper that the deceased had given property to Carthelis. Carthelis is a man of Gampaha. He has no influence in Galmatta.

K. D. A.
Thomas.
Re-exami-
nation.

20 I am unable to say whether the writing in blue on the envelope (P 8) was there at the time I handed the envelope to the deceased. When I was pressed for identification marks, I showed that Peter Siriwardene is a son of Welin's father's brother. Peter is employed in the Railway. He is a moneyed man. I know now that he purchased a land from Carthelis. The suggestion that Peter Siriwardene is holding the property in trust for me is not true. I do not meet him frequently. He is living at Nanu Oya. I last saw him about ten months ago. He has no property at Walagedera, but he has property in the neighbouring villages.

Those who went to Hospital from the Maliban Hotel were the deceased, myself, the driver, Carthelis and Vedamahatmaya. The deceased and Carthelis got into the car at the Maliban Hotel, when it was brought back there after taking in petrol. When the car returned to the hotel after the petrol was brought, I think only the deceased was in the hotel. I cannot remember whether Carthelis was with him at the time.

80 (To Mr. Advocate Obeysekera): I do not know where Dr. Jayasuriya's bungalow is. It is not so far away as two or three miles from the hotel. I did not feel the distance as I went to the bungalow by car.

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-8-43.

No. 18.
Petitioner's
Evidence.
Don Peter
Jayasinghe.
Examina-
tion.

DON PETER JAYASINGHE: Affirmed 46, Cultivator and trader, Walagedera.

I am worth about Rs. 10,000/-. I own a boutique. I knew the deceased. He was a friend of mine. We were also distantly related.

On the 5th of October last, I was sent for by the deceased, and in response to that invitation I went to his house on that day at about 1 or 1-30 p.m. I went into the deceased's room and asked him why he had sent for me. He said that Dr. Ratnayake's treatment had not improved his condition and that he desired to go to Colombo for treatment. He also said that he had written a last will in favour of Carthelis and his (deceased's) two younger sisters. Then he asked me to sign the will as a witness. I consented to do so, and then I was asked to wait. Thereupon I went out of the room and occupied a seat in the verandah. At about 4-30 p.m. Vel Vidane Handy Singho, Parlisi Goonetilleke and Thomas also came to the house. When I went out of the room Parlisi and Vedamahatmaya were in the verandah. Thomas came to the deceased's house later. At about 4-30 p.m. Sammy Jayasinghe asked me and the other witnesses to enter the room, and we did so. After we entered the room the deceased wanted the door shut and asked the clerk to read out the will. The clerk did so. Then the deceased asked the clerk to write the names of the witnesses in full on the will. This was done and the writing was handed over to the deceased who thereafter read it and signed it. Next I and the other witnesses signed it. After the will was signed, the witnesses left the room except Sammy Jayasinghe and Thomas.

(Shown document "A"): This is the will I signed. I identify my signature on it. It is the third signature. I also identify the deceased's signature. That signature was also put in my presence. I am familiar with the deceased's signature.

Don Peter
Jayasinghe.
Cross-
Examina-
tion.

Cross-examined:

When I said I am worth Rs. 10,000/-, I meant that I have property worth that amount. My property consists of 3½ acres of rubber, 20 pelias of paddy belonging to me and my wife and two boutiques. The 3½ acres of rubber was under mortgage to a man called Britto. The mortgage has been released. Altogether 11 acres were mortgaged to Britto. There is a mortgage to my sister for Rs. 400/-. Judgment went against me in D. C. Case No. 13198, Kalutara, and in two other cases. That was about 1½ years ago. I have satisfied the judgments entered against me. In one of the cases I have paid the share due from me. Another share is still due in that case. That has to be paid by another person (Joronis).

The deceased lived about a mile from my house. I am a somewhat busy man. I go to the deceased's house occasionally. I went there if I had some business with the deceased. I did business with

the deceased. He advanced Rs. 1,000/- to me on an agreement for the purpose of taking lands on leases. Before the 5th of October I went to his house on the 3rd of that month. On the 3rd he was ill. He did not recover from that illness. On the 3rd he did not tell me anything about the last will.

No. 18.
Petitioner's
Evidence.
Don Peter
Jayasinghe.
Cross-
Examina-
tion.
—continued

10 On the 5th a message was brought to me from the deceased by one Edwin, a carter employed under the deceased. I mentioned that to the proctor instructing the petitioner. When I arrived at the house on the 5th, Sammy Jayasinghe was there. I talked to him first. I did not ask him why the deceased had sent for me. Immediately I arrived at the house I went straight into the deceased's room and asked the deceased why he had sent for me. Then it was that he told me that he wanted to sign a last will. He further said that he had written a will. He did not show it to me. He did not say who had written it. When I went out of the room, Vel Vidane and Parlis Goonetilleke were in the house. They did not go into the room in my presence. They were talking with me in the verandah. I did not tell them that the deceased had sent for me in connection with the signing of his last will. At that time neither Parlis nor the Vel Vidane told me why they had come. The deceased asked me to wait for a while. He did not say: "I am waiting for Thomas. Kindly wait till he arrives". I waited from 1.30 till about 4.30 p.m. Meanwhile I went to a school and came back. The others did not tell me why they were waiting. Sammy Jayasinghe too did not tell me anything. I cannot say whether after Thomas arrived he went straight into the deceased's room. When Sammy Jayasinghe told me that I was wanted, the other three witnesses were with me. Thomas was also present at the time. He did not tell me that he had been asked to sign a last will. After I and the other witnesses entered the room, Sammy Jayasinghe read out the last will. That document was taken from the drawer by Sammy Jayasinghe. I heard the terms of the will when the contents were read out. The witness who signed the will first was Sammy Jayasinghe, and the fourth witness was the Vel Vidane. I know the order in which the witnesses signed. After the will was signed, I do not know what happened to it. I did not see where it was put. I did not see it being rolled up.

20

30

(To Court: Besides asking us to sign the will as witnesses, the deceased asked us not to tell anyone about it. He said that immediately after the will was signed).

40 He did not ask us not to divulge the will before his death. He asked us in general not to let anyone know about it. He did not ask us not to divulge the will before a particular time. After signing the will I left the room. I do not know what happened there after that.

Subsequently, on the 10th, I visited the deceased in hospital in Colombo. I went there alone. I did not meet Thomas on the 10th.

No. 18.
Petitioner's
Evidence.
Don Peter
Jayasinghe.
Cross-
Examina-
tion.
--continued

I heard of the deceased's death on the 12th when the body was taken past my house. On the next day (13th) I went to the deceased's house. I did not see the headman there on that day. I went there on the 13th morning and remained there for about 15 minutes. On that occasion, I asked when the cremation would take place. I got leaflets printed with regard to the death of the deceased. On the 13th Welin was not in the deceased's house. His son was there as well as Carthelis. It was from Carthelis I inquired when the cremation would take place. On that occasion I did not tell him that the deceased had signed a last will. Subsequently I became aware that the headman was brought to the deceased's house to compel Carthelis to hand over the keys to Welin. I came to know that the same day (13th) at about 6 p.m. Carthelis did not tell me that he had been forced to hand over the keys. There was a talk that Welin had tried to assault Carthelis and that the headman had gone to the house. The attempt to assault was in connection with a case. Carthelis had refused to give the keys, and the headman had been brought. After that I went to the deceased's house. At that time Carthelis was not there. I met him there on the 14th. On that occasion I did not tell him "why did you hand over the keys? You are the executor appointed under the last will". It did not strike me that I should say that. I did not know with whom the keys were. I thought they were with Carthelis. I did not tell Welin "there is a last will in which you have not been given anything". I was not concerned with the disposal of the deceased's property.

10

20

I attended the cremation on the 15th. On that occasion Carthelis and Sammy Jayasinghe were present. Then there was no talk about the will. I kept the last will a secret. On the 20th I went before Mr. de Alwis. After the cremation on the 15th in the evening Carthelis told me that a last will had been executed and asked me whether I had not got it. I said: "A last will was written by the deceased. I do not know who has got it". Then Carthelis told me: "I hear you were a witness to the last will. What do you know about it?" He did not tell me how he knew that I had signed the will as a witness. When he asked me: "You also signed the will as a witness?", I said "yes". I do not know how he came to know that I had signed. Up to date I do not know how he came to know that. I told him the terms of the will, that the will was in favour of three persons, and that he had been appointed the executor.

30

My next connection with the matter is my appearance before Mr. de Alwis on the 20th. Carthelis came and called me to go before Mr. de Alwis and I consented. All the five witnesses went before Mr. de Alwis. When Carthelis called me to go before Mr. de Alwis; he told me that he had not got the will, and that he believed it was lost. Thomas was not present when he said that. All five witnesses did not go to Mr. de Alwis's bungalow together. I went there alone. I do not

40

know how the others went. I went there cycling. My house is about 7 miles from Mr. de Alwis'. After I signed the document before Mr. de Alwis I did not make inquiries as to what had happened to the last will. I do not know whether inquiries were made in that connection. Welin was in possession of the deceased's estate. I knew that he was possessing it. It occurred to me that he had no right to the property. But what could I do?

No. 18.
Petitioner's
Evidence.
Don Peter
Jayasinghe.
Cross-
Examina-
tion.
—continued

10 I met Thomas frequently. He did not tell me where the will was. He did not tell me that he had a clue by which the will could be traced. He said that the will was taken to Colombo. That statement was made by him about 3 days after the cremation. I did not communicate that to Carthelis; I did not meet him.

I was fined in a case for assaulting Piloris Jayasinghe. I was not convicted in another case for removing a bull seized by a cattle seizer and fined Rs. 25/-. More recently I was not charged by Welin in another case with the theft of a bull. Last month there was a case against me by him. That case has been thrown out.

(To Court: Besides the fine of Rs. 25/- I have not been fined on any other occasion).

20 *Re-examined:*

Don Peter
Jayasinghe.
Re-Exami-
nation.

30 I signed a document in this court stating that the will was a true one and handed it to Mr. Parnavitane. I signed that document on 4th December. On the 5th Welin entered a prosecution against me. The complaint against me was made to the police on the 5th December. In that case Welin was cross-examined by my Proctor Mr. Cyril de Zoysa. I produced a cattle voucher in my favour as well as another cattle voucher in favour of my vendor. The cattle voucher in favour of Carthelis was one of 1934. During the cross-examination of Welin his Proctor moved to withdraw the case. I was discharged in that case. The case in which I was fined Rs. 25/- was about 15 years ago.

There is no truth in the suggestion that I am a rowdy. I was a member of the village committee for 9 years; I was not the chairman of the committee. 12 years ago the price of rubber slumped to 12 cts. a lb. At that time there was a big depression and I was compelled to borrow money. I was not sued in that connection. The actions against me were not for recovery of money. There are no decrees outstanding against me now. The only debt I owe is a sum of Rs. 300/-. That sum is due to my sister.

40 Q. It was suggested that you or your wife was related to a man called U. Don Peiris?

(Question objected to.

I disallow the question).

No. 18.
Petitioner's
Evidence.
Don Peter
Jayasinghe.
Re-Exami-
nation.
—continued

At the opening of a school at Walagedera there was a photograph taken. The A.G.A. sat for that photograph as well as the Mudaliyar.

(Photograph marked P 25 shown). This was the photograph. The deceased is there, seated in the front row. (Figure marked with cross in red). I am standing in the second row (marked in blue). On my right is Handy Singho, Vel vidane, and on my left Thomas Appuhamy. The photograph also includes some school masters and planters of the district.

Sgd. JAMES JOSEPH, 10
Addl. District Judge.
25-8-43.

D. H. Jaya-
netti.
Examina-
tion.

D. H. JAYANETTI, affirmed, Headman of Walagedera (774).

I have been Headman for 16 years. I am not related to the deceased. I knew him. He was a man possessed of considerable property, and he was also a headman for many years. He was a well educated man and of generous disposition. I learnt that he had died on the 12th October. Welin and the deceased were brothers. I have not seen Welin visiting the deceased. I live about 150 fathoms from the deceased's house.

20

On the 13th of October I was sent for to the deceased's house by Welin. When I went there Welin told me that Carthelis was retaining the keys of the deceased and had refused to give them over to him. He asked me to get them for him. When I questioned Carthelis as to why he had not given the keys to Welin, he said "I was a trusted man of the deceased for 20 years and I will give the keys only after the cremation of my master. If I give them before that, it will show that the trust is lost". Welin said "I will not fail to get possession of the keys". One was refusing and the other was insisting. Then Carthelis said that he would put the keys in a drawer and lock it and hand over the key of the drawer to me, he did so. I was given the keys and I had it with me.

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Sgd. JAMES JOSEPH,
Addl. District Judge.
25-8-43.

At this stage further hearing is adjourned for 27-8-43.

Sgd. JAMES JOSEPH, 40
Addl. District Judge.
25-8-43.

August 27, 1943.

Trial resumed.

MR. ADVOCATE R. L. PEREIRA, K.C., with MR. ADVOCATE RAJENDRAM instructed by MR. PARANAVITANE for petitioner.

MR. ADVOCATE J. E. M. OBEYSEKERA with MR. ADVOCATE MALALGODA instructed by MR. KANNANGARA for 1st respondent.

MR. ADVOCATE W. S. DE SARAM instructed by MR. GOMES for the intervenients.

10 D. H. JAYANETTI, Recalled, Affirmed.

On the 13th Carthelis put the keys in a drawer and gave me the key of the drawer. I did not hand over the key to Welin; I kept it with me. If I did not take over the key there would have been a big row. It was handed to me at about 8-30 a.m. on the 13th. I went to the deceased's house that day at 8 a.m. as a complaint was made to me. When I returned home Thomas called on me in my house at about 9-30 a.m. about an hour after my return. He told me that the deceased had left a last will, making Carthelis one of his heirs. Then I told Thomas: "Do not speak
20 about the last will now in the deceased's house. If you do so there will be a big row".

Thereafter, on the 17th, after the cremation, Welin himself came and asked me for the key. I told him: "I understand that a last will had been left by the deceased. I do not like to part with the key. I advise you to bring a suitable officer to me, and in the presence of the relatives and in his presence I will give over the key to you". On the next day (18th) Welin came to me with the Police Inspector of Welipenne. Then I handed over the key to the Inspector.

30 (Shown photograph P 25): I am one of the persons in this photograph. My figure is just to the right of the deceased. The photograph was taken on the occasion of the laying of the foundation stone of Prince of Wales School. The deceased was the manager of the school at the time. He had been helping the school. Later there was trouble between him and a teacher of the school. The deceased tried to discontinue the teacher but the Director of Education did not approve that. Thereafter the Government took over the school and the deceased's management was discontinued by the Director. I did not see the deceased visiting the school after that. After he
40 ceased to be manager he did not help the school.

No. 18.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Examina-
tion.
—continued

No. 18.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Examina-
tion.
—continued

Welin Siriwardene's brother was a priest. I knew him. His name is Jinaratne. There was a dispute between him and the deceased. At that time the deceased was headman. I succeeded him about 10 years ago. The dispute referred to occurred about 15 years ago. As a result of that dispute, the deceased was discontinued from the headmanship. Thereafter the deceased and Jinaratne were against each other. Jinaratne left the priesthood and married. After that the deceased visited the temple.

D. H. Jaya-
netti.
Cross-
Examina-
tion.

Cross-examined.

In the dispute referred to Welin did not take the side of the deceased; he sided the priest. I know that personally. In consequence of the dispute I do not know whether Welin and the priest fell out and that the brothers-in-law did not visit each other for a long period of time. I am not in a position to contradict that the two brothers-in-law were not on visiting terms in consequence of the dispute.

10

I am not related to the witness Thomas; we are not cousins. I am not related to him at all. Peter Jayasinghe is a son of Davith Jayasinghe. Davith is related to me through my mother. I do not call him "uncle". He is angry with me. I regard him as a distant relative. Therefore I consider Peter Jayasinghe also a distant relative of mine. I do not know Suwaris Jayasinghe. I know Sammy Jayasinghe. I do not know his father. I do not know that Sammy's father is also an uncle of mine. I have not seen him. Sammy Jayasinghe is not a relative of mine. There is no relationship at all between us.

20

It was after the deceased's body was brought to his house on the 12th of October that I knew of his death. I went to his house on the 12th in the night. I did not see Welin there at the time. I went there at about 9 p.m. and remained there for about 15 minutes. I could not talk to anyone in the house. They were all in a state of sorrow. Louis Paronavitane was also there at the time.

30

I went to the deceased's house on the 13th of October in consequence of a message I had received from Welin. Before I went there I recorded a message in my diary. The entry I made was as follows: "This morning at about 8 o'clock Welin Siriwardene sent me a message through Podi Singho asking me to come to the deceased's house and I went there". At the house the dispute was with regard to the delivery of the deceased's keys. Welin claimed possession of the keys as a step brother of the deceased. Sammy Jayasinghe was present at the time. I am not definite whether Thomas was also there; he may have been there. On that occasion the petitioner said: "I have been employed so long under the deceased. He has not yet been buried. If I give over the keys now, it will amount to a breach of trust". At that time the petitioner did not give any other reason for refusing to part with the keys. He however told me: "I am prepared to give over the keys to you".

40

On the 18th an inventory was taken in the deceased's house. On that occasion the Inspector of Police was not present. I went to the deceased's house on that day. The Inspector of Police Welipenne had not come there at the time. Welin told me that he was expecting the Inspector to come there. I met the Inspector at a junction and both of us went to the house together. The purpose of the Inspector's visit was to take an inventory of the movables in the house as well as to hand over the keys to Welin. I handed the key to the Inspector. I knew that the Inspector was taking the key from me to hand it over to Welin. At that time I did not tell the Inspector that I had been apprised by Thomas of a certain last will. Thomas had told me that the deceased had left a will. As Thomas was not an heir of the deceased and I was not shown the last will I did not tell the Inspector about it. Thomas did not tell me the terms of the will. I did not question him about the matter. All he told me was that the deceased had left a last will, making Carthelis the executor. I was present when the inventory was made. I am having a copy of it. (Shown inventory marked P 15): In the list with me no figures have been put in. R 15 is not signed. The copy with me has been signed. Certain of the signatures do not appear in R 15.

No. 18.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Cross-
Examina-
tion.
-continued

When a person having property within my jurisdiction dies, it is my duty to make a report to the Revenue Officer who then reports to the Government Agent or the Asst. Government Agent. In the case of the deceased I made a report to the Revenue Officer. In consequence of that report, the A.G.A. called upon Welin to administer the estate. (Notice issued to Don Welin Siriwardene dated 26th October, 1942, stating that the deceased had died intestate and requiring him to take steps to administer the estate produced, marked R 16). I reported to the Revenue Officer that the deceased died intestate. That report I made before my conversation with Thomas. I made it within two or three days after the deceased's death. The report was that a man worth a certain amount had died.

(To Court: In that report I did not state that the deceased had left a last will).

What I stated in the report was this: "A man possessed of considerable property has died in the General Hospital, Colombo, and Welin Siriwardene has come forward claiming to be a brother of the deceased". I did not report at any time to the Revenue Officer that Thomas had told me that the deceased had left a last will. In consequence of my report Welin was asked to administer the estate.

Thomas gave me information with regard to the last will on the 13th. My report to the Revenue Officer was made five or six days later. I am not certain of the date on which I made the report.

No. 18.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Cross-
Examina-
tion.
—continued

The school which was managed by the deceased is a bilingual school. Even after it was taken over by the Government, a local manager was appointed. Another manager was not appointed in place of the deceased. I do not know whether the school ceased to be a Grant-in-Aid institution. I do not know whether when it became a Government school, it ceased to be a grant-in-aid school. I only know that the deceased had some trouble with a teacher and that his managership was cancelled. I also know that the Director of Education came to the school several times for inquiry.

Cross-examined by Mr. Advocate de Saram

10

I first heard of the existence of the will on the 13th of October.

(To Court: I did not attach much importance or value to that information because I had not seen the will).

It was after I had received that information I reported to the authorities.

(To Court: I also mentioned in the report the name of Welin because I thought he was entitled to the estate and bound to administer it).

Although I had not seen the will, I did not think it my duty to inform the authorities that I had information that there was a last will. I had not seen the will. The deceased's house is about 150 fathoms from my house. I go to the deceased's house only when necessary. I could not visit the deceased when he was ill. I do not remember when I last went to his house before he left for Colombo. I have been there before his death. I visited his house whenever there was any necessity. I have gone there but I cannot remember when I last went there before his death. I went there on the 12th of October when his body was brought there, next on the 13th and again on the occasion of the cremation. On the 13th when the key was handed over to me I did not get any information about the existence of the will. About an hour after I received the key Thomas told me about the will. I did not take the key because there was some allegation that somebody claimed under the will.

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D. H. Jaya-
netti.
Re-Exami-
nation.

Re-examined:

I got the inventory signed by 7 witnesses. The copy produced is only signed by three of them.

It is no part of my duty to report what I hear. I merely heard of the existence of the will; I did not see the will.

(To Court: I have known Welin for about 30 years. His father married twice. Welin was not on good terms with the deceased.

40

Sgd. JAMES JOSEPH

Addl. District Judge.
27-8-43

CECILIA SIRIWARDENA: Affd. 40. Wife of Don Lewis Beddewitarne, Galmatte.

No. 18.
Petitioner's
Evidence.
Cecilia
Siriwardena.
Examina-
tion.

10 My husband is a native physician and trader. The deceased was my elder brother, born of the same father, we had different mothers. My birth is registered. My mother was Alpi Nona Weerakoon Hamine. She was the third wife of Caranelis. I do not know whether they were married after I was born. Before I married I was living in my father Caranelis' house. After his death also I lived there. I used to call the deceased Loku Aiyar. He lived at Galmatta in a different house. I got married from my father's house. Thereafter I lived with my husband at Bentota. I married after Caranelis' death. A dowry was provided for me by brother Welin Siriwardene and others. I married in 1925. I remained in Bentota till 1937 for about 13 years. Thereafter I took up residence in the deceased's house. At the date of his death, I had been living with the deceased for over six years.

20 Lily is my sister. When she married she was living in the deceased's house. At the time of her marriage, she was living in the deceased's house. Before her marriage she had been living there from 1925. She married in 1937. She lived there from 1925 till 1937. After I married in 1925 Lily took up residence in the deceased's house. Her husband is dead. After his death, she was brought back to the deceased's house. At the time of the deceased's death she had been living there for three months. During the six years I was living in the deceased's house I was managing the house, acting as the "lady" of the house. During that period, before his final illness, he used to fall ill. He was having stomach trouble off and on; I cannot say for how long. I attended on him. I was in his house when he fell ill finally. At the start he was treated by a native physician and thereafter by the Government doctor at Beruwala. Thereafter the deceased was removed to the General Hospital in Colombo. I continued to remain in his house. I am still living there. After I was given in marriage my sister and others were living in the house. Welin Siriwardene and his younger brother made an attempt to turn them out of the house. After the deceased died an endeavour was made to get me also out of the house. That attempt was made by Welin. I call him "brother". The deceased was called "Loku Aiyar" by me. The Police held an inquiry with regard to the attempt to get me out of the house. Welin was warned not to disturb my possession.

40 Welin and the deceased were not on very good terms; they were more against each other. I do not know exactly why they were not on good terms. Welin never visited the deceased, although they were living only 2 or 2½ miles apart. I have known Carthelis for 19 or 20 years. He was working under the deceased in the deceased's house. All throughout he was treated by the deceased as his own son,

No. 18.
Petitioner's
Evidence.
Cecilia
Siriwardena.
Cross-
Examina-
tion.

Cross-Examined.

Caranelis Siriwardena married three times. I do not know the name of his first wife. I know that by his first wife he had an only child named Frederick. I have heard that the second time Caranelis married Engo Nona. I do not know the name of his second wife. By that wife he had four children. The first child Jane married Brampy Kannangara and by that marriage she had four children. Those children are alive. The second child was Don Welin. The third child by Caranelis' second marriage was Davith who married Sopinona. Davith is dead. By Sopinona he had 6 children. I am not certain of that. He had a number of children. The next child Eminona is still alive.

10

The deceased was not on very good terms with anybody except with me, my sister Lily and Carthelis. He was on good terms only with those who were living in his house; not with those living outside. I do not know the cause of the displeasure between Welin and the deceased. I know that there was litigation between the deceased and Davith, but I cannot say definitely why that litigation arose. The deceased and Eminona were not visiting each other. My mother was a woman of Paiyagala. My father was from Kolahakade. I do not know whether my mother was first married to a man called Moonis.

20

(MR. ADVOCATE OBEYASEKERA produces, marked R 17, decree of divorce in D. C. Kalutara case No. 4142, entered on 14th December, 1909). I do not know whether my mother was previously married. I married on the 6th of February, 1925. (Shown marriage certificate marked R 18): This is my marriage certificate. At the date of my marriage I gave my age as 23 years. I must have been born in 1902. I have heard that my mother was divorced from her first husband. She did not tell me that. Her full name is Alpi Nona Weerakoon Hamine.

When I was living with Caranelis, the deceased was living in another house. I continued to live in Caranelis' house after he (Caranelis) died until I married in 1925. I married a man of Bentote and went with him to live there. Two children were born to me in Bentotte. They are aged 13 and 10 years respectively. They lived with me in Bentotte. My husband's interests are in that place. It is my brothers who attended to the necessary matters with regard to my wedding. A dowry was provided for me out of my father's property. My brothers also contributed towards the dowry. The deceased Frederick's contribution was a share in a land called Ranmuttugalwatte. The land belonged to the deceased but it was given as from my father. The deed was signed by my father. Fredrick did not sign any deeds. Neither Welin nor the other brother Davith gave any property to me by way of dowry.

30

40

(To Court: My brothers have also signed deeds in my favour—two deeds. I have deeds signed by them. The lands have been sold).

My sister Lily is two years younger than I. She must have been born in 1904. She married a man of Dodangoda and went there to live with him. He died three months after marriage. She married another man and that husband also died. The deceased Frederick gave money to her by way of dowry.

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I returned to Galmatte in 1937. In 1937 I was residing there. My rice coupons are drawn at Galmatte. At the start of the present rice control I drew my rice coupons at Bentotte. When the rice control started I remained at Bentotte for some time. During my children's school holidays I used to go there and remain for a month or so. I did not first draw my coupons at Bentotte. I cannot say for how long I drew the coupons at Bentotte. I did not remain there for over a month on each occasion I went there.

After the deceased died Welin did not say that my sister and I were pilfering things in the deceased's house. He locked the door of the house and asked us to leave the house. I am remaining there in consequence of an arrangement between the two proctors in this case. I was in the house on the 5th of October. I do not know anything about the writing of a last will.

20 *Re-examined.*

Cecilia
Siriwardena.
Re-Exami-
nation.

I did not say that the deceased Frederick gave me two properties. I produce certified copy of deeds 12747 (P 26) and 12748 (P 27) both executed on the same day, namely, 22nd February, 1923. (See the attestation clauses).

For my children's school holidays I used to go to Bentotte. I used to get our rice coupons transferred to Bentotte on those occasions. We did not remain there for more than a month each time we went there. My permanent home is at Galmatte.

30 Sgd. JAMES JOSEPH
Addl. District Judge.
27-8-43.

E. T. Mc INTYRE: Affd. 34. Examiner of Questioned Documents.

E. T. Mc
Intyre
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tion.

I have been in practice for seven years. I have given evidence in almost all the District Courts of the Island as an Examiner of Questioned Documents.

40 I examined the disputed signature submitted to me by the proctor for the petitioner; that is the signature in the document "A". I was given 21 standards to be compared with that signature. The standards include six signatures of Mr. D. F. Siriwardena appearing on prevention of rubber theft forms, five of which have been signed in 1942 and one in 1941. They are marked P 9—P 14 filed of record. I further had the opportunity of examining six signatures of Mr. D. F. Siriwardena at the District Court of Kalutara. Those Signatures were

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on six proxies in Case No. 22817 dated 22nd December, 1941, Case No. 22300 dated 6th November, 1941, Case No. 22451 dated 21st July, 1942, Case No. 21764 dated 26th August, 1940, Case No. 21707 dated 20th December, 1939 and Case No. 21976 dated 11th November, 1940. All those cases are actions in the District Court of Kalutara. I also examined nine other signatures appearing on coupon issue cards of the Rubber Control Department. They are all bound together marked P 15.

I was asked to report whether the signature appearing on the will has been written by the hand that signed those standards. I expressed the opinion that they were signed by one and the same hand. I examined the signatures under "transmitted" light. I have here the apparatus I used in that examination. I examined the signatures with a magnifying lens with the light underneath. I also photographed the signatures and enlarged them. The disputed signature (marked P 28) has also been enlarged. 10

I further produce marked P 29 an enlargement of four standard signatures appearing on prevention of rubber theft forms. The first enlargement is marked P 12, the second P 13, the third P 14, and the fourth P 11. I next produce my report marked P 30. In the examination of the disputed signature I have applied every test necessary. That signature has all the symptoms of genuineness. I have under separate sheet given my statement of reasons, marked P 31. The first reason is this: The alignment of the disputed signature agrees with that of the admitted signatures. Alignment is an unconscious habit. 20

(To Court: In P 28, the signature goes upwards as it reaches its end).

The second letter "F" is not joined to the following letter "S" in the admitted and disputed signatures. The initials are written in one movement of the pen. The "S" has been written in such a way as to form part of the crossing of the "F". "D" and the downward portion of "F" is all one movement. The letters "iriw" are also one pen movement. The next movement "ardene" is the last pen movement. The letters "ene" are absorbed in a line. The whole signature presents an angular writing. The admitted and disputed signatures are consistent with regard to the writing of the letters "iriwardene". 30

My next reason is that the construction of the letters in the admitted and disputed signatures agrees. The next reason I have given is that the spacing of the letters in the signatures agrees. The spacing between "D" and "F" is nearer than that between "F" and "S". Spacing is also an unconscious habit. The disputed signature shows abandon and easy flow and carries the hall mark of genuineness. There has been no hitch or delay in the execution of this signature, and there are no circumstances which point 40

to any suspicion as to the genuineness of the signature as there is no tremor of fraud. In investigating into a forgery it must be borne in mind that the most common symptom is that drawn and hesitating line quality at certain points of the letters. Flowing starts and flowing finishes where the action of the pen precedes the writing of the stroke and continues beyond almost vanishing point are always found in free and natural writings, and as a rule they are a very important indication of genuineness. If in a signature the writing indicates that the writer did not think of what he was writing, that is a sign of genuineness. Forgery is a self-conscious act while natural writing is almost automatically written, unconsciously. Abbreviated, distorted and illegible forms which have been written sufficiently freely and rapidly indicate genuineness. There is no doubt that the disputed signature is the genuine writing of D. F. Siriwardena.

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(After the Luncheon Interval).

I spent nearly half a day examining the six records at Kalutara.

Cross-examined:

I have been an Examiner of Questioned Documents for the last seven years. Prior to that I went through some training in the Institute of Graphology in London. That consisted of a few months study. There I had to attend a series of lectures for six months, and then I was asked to submit a thesis. Thereafter I returned to Ceylon and set myself up as an expert. I am also a finger print and Poroscopy expert. "Poroscopy" is the identification of animals and human beings by the pores. I have not given evidence in Ceylon as a Poroscopy expert. I have only presented a thesis to the S.P.C.A. to enable the prevention of branding animals by identifying them from the pores.

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tion.

So far as the standards are concerned the only photograph I am submitting are four photographs on the document P 29. These four standards were all taken from the rubber theft forms. My opinion regarding the resemblance of letters by alignment etc. is based upon the four enlargements.

(Passage from page 287 of "Questioned Documents" by Osborne put to witness): I agree with the statements made there. The first ground of my opinion is the agreement of the alignment in the disputed and admitted signatures. The alignment of P11, P 13 and P 14 agrees except the alignment of the letters "F" and "S" in P 11 and P 14. The alignment of the whole signature on the impugned document does not go up as it continues. The whole picture of the signature is parallel to the basic line. That is so in P 11; not in P 12 and P 14 where the signature ascends. The signatures in P 12 and P 14 not being parallel to the base there is a certain angle with the base.

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It is correct to say that of the disputed signature P 28 also. The angle formed in P 28 is much larger than the angle in P 12.

(Mr. Advocate Obeysekera produces an enlarged photograph of the impugned signature, marked R 20; also enlargements of five standards marked R 21).

(Shown R 21): The alignment of the initial "F" in the first signature in this document extends beyond the base line; it goes below the base line. That characteristic does not appear in the second standard in R 21. There the "F" is almost parallel to the base. It is almost parallel to the base of the letter "D". One characteristic of the genuine signatures is for the "F" to be sometimes elongated below the base. That is not so in all the standards. It is a feature, not a fixed characteristic. That feature does not appear in the disputed signature. In every admitted signature a line has been drawn under the signature. That does not appear in the disputed signature. Every signature in R 21 has an underscore but it does not appear in the disputed signature. An opinion as to the genuineness of a signature based on alignment only would not be a sound one. The opinion would be sound if the question of alignment is considered collectively with other arguments. Alignment itself would not afford any sure ground for resting an opinion. The third signature in R 21 agrees in alignment with the disputed signature. The majority of the signatures in that document do not agree with the disputed signature. Alignment need not be with the base line. It may be with the line to which the letters reach, the top line. In the disputed signature the "F" reaches just the height of the initial "S". In the first four standards in R 21 the top of "F" goes considerably above the top line. "F" goes higher than the "D" in all the signatures in R 21, except in the last signature where those two letters are almost parallel. In the disputed signature also those letters are almost parallel. In R 21 the top of the "F" goes considerably above the top of the "D". That is a point of alignment where the disputed signature differs from the four standards in R 21. The "W" in the disputed signature is not on the same level as the rest of the signature; it is on a higher level. But that is not so in every one of the standards appearing in R 21. The second dot separating the "F" from the initial "S" in the disputed signature is on a higher level than the first dot separating "D" from "F". But in the standards the two dots all appear below the base line either on the base line or below. I also considered the line quality of the initial letter "D". It is my opinion that letter represents one stroke of the pen. In the photograph R 20 the initial stroke of the "D" is not a steady line because the letter has been highly exaggerated. If that is done the serration of the edges look like tremors. The initial stroke of the "D" in the disputed signature looks much steadier than the "D" in the photograph. I do not agree that at the end of the bottom stroke of "D" the pen was halted and the next little upward stroke and the loop written. There is an ink

flow at that point. I deny that there has been a pen lift at that point. There the pen may have been stopped but not lifted. I do not admit that there has been some hesitancy at the downward bend of the letter. The point where the upward stroke of "D" ends and the next stroke is commenced suggests either a pen lift or a heavier pressure of the pen. In the signature on P 12 there is a similar movement of the pen.

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Q. That Stroke of "D" is continued and where it comes in conjunction with the downward stroke, there is a smudge of ink suggesting a pen halt.

10 A. To a layman it may appear to be so, but not to an expert. To an expert that smudge does not suggest a pen halt. It shows that when making the first downward stroke there was plenty of ink on that line and that when the stroke was taken up, the ink came into conjunction with the pen. A layer of ink can exist upon a thin stroke in proportion to that stroke. A pen halt is not apparent to me. The initial "D" does not show at least five strokes of the pen. The letter is completed in one stroke. The pen may have been halted at the top portion of the lower loop of "D". In all the standards in R 21, "D" is one continuous letter freely written. I admit that the D's in R 21
20 are written with one action of the pen freely written as distinct from the "D" in the disputed signature. The "D" of the disputed signature disagrees only with the D's in R 21. But with other standards it agrees.

(Shown R 20): I admit that the top stroke of the "D" has been definitely stopped and the initial stroke "F" formed with a separate stroke. That does not appear in my standards. "D" and "F" are just one continuous stroke. Except in P 12 there is not that disjointed movement of the pen in all my other standards. In my statement of reasons P 31 I have stated that the letter "F" is not joined to the
30 following letter in the admitted and disputed signature. When I stated "not joined" I meant that "F" and "S" do not form a continuous stroke. In all the signatures that were compared I found that the horizontal crossing of the "F" forms the commencement of the "S". Anybody copying the deceased's signature cannot afford to let that out of account. The crossing of the "F" is part of the "S". In the disputed signature the "D" and "F" have been written separately.

(To Court: The top of the "F" is an unnatural point to stop and begin again).

40 I have stated as my fourth reason that the deceased's signature "presents an angular writing and this is consistent in both sets of signatures". In the disputed signature the initial letters "D" and "F" are about the same height but in the standards the "F" is always elongated to a point much higher than the "D". That is so in some of the standards. In four of the standards produced by the respondents "F" is continued to a point higher than the "D".

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(To Court : The slope becomes more and more pronounced as letter after letter is written: Thus "F" is higher than "D" and "S" higher than "F". What the writer has done almost unconsciously is to create a slope as the picture becomes higher and higher).

A feature of the writing is to start the initial "D", then the "F" gets a little higher and the "S" a little higher than "F". That characteristic is present in the disputed signature; I am sure of that. In the disputed signature produced by me "D" and "F" are almost in a level. "S" there is higher. In R 21 also the "D" and "F" are almost in a level.

10

With regard to construction I have referred to it in the sense of the formation with the pen. (Another passage from Osborne at page 180 put to witness): I have applied all the tests. I did not mention in my report the question of hesitancy and halts. The standards agree with the disputed signature in every way. In my report I have referred to construction and absence of hitch or delay. I expected to be tested on those points. In the disputed signature the letter "F", the ending of the "D" and the beginning of "S" are two movements. There is a similar habit shown in P 12. In the standards and the disputed signature there are no pen lifts besides the particular pen lift I referred to. A natural pen lift in the standards if it is reproduced in the disputed signature would be an indication of genuineness. The letter "i" after the letter "S" is independently written from "S". In the disputed signature the "w" is independently written, independently in the sense of a stop and a restart which is found in the admitted signatures in R 21. In R 21 the writer has a better style of writing than in my standards. It may be that the first signature in R 21 is an old one written when the deceased's strokes were bolder and firmer. Over-writing of a letter is ordinarily a suspicious feature; not always. Some people have a habit of re-strengthening lines after they have been written. I may mention the particular case of the base of the letter "S". Over-writing looks like an attempt at correction or to reproduce a feature in the standard. The peculiarity at the base of the letter "S" in the disputed signature looks suspicious. But the base of the "S" (the hook) in R 21 also creates a little suspicion. (R 21 shown): The appearance of the little island of "S" can be due to the fact that when the upward stroke was written the ink was less. That is definitely two strokes caused either by no flow of ink in the nib or an attempt to re-strengthen.

20

30

(To Court : It is not an instance of re-writing or over-writing. It may be due to the fact that the writer had pressed the pen causing the two points of the nib to part).

40

In the disputed signature too you find an island.

(To Court : The island in my standards is a natural one; in the impugned signature it is an artificial one. The island in the top signa-

ture of R 21 is the result of the two points of the nib parting because of a bolder pressure of the pen upon the paper at the end of "S". The "S" was completed by another stroke going downwards. There is an island at the bottom of "S" in the impugned signature also. The island is bounded on the north and south by something like two parallel strokes, formed by the parting of the two points of the nib as in R 21. It is possible that an attempt was made to restrengthen that portion. The island may be due either to that or to the parting of the points of the nib. I agree that it is not natural for a man who makes only the little horizontal stroke in question to make it with such force as to cause a parting of the points of the nib.

10

In the admitted signatures the letters "iriw" are written as one section and "ardene" as another. Those sections in the standards appear in consequence of a definite space. In the first signature in R 21 there is a space after "w" and in the second, third, fourth and fifth also. In P 12 there is no such space. Apart from P 12 there are spaces in my standards. In P 9 and P 10 there are no spaces. In P 11 there is a space, also in P 13 and P 14; not in P 12. In the large majority of the standards there is a space between the "w" and the "a". That is a characteristic, but not a consistent one because in some of the signatures there are spaces but no spaces in others. In the signatures on the three rubber registration forms (P 9-P 12) there are no spaces. In my productions I cannot recollect whether there are spaces in every one of them. There is no space in the disputed signature. I do not regard that as an important point of difference. Comparison between the standards and the disputed signature shows a characteristic or habit of the writer to make a space or not to do so. Both those are common to the writer.

20

(To Court: In P 9, P 10 and P 12 there is no space between the "w" and the "a", but in P 11 there is such a space. In P 12 there is no space. All the other signatures have spaces between "w" and "a". Therefore the space in question is a common habit of the deceased. To make a space or not to do so are both common habits of the deceased. The habit is to make a space and not to make a space is an exception to that habit).

30

In the first signature in P 15 there is a space and also in the second signature. In the third there is a very thin connecting line, in the fourth there is a space and in the fifth there is a thin line connecting "a" and "w". In P 15 barring four signatures the rest have spaces between those letters. Even in those four signatures the "w" is not continued on to the "a". The end of the "w" touches "a"; it is not a continuation. In the fifth signature in P 15 the "a" is continued from the "w". In the sixth signature the "a" and the "w" are definitely joined.

40

The "w" in the disputed signature is not formed with an initial horizontal stroke. That letter is something like "m".

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(To Court: The first downward stroke of what appears to be "m" is an "i").

The letter "i" is the first downward stroke of what appears to be "m". In relation to that stroke the dot is almost on top of that parallel stroke in the standards. In the first standard the dot is almost on the top of the "i". The second dot is almost on the top of the other "i" in R 21. In the third signature the dot is further to the right). I do not agree that the horizontal stroke below that dot is the initial stroke of the "w". In the first signature in R 21 I do not concede that the dot of the second "i" appears over the "w". In the disputed signature between the line that connects the "i" and the "r", there has been a pen halt or a lift. There are no uncommon lifts in the signature. In P 9, P 10, P 12 and P 13 you find these lifts, what I call the connecting strokes between the "i" and the "r". All depends on the habits the writer had formed.

10

After the "w" the "a" in the disputed signature is one large blotch of ink. That might have been the result of hesitancy at that point; rewriting.

(To Court: If it was intended to be the picture of "a", there should have been the "a", but there is no "a". When we write a letter involving a loop, the ink sometimes drops and a blotch occurs. When you dry it immediately with a blotter, the loop becomes apparent. But you will not be able to see the loop if the ink remains there and dries up).

20

When a man wants to copy he would copy minutely—in detail. The stroke at the end of the disputed signature is a very daring one which I doubt a forger would risk. In P 12 and P 13 that same horizontal stroke appears; after "a" there is almost a straight line. In P 13 there is more attempt to form the letters than in P 12. In P 15 also the final part of the first and third signatures is almost a line as well as in the sixth signature. In the disputed signature there is an attempt to form a letter after the "a".

30

(To Court: There is a "hump" dividing the final stroke of the "a". Except for that "hump", there is no effort visible to make any letter).

But in P 12 it appears as if there had been an effort to make a letter. In P 13 there is an attempt to make two letters. In P 15 there is only one attempt to form the letter after "a". The impugned signature is the only signature where I cannot discern an attempt to form a letter, except for the hump. In P 15 after "a" there is no attempt to form any letter at all; after the "a" there is "r" but "dene" is altogether absent. In P 15 there are no letters after "r", but in the impugned signature there are no letters after "a". In P 15 the writer has carried on the letters to one or two letters beyond "a". The disputed signature has an angular hump.

40

(Shown R 21): The dot over the first "i" consists either of a horizontal stroke or a stroke in a downward direction. It is an actual stroke; not just a dot. In the disputed signature it is a stroke downwards with a heavy pressure of the pen, a pressure which has produced an inverted shape, an angle. That is quite a different stroke to a dash.

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By "abandon" I mean the dash with which the disputed signature ends. There is abandon in the writing of the letters "iriw". The abandon begins with "i". Even the whole signature is written with abandon, without any care for particular drawing or hesitating strokes, with an easy flow of ink. The flow of ink would have been heavy and easy; it may have been copious. An easy flow does not limit itself to a copious or less flow. "Easy" flow may have either a lot or a little of ink. When a person dips a pen in an ink well and writes the ink flows very freely from the pen to the paper unless there is some obstruction. In some instances the ink does not flow and then you find retouching and repairs. Easy flow of ink does not depend on the writer himself but on the quality of the pen. It is not a writing characteristic and does not afford a sure foundation for an opinion. One part of the disputed signature shows that there was a copious flow of ink. That may have been due to the fact that the writer stopped at that point, dipped the pen and re-started. Before the writing of the blurred letter you find the ink became lesser at the ending of the letter "w". Therefore the pen used may have been a fountain pen. I cannot form any opinion on the flow of the pen. I did not form an opinion on that point. I maintain that the writing of the disputed signature there is abandon, that is carelessness. If you call it a forgery I call it a very careless forgery but forgery is a careful act. By "hall-mark of genuineness" I mean the signature has abandon and carelessness. All the factors of genuineness plus abandon and carelessness carry the hall-mark of genuineness. The phrase "hall-mark of genuineness" is not mere verbiage. It combines all the reasons I have given in my report (1-7).

By the word "hitch" I mean this: The writer did not stop and hesitate at a point and begin his next letter. By "no hitch" I mean he went on writing without stopping. By "suspicious characteristics" I mean new features unknown to the writer of the disputed signature or features introduced into the disputed signature. If all the habits of the writer of the standards are present in the disputed signature I would call the impugned signature a genuine one. Circumstances which are suspicious are the absence of certain characteristics of the writer of admitted signatures in disputed signatures. Some of these characteristics are alignment, the space between the letters, the line quality. I have mentioned them. When I state "The signature has been written with a flowing hand" line quality is involved. I say that the line quality of the admitted signatures compares with the line quality of the disputed signature.

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I have also stated that there is no "tremor of fraud in the disputed signature". In the letter "D" in P 12 there is tremor similar to tremor in the disputed signature. Even the formation of the "D" is the angular hump the same in both the signatures.

(To Court: These humps ordinarily are "humpy" and round. But here it is angular).

I say that there is no tremor of fraud in the disputed signature. A tremor of fraud is usually shown by a strong hand. Ordinarily a tremor would be a tremor throughout due to physical infirmity or old age.

10

Sgd. JAMES JOSEPH,
Addl. District Judge.
27-8-43.

It is 4 p.m. now.

Further hearing is fixed for August 30 and 31 and September 2, 1943.

Sgd. JAMES JOSEPH,
Addl. District Judge.
27-8-43.

August 30, 1943.

20

Trial resumed.

MR. ADVOCATE R. L. PEREIRA, K.C., with MR. ADVOCATE RAJENDRA and MR. ADVOCATE MAHADEVAN for the petitioner instructed by MR. PARANAVITANE.

MR. ADVOCATE J. E. M. OBEYSEKERA with MR. ADVOCATE JAYASUNDERA and MR. ADVOCATE MALALGODA for 1st respondent instructed by MR. KANNANGARA.

MR. ADVOCATE W. S. DE SARAM instructed by MR. GOMES for the intervenients.

E. T. MC INTYRE: Recalled.

30

(Cross-examination continued by Mr. Advocate Obeysekera).

I did not take into account the question whether a steel pen or a fountain pen was used in writing the disputed signature. It is possible that the signature was written with a steel pen. Ink writing must be compared with ink writing. The standards P 9—P 15 on which I relied are written in ink. The signatures on P 15 are all in pencil. Therefore those signatures do not afford a very safe standard. Formal

documents should be compared with formal documents as a rule. The signature on a last will can normally be compared with signatures on deeds and proxies as opposed to signatures on documents like rubber theft prevention cards which are much less formal documents.

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10 The portion following reason 10 in my report P 31 was dictated by me to my typist. Osborne and I have very much the same style. (Passage on page 364 of Osborne read). There is agreement between my composition and Mr. Osborne's. I use the language of the text sometimes, sometimes my own language. I summarised the report; I dictated that summary to the typist. I did not have Osborne before me at the time.

I agree that in the disputed signature there is rather great variation of pen pressure. Extreme variation of pen pressure is a habit the writer would have maintained in any signature he wrote. That is present in some of the standards.

20 (Shown proxy in D. C. Kalutara Case No. 22817): In the disputed signature reference has been made to a connecting stroke, heavy pressure exercised on a horizontal stroke, the joining of "i" and the preceding stroke "r" and the pressure on the beginning of the "w"; all that is duplicated on the signature on the proxy, marked P 32. (Proxy in Case No. 29176, D. C. Kalutara marked P 33; proxies in the following D. C. Kalutara cases also marked: No. 21764 (P 34); No. 22300 (P 35); No. 21707 (P 36) and 2245I (P 37).

30 The pressure is always strong on the downward and horizontal strokes in the admitted and disputed signatures. In those strokes the same variation of pressure is to be found in the standards and the disputed signature. In the upward strokes there is no pressure at all. The pressure on the downward stroke of "r" in the disputed signature and in P 9—P 12 has similarity. If I put aside the "C" forms and take into account other standards, I may have to re-examine my opinion in the light of those other standards. There may be signatures written later than those on R 21. If those are comparable standards on the basis of those standards, I may have to reconsider my opinion. Without the "C" forms if I take the rest of the forms I will have to have to revise my opinion. The further standards produced on Friday were not given to me. They were asked for from the other side, but they were not given.

40 Fr. Julian and I first compared the signatures independently and later consulted each other. I may have seen notes of his report. I have not read the report itself. Fr. Julian works on rather different lines. He has his own methods of identification different to mine. We arrived at the same opinion. We did collaborate. We agreed in our opinions. He applied different tests, and I different tests, but we

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arrived at the same conclusion. I am also a Graphologist. I did not apply graphological methods in arriving at my opinion. Fr. Julian is essential a Graphologist. Graphology is a higher science in relation to handwriting. Fr. Julian is concerned with testing the handwriting of a person and telling what type of person it represents. First we have to identify the handwriting, then draw inferences as to what type of man is represented by that writing; that is graphology.

(To Court: A graphological expert arrives at some view as to the character of the writer. The procedure in Graphology is this: First we identify the writing, how the writer has made the strokes, the peculiarities of the writing, then we draw our inferences as to the type of man. The next step is not deciding whether such a man would have written an impugned signature we have to examine).

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(Shown R 22): There are here only four clear signatures. (Shown R 23, photograph of the witnesses' signatures): I cannot read Sinhalese. The first and second signatures are P. K. Somaratne. The third writing looks different from the first two. That third signature which is different appears in P 12. P 12 is one of the standards I had to have recourse. The largest recourse I have had to P 12. If I put aside P 12, I will not have to reconsider my opinion. If P 9—P 12 are put aside I will have to do so. It is probable that the person who wrote the signature on the last will wrote the signature on P 12.

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I have admitted that at the end of the capital "D" there is apparently a halt and the initial stroke of the "F" written from a slightly higher point. That peculiarity also appears in D 32. I maintain that in P 32 that there are two different strokes between the beginning of the "w" and the end of the preceding letter. I find a disjunctive stroke there. Apart from P 12 that feature is found in D 32. I have also said that at the bottom of the initial stroke "F" in the disputed signature there appears to be a cross stroke. I cannot show that in that form in any of the admitted signatures other than in P 12. I have admitted that the dot over the first "i" in the standards is a dash. Such a stroke is found in P 12 and P 14; that is a stroke, not the kind of dot found in the disputed signature. That kind of dot is found in several of the standards. The signatures on P 12 and P 33 have that kind of dot. When the pen was pressed a kind of angle was formed. In P 33 the dot is certainly a stroke. When putting that dot the writer has used pressure; so the top has been widened. In P 33 the dot is the result of a definite writing of a left to right stroke. It is a kind of stroke made by the writer and for the purpose of that stroke his pen moved in two directions; that is so only in the admitted signatures. In the disputed signature the first dot does not consist of two strokes formed at an acute angle to each other. I now admit that there is no resemblance between the dot in P 33 and the dot in the disputed signature.

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(To Court: In the admitted signatures, invariably the first dot is not a dot but a dash, except in P 14. In the impunged signature that dot was not written as a hook but has the appearance of a hook due to the pressure of the pen, whereas in all the standards the dot has been written either as a dash or a hook, except in P 14 where that particular kind of dot has not been made. In P 14 the dot is a sort of comma.

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(To Court: In any of the standards the dot is not a dot).

10 I think the spacing between "F" and "S" is the same in the disputed and admitted signatures. In P 12 also there is a blotch in the "a". The blotch in the impunged signature is not reproduced in P 13. There is a similar blotch there in the letter "d", not in the letter "a". In the beginning of the letter "D" in the disputed signature there is a crook. You do not find that anywhere in the standards. In P 12 on the top of that letter there is a semblance of a crook. Several of the defects in the impunged signature are not seen in the standards, except in P 12.

Cross-examined by Mr. Advocate W. S. de Saram:

20 When I was asked to examine the signature on the will I was told by the proctor who retained me that the will was impunged. I have studied forgery for seven years. I have read about the methods of forgers, and I have learnt where the chief pitfalls in forgery are. When a forger forges a loop, there is always a pitfall. In the "D" in the first signature in R 21, a forger making an upward stroke would make it go up extremely. A man writing naturally his own handwriting or signature would have the habit of knowing how far to go before coming down. Unless he is careful a forger might send his pen too far up or too far down. That is a natural pitfall. When examining signatures I am very careful to see whether a man writing an upward stroke has done so fluently. In the case of the forger, I would expect a stop indicated by a pen lift caused by a different formation of the letter. In the standards in R 21, the backward stroke of the back of the "D" goes up freely. There is a rotundity in the back of that letter in all those standards. In the impunged signature there is no such rotundity; there is an angle. That is not due to a forger meeting with a pitfall. That is an indication of forgery. To a forger the writing of a down stroke is fairly easy. The back of the "D" is different from that of the standards in R 21. That is where the forger can meet with one of the pitfalls. The bottom of that letter is another place he would have to look to. When a man has to make the round back of the "D", he will do it freely. I have said that in the standards where the writer gets to the back loop of the "D", there is a curve or loop and then he goes towards the right to form the "F". In the enlarged photograph of the impunged signature there is a retracing and the loop is absent there. That is another point where a forger would have met a

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pitfall. A person who keeps on writing develops a certain style. In going to the top of "D" and coming to the "F", there is no break. In the impunged signature, there are curves made. That is a fourth point where a forger would meet a pitfall.

In the impunged signature the down strokes of the "D" and "F" are closer together than those of the "F" and "S". In R 21 you find exactly the same reproduction of the spacing between "D" and "F" and "F" and "S". In the impunged signature the difference is not greater than in the standards. For instance in the first signature in R 21, "F" and "S" are further apart than the "D" and "F". In the impunged signature the distance between "F" and "S" and "F" and "D" is not greater than in the standards. I have measured the distance. A man writing his ordinary signature would not think of the spacing. Spacing is an unconscious habit. In the impunged signature the downward stroke of the "S" sort of converges towards the bottom of the down stroke of the "F" more than in the standards. The writing of an angle in a downward stroke is another recognised pitfall.

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I have examined the signatures by turning them upside down also. I do not know whether forgers turn the signatures they copy upside down. If the admitted signatures are turned upside down you can see at once a striking difference in the back of the "D" in the impunged signature. The down strokes of the "F" and "S" may be steeper in the impunged signature than the similar down strokes in the impunged signature. I have admitted that the down stroke of the "F" and "S" in the fifth signature in R 21 are more or less more parallel than in the impunged signature. In the fifth signature the down strokes of the "F" and "S" are not parallel; they are diverging. The general trend of the strokes there is not more or less parallel. I do not find in the standards a certainty in the capitals not found in the impunged signature.

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It is a recognised rule in studying handwriting that the standards must be as nearly as possible similar to the documents to be compared with. In R 21 the first three standards seem to be old ones. One of them has been written in 1935 and another in 1930. The age and condition of a writer has a lot to do with regard to his signature. I agree with the statements in the passage in Osborne on page 32, beginning in the 7th line and also with the statements in the last paragraph on page 365. On page 288, Osborne gives a series of points to which an expert should direct himself. I gave my attention to those points when I considered the signatures.

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(Shown R 21): If the signatures here are those of D. F. Siriwardena they show marked differences from the later signatures on the proxies; very divergent differences. "D" has a diagonal absent in any

of the standards. The connection between "D" and "F" is absent in any of the standards. The first signature in R 21 is the only standard where there is any resemblance in the "r" to the normal written "r". There is a definite pen lift there after the "i" where the final stroke of the "i" crosses on to the "w". The dots are more or less parallel. In the second signature the dots are below the "D" and the "S". The first one has only a normal small dot. The second has also a dot slightly widened at the base. The dot over the two "i's" in no two of the five standard signatures are the same. In the first, the dots are at an angle; in the second they are almost horizontal; in the third almost at an angle but somewhat horizontal; in the fourth the second dot is like a comma; in the fifth it is curved and in the fifth it is somewhat similar to the dots in the impeached signature.

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In R 22, only three of the signatures are clearly visible, viz. the second, the fourth and the fifth. The signature somewhat smudged in P 12. I have drawn attention already to the similarity of the "D" there to the "D" of the impeached signature. In P 12 the down stroke of the "F" also tends to converge as it goes downwards.

The proxies produced were signed in 1939, 1940, 1941 and 1942, the earliest being in 1939. (Proxy of 1939 marked P 36 shown): In this you find no loop of the "D" at all; the curved hump of the "D" is absent. The "D" had been executed here in two independent pen movements. At the base of the "F" there is a tendency to make a sort of small tick to the right. The "S" has no loop at all at the top. Four out of the five specimens in R 21 have a loop.

(Shown proxy of 1940, marked P 33): Here the initial three letters are all joined. The writer appears to start his normal "irw" with some mistake. The first stroke behind the "S" is a redundant stroke.

(Shown the proxy signed in August 1940, marked P 34): The gap between the "w" and the "a" in "Siriwardena" is very marked here and I also draw attention to the dots of the "i's". (P 35 dated November 1941 shown): Here an endeavour has been made to write the initials in one pen movement but on reaching the top of the "F", the writer has lifted his pen for some reason and made a simple down stroke for the "S". Here again the alignment of the initials is slightly upwards.

(Shown P 37, dated July, 1941): In the deceased's signature here also the "D" is written in two strokes. In writing the normal downward stroke, apparently there was a failure of the ink. The "S" also shows a failure of the ink in the pen in going upwards. (Shown P 32 dated December 1941): Here one finds the "a" of the "ardena" a blotch. The first three signatures on R 21 differ very markedly. The signature in Case No. 22300 is not reproduced in the photographs produced by the other side.

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In the course of my cross-examination I stated that alignment is an unconscious habit. Habits are strong determining factors in considering the genuineness or non-genuineness of a document. That is emphasised by Osborne. The spacing between the letters is another unconscious habit. In that regard I wish to draw attention to the spacing between the three initial letters. In all the standards produced on both sides the "D" and "F" are closer together than the "F" is from the "S". I spoke of an island at the base of the "S" in the impugned signature. There the writer has drawn a parallel stroke to the angle and the pen has probably separated and the island was formed. That is in one of the admitted signatures produced by the other side. You find that after he made the base of the "S", he has taken the pen stroke upwards. That may be one of the reasons why the island is present. There is a similar island in P 14, as well as in the third signature in R 21. In that signature in R 21 you find the first "i" written in a peculiar way; like an "e".

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The last part of the impeached signature formed of the letters "ardene" is similar to the ending in P 12 and P 13. In the last signature in R 21, there is a loop after the "a" and then a line drawn straight on and perhaps another line added. There is a horizontal line which doubles back. That is peculiar to that signature alone.

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The length of the stroke the deceased has made below signatures varies from a short one to a very long one and even the angle made varies. In the last signature in R 21 the angle is wide and in the other signatures there it is less so. In some signatures there is no underscore. Four out of the six proxies have an under-score. One of the other signatures has no underscore at all and the other signature has a very short underscore under the initials. Underscore cannot be taken as a characteristic of the deceased's signature.

My attention was drawn to the circumstance that in the disputed signature the top of the "D" and the top of the "F" were more or less on a horizontal line. From the standards I have I can parallel that. In P 13 the top of the "D" and the top of the "F" are also in the same line as well as in P 11 and in the last signature in R 21. It is laid down by Osborne that no man writes the same signature even once in a million times. The slight superficial variation are only to be expected. The variation in the signature on the last will are not radical differences; they are superficial differences. With regard to habits in writing the signature shows consistency.

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My attention was also drawn to the circumstance that in some of the signatures the base of the "D" and the base of the "F" are not on the same level, that the base of the "F" has been extended beyond the "D". The reverse has also occurred. In all the admitted signatures produced by the other side the base of the "F" has been extended below the base of the "D". In R 21, the base of every "F" is longer

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than the base of the "D". In R 21 the standards chosen diverge. In the third signature in R 21 the initial stroke of the "S" goes well to the right stroke of the "D". There are no other standards which even approximate to that.

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10 My attention was also drawn to a pen pause in the connection of "D" and "F". In the first and second signatures in R 21 you find the pen going up and making a branch with the down stroke of the "F". There is definitely what appears to be a pause. The writer has paused before proceeding. That appears in the second signature in R 21. Both the "S's" have angular tops. The third "S" also has an angular top and there has been a pause in coming down. The fourth and the fifth "S's" have a very narrow loop on top. That is in marked contrast to the "S's" in the first three signatures. The loop of the "S" in the last signature is a retracing; not a loop. The pen has gone up and come back. In the second and the fourth signatures the connecting stroke between the "D" and "F" presents an appearance of over-writing. One stroke goes over the other. The "D" in the impeached signature is similar to the "D" in those signatures.

20 My attention was also drawn to the curve in the curve in the loop of the "D" in the impeached signature. I have stated that the whole of that letter was one pen movement. With regard to the hump of the "D" it is possible that when the writer took the upward stroke there was a tremor. In the standard also we find the same tremor. It may be a common characteristic.

When I referred to abandon and easy flow I meant the disputed signature was fluently written.

30 (To Court: My opinion is that the signature on the will was possibly made when the writer was not in good health, in spite of the ease and fluency which I say the letters were written. The angularity of the hump of the "D" may be due to the writer not have been in good health when he wrote it).

Apart from the first letter "D", the rest of the signature has been written in a flowing first. There may have been some hesitancy in writing the first letter after he had got up from his bed and sat at the teapoy. There are similar pen lifts in the admitted signatures such as in P 32. There is no reason to make any departure from my opinion. I adhere to my original opinion; the impugned signature is a genuine one.

Sgd. JAMES JOSEPH,

Addl. District Judge.

30-8-43.

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M. P. J. SIRISENA : Affirmed.

I am the Record Keeper of the Kalutara District Court. I have been summoned to produce six records.

P 32 is the proxy in Case No. 22817, dated 22nd December 1941;
P 33 proxy in Case No. 21976 dated 11th November 1940;
P 34 " " 21764 " 26th August 1940;
P 35 " " 22300 " 6th November 1941
P 36 " " 21707 " 4th December 1939 and
P 37 " " 22451 " 21st July 1941.

It is only the last named case that is pending. The deceased having died a new proxy from the heirs or the executors, whoever is going to fight the case, will be necessary in that case. 10

Sgd. JAMES JOSEPH,
Adtl. District Judge.
30-8-43.

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tion.

After lunch.

WILSON DE SILVA, Affd. Proctor and Notary, Kalutara.

I have acted as proctor for the late Mr. Frederick Siriwardene in some case. I knew him well. I appeared amongst other cases in a case in which he and Carthelis were co-accused. There were five other accused in that case. In October last I was also proctor for the deceased in a land case then pending at Kalutara. That was an action for a declaration of title. I thought that the deceased had a poor case and I conveyed that opinion to him. I advised him to consult Counsel in Colombo. The deceased and I later came to Colombo and consulted Mr. Advocate Nadarajah, K.C. That was towards the end of September last year. I gave all the facts and the connected papers to Mr. Nadarajah and he promised to send me a written opinion. Subsequently I received a letter and opinion of Mr. Nadarajah. (Envelope marked P 8 B shown): This is the envelope. (Connected papers marked P 8 B). The connected papers are the papers I left with Mr. Nadarajah. I received the opinion at Kalutara. A few days previous to that the deceased came and inquired about it. It was delayed, not sent on the promised date. As soon as it was received, a day or two after, the deceased sent a message to me through one of the two men who used to be with him. (Thomas called in): This is the man. I think Thomas came the same day or a day or two after I had received the opinion. The letter was in my bag. On that occasion Thomas came to me making inquiries whether the opinion had been received. He brought me some money. I sent the opinion through him to the deceased and also verbally told him that it was not favourable. I handed the letter I received from Mr. Nadarajah with the papers marked P 8 B and P 8 C along with the envelope. 20 30 40

A few days later the deceased did not come and see me. He came in a car and stopped it near the Police Court. Then I was told that he wanted to enter hospital and desired to see me. I went up to the car and spoke to him. He was unable to speak properly at the time. But for all that he showed an interest in the case. He asked me not to let the matter rest at that, to consult Mr. H. V. Perera also. I told him that was not the time to be worried about the case, that he should get well first and that he could think about it later. He wanted me to ascertain what Mr. Perera would charge. I told him something more. The trial in that land case was fixed for a date that month. I told him that if he felt he was unable to attend Court he should send a medical certificate earlier to ask for a postponement. I asked him to send the certificate to avoid having to pay costs. The medical certificate was sent a few days later. I was ill then. It was sent to my house, brought by Carthelis (points him out). Whenever the deceased came to see me, invariably either Carthelis or Thomas used to accompany him. A cheque for Rs. 75/- was given to me by the deceased to be paid to Mr. Foote, a planter for the purpose of expressing an opinion regarding the condition of one of the lands in the case referred to. I said I would send the cheque to that planter. I cannot definitely say to whom I gave it; it was removed from me. The cheque was given about a month before the deceased saw me for the last time on his way to Colombo. The deceased was a man who had many cases; as a result of that he had a fair idea of litigation.

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It would be correct to describe him as one of those people who loved litigation. He was a careful man in a way. He can correctly be described as a man who was careful with his money, who did not part with his money easily. Sometimes I recovered my fees from him with difficulty. To begin with it was so, but not so when I gained his confidence. About the time of his death there were three pending cases in which I was appearing for him. I appeared for him altogether in five cases. I first acted for him as proctor during the last two years previous to his death. It would be correct to say that I had earned his confidence. He had practically gone through all the proctors in Kalutara. At no time did he discuss with me the question of a last will.

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The writing on the envelope (shown) is not Mr. Nadarajah's.

(To Court: The Sinhalese writing on the flap is "Keep this safe." The figures are my clerk's). My conversation with the deceased on the day he was going to Colombe was extremely brief. I was told that he was suffering from dysentery. I made the conversation as brief as possible. I have no recollection whether he showed me any papers at the time. I cannot say what he did with the letter I sent him,

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The figures are in my clerk's fist. They are in pencil.

(To Court: When I handed over the opinion of Mr. Nadarajah to Thomas, I expected the client to come and see me. I wished him to see what it was and to return it the next time I saw him. When I saw him at the time he was going to Colombo I did not ask him about the opinion. His condition was very bad; he was talking very faintly. I cannot say why he did not hand over the opinion to me that day).

Sgd. JAMES JOSEPH,
Addl. District Judge. 10
30-8-43.

Rev. Fr. M.
A. Julian.
Examina-
tion.

Rev. Fr. M. A. JULIAN, Sworn, 66.

I am a priest of the Roman Catholic Church. I am the Chaplain of Maris Stella College, Negombo. I have given expert evidence on handwriting for a number of years in the Courts. I have given evidence in many cases. I am also a Graphologist. My opinion was sought for by Mr. Paranavitane as to the genuineness or otherwise of the signature on the last will. Later I came to the Record Room of this court and studied the will. I had given to me a number of signatures of the deceased. I cannot exactly say what documents I had with me when I studied the signatures. I did not keep a note of the documents. They were similar to the prevention of rubber theft forms filed in this case. I examined the signatures six months ago and I cannot say for certain which of the signatures I looked at. After studying I came to the conclusion that the disputed signature is a genuine one. 20

I made an analysis of the handwriting. The analysis considered of noting down the different features of the handwriting, the classes of features of writing and features of letters and other signs. These features are either normal or special. By "normal features" I mean those that correspond to the copy book standard and the special features are those that deviate from the copy book standard. The special features are casual features or habitual features. They are simple, habitual or characteristic. I attach no importance for identification of the writer to normal features because normal features represent a model. Those features only express the capacity of the writer to reproduce what is known as a clerical fist. No inference can be drawn from the similarity of normal features. The normal features on which I ground my conclusions are habitual and characteristic features. Casual features are only confirmatory of the habitual on the characteristic. When I examine handwritings, I go over the script, note down the special features and find out the amount of recurrence. 30
A habitual feature is a feature which recurs frequently or very frequently. 40

It is by noting the recurrence of special features I know whether it is a special feature or a characteristic feature. Habitual and characteristic features can be considered either individually or collectively. Considered individually you can find that anywhere and everywhere.

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(To Court: What I mean those features are found everywhere but will not help me in forming any opinion. Those features considered individually may be found in my own personal writing. Considered collectively their chance of reproduction I think is in inverse ratio to the integration of the collection. Then I draw my inferences).

10 The first feature I notice in the signature of D. F. Siriwardene is that the writing is "ocaligraphic" and angular. The second is alignment. The writing is above the line and slightly ascendant. By alignment I mean a line horizontal to the paper. The spacing is very irregular and the size of small letters uneven. The capital letters are tall. I find the initials "D.F" reconnected and written by one single stroke of the pen or one pen movement. I also find the capital letter "S" is joined to "F" and is usually written higher than the initials. The second portion of the signature is illegible and breached. The first "i" usually smaller than the "r". The writing is usually fluent
20 except in "D" in P 12. The second letter "i" is not joined to the capital letter "S". The dots between the capital letters are not on even level, the second being higher. I find that the ending of the word is club shaped. I also find 11 characteristics or habitual features in the standards and the same features are reproduced at least 80 or 90 times in the disputed signature.

Cross-examined :

30 I am a Graphologist and also a handwriting expert. I have studied the question of indentifying a writer. Graphology is a psychological interpretation of a mechanical science. I attempt to portray character by a man's handwriting. Before proceedings I have to identify the writer. Graphology taken separately is the science or field of knowledge where you read a man's character by an analysis of his handwriting. Graphology as a science does not necessarily involve the identification of the writer.

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tion.

(To Court: By studying the various signatures or writings of a man I draw inferences about his character. That is primarily a special intellectual study).

40 For that the analysis of the writing is necessary. A man whose handwriting is angular I would say is intelligent; angularity is a sign of intelligence.

Q. To form inferences as to a man's character from analysis of handwriting, it is not necessary to compare writings?

A. I had no idea of giving evidence in Court.

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(To Court : I noted certain features in a number of handwritings. I also said that 80 or 90 per cent of the features I noticed are to be found in the impunged signature. Therefore the impunged signature also must have been written by the man whose signatures I have seen. Graphology has nothing to do with that. I have come to help the Court with certain observations I have made, observations which I have been in a position to make by reason of my study of handwriting as a Graphologist. Graphology does not come in there).

I have studied Graphology as a science.

(To Court: For the purposes of Graphology I had to study minutely all varieties and peculiarities in handwriting. A handwriting expert studies these matters for the purpose of comparing various handwritings, I for the purpose of drawing conclusions regarding character. I have also to study peculiarities in handwriting and it is after comparison of the various peculiarities that I draw up my list of peculiarities, specialities etc). 10

When I began the study of Graphology I had no mind to study what I call handwriting.

(To Court : I took to the study of handwriting later. At the start I studied Graphology just to read the character of a person but as the study proceeded I found myself interested in peculiarities etc. in handwriting. Then I tried to study the comparison of handwriting for the purpose of identification). 20

I have read Osborne, not the whole book. Graphology is a "super" science in the opinion of Osborne. I do not say that it is such a science. I have given evidence in three or four cases on an average a year. I have given evidence in Dr. Cooray's election petition case. At that date I claimed to be an expert in handwriting. I have now a much greater knowledge of handwriting, more experience. I have no diploma. I last gave evidence I think in January this year. 30

Mr. Mc Intyre stated this morning that my method of approach to this matter was entirely different from his. I think it is different from his. I did not go to Kalutara and examine the records of any cases there. I did not take any photographs. I had photographs. I had photographs taken by Mr. Mc. Intyre given to me, viz: P 11, P 12, P 13 and P 14. I cannot remember when the photographs were given to me. I did not want any photographs to form my opinion. I came to District Court Record Office and took my notes and on those notes I built up my opinion. The document I looked up in the record room were the rubber coupon forms. Those were the only documents I saw. I saw certain documents stitched up in a case record, made my notes and formed my opinion on those notes, and I stand by that opinion. When Mr. Mc Intyre gave me the photographs I compared them with my notes. Except that, I gave my opinion independently of the photographs independently. 40

I have stated that the writing was "acaligraphic". By that I do not mean calligraphy; I mean that the writing is ugly. That is my view of the general appearance. That itself would not enable me to form an opinion.

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(Shown R 21): I will not say of the first signature here that it is angular. The second signature is definitely angular. The base of the first letter written after the "S" is angular, not round. The base of the "w" in that second signature is not angular. The simple "d" is not angular. In the third signature the second half of it is definitely rounded and I would say the same of the second half of the fourth signature and also of the second half of the fifth. The last signature in R 21 definitely follows the base line; it is not ascendant. I cannot say whether it is above the line or not, but it is not ascendant. The first signature is not ascendant. The second signature ascends. Ignoring the underscore of that signature, the word "Siriwardena" is not ascendant, nor the third signature. The fourth signature is very slightly ascendant.

I have said that the spacing was very irregular. By that I mean in one place the spacing is narrow in another it is broad. Taking the whole of the impugned signature the spacing between "D" and "F" would not agree with that between "F" and "S" etc. I considered more than the spacing between those letters in connection with the question of spacing. In P 13 the first "i" is rather close to "r" and also in P 14. In P 11 you find the spacing is not the same as that in P 13 and P 14. In the standards in R 21 the spacing between the "w" and the "a" is different. There is a space between these letters there. The space between "w" and "a" in the first, second and third signatures is more or less the same. But in the fourth and fifth signatures that spacing is wider. In the disputed signature there is no space between "w" and "a". The last portion of the disputed signature is illegible. That portion is somewhat different from my standards. In the standards produced by the other side that portion is illegible.

I have said that the size of the small letters was irregular and uneven. In the second part of the disputed signature the small letters are not written so clearly as in the standards. The capital "F" in the disputed signature is shorter than the capital "F" in all my four standards. That is also so as regards the four standards in R 21. From the photographs I cannot answer the question whether the capital "F" in the disputed signature is shorter than all the "F's" in my standards. (Last Will "A" shown). The capital "F" here does not go beyond the top of the capital "D". In my standards, the "F", goes beyond the "D". That is a point of difference between the disputed signature and the standards I have. The bottom of the capital "S" is considerably over the bottom of the "D" and "F" in the disputed signature. (Shown R 21): The three initial letters of the signatures are almost on a level. That is correct with regard to the second signature. The

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"S" there is a little bit higher. In the third signature also the level of the letters is about the same. In the fourth the "S" is slightly below the "D" and the "F". In the fifth the "S" and "D" are on the same level. Therefore the alignment of "S" in the disputed signature differs from the position of that letter in the standards.

I have also said that one characteristic is that the initial letters "D" and "F" are connected and written with one stroke of the pen. When I said that I took into account pen lifts. There has been no pen lift. There may have been pen lifts. There may have been a pen halt there. (Shown R 24): The letter "D" has been written and the pen movement delayed before the upward stroke and the loop was written; there has been a pen halt there. There has also been a pen halt before the writing of the horizontal stroke and the other loop. There is a halt where that loop meets the angular stroke of the "D". There is again a halt before the upward stroke of the "D". There have been no pen lifts.

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The top of the "F" does not show a pen lift. The pen has gone up to a point and come back.

(Shown R 21): The initial letters "D" and "F" as written in the disputed signature do not represent anything like the "D" and "F" in the standards in the matter of easy flow of writing. The writing in the standards is much more easy and fluent. The second portion of the disputed signature is illegible. I grant that in no standard does the second half of the signature look so illegible as in the disputed signature. I have stated that the writing is fluent except in "D" of P 12. In P 12 the writing of the "D" is not fluent. I say that the writing of the whole of the disputed signature is fluent; even the writing of the blotched "a" is fluent. There is no evidence of rewriting there. There was plenty of ink in the nib when that letter was written. The presence of the blotch is due to the loop being formed. The pen passed over the same area once and left more ink. The pen passing over the area only once was quite enough to leave more ink than would normally be the case.

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(To Court: In passing round once the ink that was on the top of the nib dropped on the paper. If the pen was an old one that may have happened).

I have also said that the ending of the disputed signature is club shaped. That is a bold horizontal stroke. (Shown R 25): The club stroke is shown here. In P 14 there is a similar stroke; the line ends like a club. There is illegibility at the ending of both P 14 and the disputed signature. In the disputed signature the "w" starts from a spot which I indicate with a blue cross on R 20.

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(Shown P 28): The "W" begins here (marks it on P 28). The second half the "W" in the disputed signature is on a higher level than the first but that is not so in P 13. In P 13 the whole of the "w" is below the base line. The second part is higher than the first in P 13. In P 14 as well as in P 11 the "w" has not been formed at all.

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(Shown R 23): I can read Sinhalese. The signature of Somaratne appears here in three places. (Shown the originals filed of record): The first and the second signatures are written somewhat differently to the third. I cannot give an opinion whether they have been written by two different persons.

Re-examined.

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My first impression is that they have been written by two different persons. It is my experience that the same man may write somewhat differently. In my comparison I took the spacing of each of the letters as far as they were legible and my opinion is that they are irregular. (Shown last signature in R 21): The second half of "Siriwardene" differs from the other standards. That half reads "wa". The letter "a" is a flourish and the pen seems to have been brought back. That is a peculiarity different from all the other standards I have seen. The top of the "F" and "D" in the signature in question is more or less on the same line; the "F" is slightly higher. Apart from the documents I saw in the record room I saw the signatures on the proxies. That helped me not to alter my opinion. (Shown the signature on the will): Here there is no difference in the height of the "D" and "F"; there is hardly any noticeable difference in the height. The signature is a genuine one.

Sgd. JAMES JOSEPH,
Addl. District Judge.
30-8-43.

Mr. Advocate R. L. Pereira closes his case reading in evidence P 1—P 37.

Sgd. JAMES JOSEPH,
Addl. District Judge.
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August 31, 1943.

Trial resumed.

Appearances as on previous date.

RESPONDENT'S CASE.

MR. ADVOCATE OBEYSEKERA calls:

LAWRIE MUTHUKRISHNA: Sworn.

I am an Examiner of Questioned Documents. I have practised as an Examiner of Questioned Documents for about a third part of a century. I have given evidence in a very large number of cases in practically every Court of the Island. I have also given evidence in the High Court of Madras. I have sometimes given opinions against the person who consulted me.

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In this case I was instructed by Mr. Kannangara, Proctor for the 1st respondent to examine the signature on a document alleged to be the last will of Mr. D. F. Siriwardene, dated 5th October, 1942, and I did so. I produce my report, marked R 26. (Shown the will marked "A"); I identify here the signature I examined as the alleged signature of D. F. Siriwardene. (Mortgage Bond No. 75 dated 7th August, 1925, marked R 27 shown): This is the original. The signature on that bond is the first signature in R 21. The next standard I examined was the deceased's signature on deed No. 322 of the 28th of March 1930, marked R 28. (Shown R 28): This is the original document. The signature appears as the second signature in R 21. (Shown deed No. 1713 dated 19th March, 1933, marked R 29): The deceased's signature here is the third signature in R 21. (Shown deed No. 1898 dated 10th March, 1936, marked R 30): The signature here is the fourth signature in R 21. (Shown bond No. 2973, dated 7th December, 1937, marked R 31): The last signature in R 21 appears here. The next standard is on the production in D. C. Kalutara Case No. 22300 dated 6th November, 1941, already marked P 35. The signature in P 35 has been photographed and reproduced in R 32. The next is a proxy in D. C. Kalutara case No. 22817 bearing the deceased's signature (marked P 32). That signature appears as the third signature in R 22. I next produce rubber coupon card No. 1036 marked R 33 (undated). In R 32 the middle signature is the signature on the proxy in case No. 22300 (P 35). By middle I mean the second signature. The coupon card R 33 is the first signature and the third is P 32. All the standards have been photographed. After consideration of all the material I have given the opinion expressed in my report that the will is not genuine.

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I have examined two further sets of documents, the six "C" forms and the four other proxies which were produced yesterday. Of these four had been previously examined by me. From a consideration of all the documents I am of opinion that the signature on the will is not genuine.

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10 My first standard takes me back to 1925. The first five of my standards have been written between 1925 and 1937. From 1925 up to the date on which the standard of 1941 was written the dominant characteristics of the deceased's signature have remained unchanged. From an examination of the later documents I find that these characteristics have not been affected in any way.

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20 I produce marked R 34 a statement headed "Notes for Counsel" which embody my reasons for the opinion I have expressed. I am able to express an opinion as regards the genuineness of the impunged signature firstly from an examination of the signature itself, its inherent defects. R 20 an enlarged photograph of the impunged signature has already been produced. My first position is that there is inherent evidence in the impunged signature which suggests that it is a forgery. My reasons appear in paragraph 2 of R 34. I can supplement those reasons or summarise them. I would summarise them under a few heads, viz : pen pressure, continuity, inter spacing, alignment, speed and movement. Under "pen pressure" I wish to mention that this essential feature must not be looked for in a minute part of a letter but in the signature as a whole. When the signature as a whole is viewed with regard to pen pressure, it will be found that the first part of the signature has very feeble pressure and that the second part ends vigorously. It was suggested by one of the witnesses that the reasons for the warbly character of the first initial was due to the illness of the deceased. Presumably his health improved as he went along; otherwise we cannot reasonably account for the very firm and almost copy book form of one or two of the letters in the rest of the signature. The down stroke of the first initial starts with some uncertainty and goes along hesitantly until it comes to the base line; then it turns upwards. There is a pause there and a sudden and inexplicable twist of the hand presenting the pen to the paper in a new direction. That part of the stroke goes a little to the right of the down stroke. There is a visible pen pause. Then the stroke goes upwards and turns left-ways again. But this left-way ascending stroke is not an integral stroke. It definitely stops on the down stroke. The up stroke stops where it intersects the root of "D", where it touches the stem of "D", and then an entirely new stroke well below the level of that first stroke starts at that point and proceeds upwards. Then the final part of that ascending stroke is written rightways. Finally that stroke stops a little below the top end of the second down stroke which is the letter "F". The second initial ("F") is written and when that down stroke reaches some point near the base line but not quite the base line, it turns

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upwards to form a little spur. It was presumably found that the length of that stroke was insufficient and the quite visible addition has been made both downwards and rightways in the form of an enlarged spur. Then the link with the next letter is begun. There again that same kind of uncertainty has been shown as to the direction in which the stroke should be formed. The stroke goes upwards, forms the loop of the "S" and goes down not near the base but fairly high above it. That down stroke was originally finished off with some kind of loop but in much the same way as the second down stroke in that loop namely the letter "F" has been revised at the bottom, so this end of the letter "S" has also been revised, giving it a new spur. Then the small writing begins, what appears to be something like the letter "i". I have invited the attention of the Court to the fact that in the standards through some strange arrangement of the letters the signature reads more like "Suriwardene" throughout but in the impunged signature it appears to be more correctly set out as "Siriwardene" although the "r" looks so much like "n" that for purposes of description I shall refer to the strokes as two summits, although in a "r" there would be only one summit. The up stroke of the "i" ends at the point of the first summit. The down stroke thereafter is an absolutely independent stroke. These are all visual facts. The originals can be looked at under ordinary lens and the points can be verified. After the down stroke referred to the up stroke begins above the end of the first down stroke. That stroke is again an independent stroke because the curved stroke following it is written with an entirely new pen effort. The end of that up stroke is there and the beginning of the down stroke is there and the two points of the pen are quite visible. Then that curved stroke is carried on to the next letter but in the middle of it there is a rather heavy pause and it ends there. While it is in contact with the next letter it is not written continuously.

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The next letter "w" is very well formed. Then we come to that letter which has been referred to as a blotch. If any attempt had been made to inscribe an "a" by a "d" motion of that stroke at the start and the motion at the end, that would have given us some indication as to what had been attempted but as the blotch stands it can only be supposed that a mysterious globule of ink descended at that spot to hold up the forger who might have encountered some difficulty in making that rather peculiar letter "a" which the deceased was accustomed to write with a sort of a loop over a loop as will be seen in the third standard in R 21. In that standard you will notice how "a" starts from the base line. In the other standards you may not have the same movement on paper but one has to consider the psychology of the finger movements. Whether the hand presses a portion of the paper or not it is accustomed to move in a certain fashion and it has certainly not moved in that fashion where the blotch obscures all interpretation of that sign.

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Then the stroke goes on with another heavy pause in the middle of that summit and from there onwards but the end of it shows distinctly two nib tracts so that that part has been re-written.

(To Court: The club cannot be the effect of one flattening out the nib. You see distinctly there a canal as it were between the two ink strokes. There I say the nib was drawn twice).

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10 Under the head of pen pressure and the presentation of the pen to the paper, I wish to invite the attention of Court to the fact that the deceased does not appear to have had any difficulty in signing his name. He signed it on occasions with such rapidity that a part of the signature, mostly the latter part became fused, one letter ran into another and was not distinguished by any definite outline. But in the case of the impugned signature there is such a variation of pen pressure that it is reasonable to infer that the writer went very slowly and carefully in forming the first part of the signature and that having looked at it and satisfied himself that it might seem a tolerable approach to the model, he became careless and dashed off the rest of the signature without any attention to detail. In the standards, however, the writing is very rhythmic. The hand has moved up and
20 down freely. No one part of the signature is made intenser than the other although in one or two standards it will be shown that the pen on account of the rapidity of the movement has sometimes skidded over the paper as in the fourth signature on R 21 where a certain part of the loop of the "S" is not visible. That is because the pen has not been in sustained contact with the paper. It may be due to a multiplicity of causes, such as poise of the hand, etc. Anyhow it is not as if that part of the "S" was written because the hand was doddering or the writer was incapable of writing it. The letter shows a purely natural defect in writing and no attempt has
30 been made to re-write or revise it.

I come to the next point, namely, inter-spacing. Inter-spacing in the standards is sometimes very patent and sometimes it is not, but the hand has been accustomed to write the signature in several definite sections. The group of initials is the first section. The "iriw" is the second section, the "ar" the third section and the "dene" the fourth and last section.

(To Court: The "ar" is mostly a separate section).

40 In the last signature in my standards there is no such sectioning of that part of the signature after "w". I am in no way worried about the shapes and forms and details like that. I am considering the signatures broadly. Here is a man accustomed to write his signature from start to finish without lifting his pen or disconnecting his letters. Certainly there is no specimen signature produced which shows breaking off of a stroke in the middle of a letter such as occurs in "D", "ir"

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and at the junction of the "D" and the "F". Though the disputed signature gives an impression of fluency, on a closer examination it will be found that not only are several letters which are customarily written continuously written disjunct but that even parts of letters are built up in that unhabitual way.

That leads me to the next point, namely, that if the deceased was so ill as he is represented to have been when he wrote the signature and if the letter "D" is any indication of his inability at that time to have written correctly and customarily, then the precise reconnections of the letters is utterly inconsistent with that state of health and mind. 10

(To Court: By "re-connection of the letters" I mean this: For instance in the impunged signature one part of the "D" is connected with the other).

A man must have a very firm hand and a sure eye to make these delicate revisions and repairs of the letters in that signature, a state of mind and body which will be inconsistent with the state of health which has been imputed to the deceased at the time the signature was written.

In the matter of inter-spacing I have mentioned that in a number of cases there is a definite gap between the first half of the signature more or less and the letters "ar", but even if the letters "ar" may be in contact with the "dene" or even though the "w" itself may in a few cases be in contact with the letter "a", still there are definite hand rests. The writer wrote his signature according to long established practice in certain sections but the impunged signature ignores that way in which he was accustomed to section off the various groups of letters. That signature shows one continuous connection from "i" to the end of the signature without any space and without any disconnection. The forger has over-reached himself in trying to make the connections between letters as skilful as possible whereas if he had made no such attempt the signature might have in that one little respect at least better approximated the standards. In connection with inter-spacing and spacing, I would make a passing reference to the position of the dots between the initials. That action is not a matter of great importance but it so happens that the entire spacing between the signature and the dots is different in the standards from what it is in the impunged document where the dots are more nearly against the base line of the signature. 20 30

With regard to alignment, the standards show that the small writing of the surname and the initials are more or less on one level. It may be possible with a micro metric scale and a pair of calipers to show infinite variations but we have to look at the signature as a whole in broad outline and notice that even though there is in the standards a slightly greater space between the second initial and the capital letter of the surname than there is between the first and the second initials, 40

still in the impunged signature that difference has been so exaggerated as to present an unusualness of aspect to the eye. The alignment of the individual letters is a very significant clue to the genuineness of the will signature. I have had an opportunity of inspecting the standards produced on behalf of the petitioner. I may say that taking all the standards produced in this case, it will be found that the second half of the "w" is a little lower than the first half of it in most of the standards. In one or two, possibly in three, of the "C" forms, it is not so but the "C" forms are informal signatures and even if they were taken into consideration, in the first instance the general habit seems to have been to make the second part of the "w" dip a little below the base line and if there is any deviation from that habit in one or two of the "C" form signatures, that can scarcely be cited as cases in point with regard to the defects in the impunged signature. So also the length of the second initial, the down stroke of the second initial is decidedly greater in the standards than it is in the impunged signature. Sometimes this stroke is a little above the top of the starting stroke of the "D". Sometimes it is a little lower; sometimes it is both higher and lower, the full length being definitely longer than that of the letter "D". The original effort of the forger was to make that letter "F" much shorter than it is. It is only by a correction that he has succeeded in making it reach a slightly lower point.

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I say that the letter "w" starts with the horizontal stroke, then it goes down, comes up, then goes up, comes down again and there is the finish of the "w" with a little turn. (Shown R 30): I agree that "w" begins where there is a cross in blue pencil there. (P 28 shown): The "w" marked in red pencil here is decidedly not the start of the "w".

I pass on to the next point: speed. The submissions I have made with regard to hesitancy of the writing, the breaks in the middle of a letter and between one letter and another must definitely point to slow and laboured movement whereas in the standards we have nothing corresponding to such hesitation or such difficulty in the formation of a letter or in the connection of one letter with another where the connection is habitual. I was on the point of the elongation of the letter "F" by the attachment of a spur. That may be a small point but it is highly significant. A correction is generally made by a writer where he finds that he has omitted a letter or written a wrong letter or written a right letter imperfectly, but no writer comes back to give a stroke greater length or greater width or greater curvature when it is unnecessary to do so and when without such retouches the letter appears to be perfectly legible and decipherable. Viewed from that point the addition to the letter "F" cannot be said to be bona fide. It was undoubtedly made to fashion it into the semblance of one of the standard letters and not because by the shortness of its length, it would have in any way confused the reader as to what that letter was intended to be. If the deceased had any idea that by not lengthening

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that letter and adding a spur his signature would not read as D. F. Siriwardene, but as D and something else Siriwardene, we could well understand the correction, but text book writers and authorities place great stress on unnecessary correction because they undoubtedly imply that the forger is trying to model his letters after some copy he has before him or in his mind and not because such corrections are really necessary to make the letters clearer or more decipherable.

With regard to speed of movement I wish to point out that taking standard after standard if we count the strokes which constitute the signature from after the capital letter "S" to the first break at "W" we find an average of 13 or 14 movements of the hand. There is a down stroke and an upstroke, etc. In the impunged signature the writer has dropped two of the movements. That makes it about 10 or 11 movements against 13 or 14. In other words as the fingers have not been co-ordinated to write this particular signature, they have not acquired by long practice that rhythmic movement present in the standards. In the first part of the surname in the impunged signature the letters are "Siri". The additional unnecessary strokes but which form part and parcel of the deceased's accustomed signature are absent in the impunged signature. There is no signature disputed or admitted where the mark over the first "i" is in the form of a dot but in all the standards that is undoubtedly a horizontal dash. In the impunged signature in place of the habitual dash there is a mark of some other kind. Then again in all the standards out of all the formal signatures one alone, one of the proxies has no underscore. The impunged signature has no underscore. Nothing would be easier than for one defending that signature to say "there is another signature which also has no underscore". As I mentioned at the beginning it is not necessary to make this evidence prolix or prolonged by taking little items like that. We may look at the signature and say "in the larger measure does it contain customary features or unhabitual features"? In the standards you may find that they differ very widely among themselves but there is some common identifying characteristics in the manner in which the standards have been written so that if there is an accidental omission of one of these characteristics or the introduction of some previously unemployed characteristics the signature does not become subject to suspicion, but if we examine the impunged signature, we have to actually cudgel our wits to find out which part of it corresponds to the genuine signatures. If abnormalities existed only in some isolated way which is one of them only or two of them, one may say that was accidental, but when you have a convergence of unusual features, the fact that some other signature may be pointed to have everyone of those abnormalities will not make this signature seem natural and genuine. One has to appreciate the fact that here in R 21 is spontaneous writing and here in the impunged signature is writing which is flabby and feeble, slow and laboured, pieced together with unnatural disconnections and reconections. Surely that was not the way in which the

deceased was accustomed to sign his name. The forger has copied "D. F. Suriwardene" as "D. F. Siriwardene". Apart from the general, pictorial or spelling reproduction of the name, he has not shown in the details of the formation of the letters those characteristics which were unconscious to the deceased but which are evident in all his signatures.

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(To Court: It would be right to say that in the only instance where he did not make the picture "Suri" he made the picture "Seri". Everywhere else the words are "Suri". In R 21 an unnecessary stroke has made the letters "Seri").

There are some writers who have to gather momentum for their signature. They cannot start till they spurt the paper several times with the pen and then they go on. This is not an unusual but common characteristic of many people who have a pattern signature in one language but use another language for their general correspondence, who have not much writing to do, who have a way of writing their signature and keeping on to one model for fear that any correction of it or departure from it may cause the authenticity of that signature to be questioned at some later date. Here, however, is a man who appears in his signature to have abandoned all the habits of his lifetime, all the habits which characterise his standards and to have made a signature totally unassociated with his personality so far as that personality is disclosed by his writing. I say that for these reasons which are set out somewhat in detail in my "Notes to Counsel" I considered the impugned signature not at all genuine and not even a good forgery.

Mr. Mc Intyre has relied largely on the signature on the rubber coupon cards. I have arranged them in order of the dates. I have reproduced the signatures firstly of the deceased in photograph R 22 which I have produced and the signatures of the witnesses in another composite photograph R 23. P 10—P 12 as reproduced in R 23 bear the names of two witnesses Handy Singho and P. K. Somaratne in Sinhalese. In the signature of P. K. Somaratne as written in these documents there is a difference. There is such a wide divergence in the form and style of "Somaratne" on P 10 and P 12 that any expert examination appears to me to be unnecessary to indicate that they represent two totally different writers. In other words the man who wrote the signature of "Somaratne" on P 12 is different from the person who wrote it on P 10 and P 11. (Shown R 7): I see the endorsement here circled in blue. There is no resemblance between the writing in this endorsement and the signature of P. K. Somaratne as written in P 12. It seems to me the signature on P 12 of P. K. Somaratne is probably in the hand of the person who made the endorsement on the margin of R 7. The signatures on P 9—P 12 indicate so many strokes across them that there can be one of two inferences; either that these were copied or that these were used for copying. The marks are visible under a low power lens. On P 10 between "w" and "a" there is a fine piece of writing linking the two

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letters, which does not appear to have been there originally. It is a little wavy connecting line which does not appear to have been part of the original signature. In P 12 the paper has evidently been very greatly crushed but in spite of smoothing out the enlarged photograph shows deep depressions which go sometimes over a letter and sometimes near a letter. I suggest that P 9—P 12 be excluded from consideration.

Q. (By Court: The signature on P 12 has a very strong resemblance to the signature on the will?

A. I would say this, that the defects of P 12 are reproduced in the impunged signature, even to the extent of the "hump" and the "club" end. My theory is that more than one forged signature might have been attempted. We know how the deceased has set his signature on formal documents. We know that he was executing a document of considerable importance to himself. He would therefore not naturally or probably have used an informal signature such as appears on P 12 to authenticate such a document as his last will. I do not wish to say definitely that the deceased wrote the signature on P 12. Even if we suggest that P 12 was made by him there are differences between P 12 and the impunged signature. But I say that P 12 is unsuitable as a standard. There is a signature of a witness forged. There must have been some desperate purpose in forging the witness' signature to make use of the document in this connection). P 12 has several of the characteristics which we find in the standards; for instance the first mark over the "i" is a dash. My point is that if it is necessary to refer to P 12 as a genuine document there are differences between that signature and the impunged signature. The customary features are in P 12 but not in the impunged signature. (To Court: Therefore the view I express is that the signature on P 12 might have been used as a model and it might have been the signature of the deceased). The last will is a much more formal document than the "C" forms.

I have also examined further proxies upon which the other side has placed reliance viz: P 36, P 34, P 35 and P 37. They conform in every respect to the other standards. My examination of these standards confirms the view I have already expressed. One of them has no under-score as in the impunged signature but three of them has an under-score. As regards the pencil signature in P 15 I have disregarded it for the reason that I cannot compare usefully a pen signature with a pencil signature. A pencil signature would not give data for comparison.

The punctuation in the standards is always more accentuated. The pen has been as it were dipped into the paper in making the marks. In the impunged signature the pen has been weakly applied. The habitual manner of making the dots and dashes is absent in the impunged signature.

I have only to assist the Court with my views and opinions.

Cross-examined.

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10 It is an accepted principle in examining questioned documents that the standards should relate as nearly as possible to the questioned document. Osborne and every other expert stresses that. (Page 27 of Osborne, first paragraph, put to witness): My submission is that P 12 is not the best standard. I perfectly agree with the statements in that paragraph. (Page 28 of Osborne 2nd paragraph also read): In R 21 I collated five signatures ranging from 1925 to 1937. I had no part in the selection of the documents. I had only to examine documents given to me by the proctor for the respondent. I myself invited attention to the desirability of giving me documents nearer in date, but it was beyond their capacity to furnish them, and I have done my best with the documents provided. I was able to get a 1941 signature by going to Kalutara for that purpose with Mr. Kannangara. He was in Kalutara and I went there by appointment.

(To Court: Mr. Kannangara must have been aware that the deceased was a litigant having several cases).

20 I would not say that pictorially the top signature on R 21 is the one that differs most from P 28. It is my case that the standards show four sections of writing i. e. the "D.F"; "S"; "iriw" and the "ar" and "dene". The group of initials are connected. The "S" is not written continuously with "F" but the loop of the "F" and "S" are ligature. In stating that there are four movements I took "D" and "F. S" as the second because "F" and "S" are ligature letters, joint letters. "F" is a separate letter from "S". It is not continuously written. Therefore in the initials there are two pen movements. In "iriw" there is a connected section of writing; in "ar" another section and in "dene" another section.

30 In my first standard R 27 there are six pen movements. Before the "w" there is a break. The second "i" runs into the "w" and crosses the initial stroke of the "w". That is absent in all other standards. I can say nothing about the flourishes in the signature of 1925 but it exhibits the same characteristics as in his later signatures. I would not say that flourishes exhibit that there is an additional curve in the "F" in the first signature in R 21. There does not appear to be any customary departure from habit there.

40 (Initial stroke of the "D" referred to): When you hold the pen at a certain angle sometimes a shoulder of the pen also touches the paper. To cause a double line the shoulder of the pen must come behind the point of the nib.

(To Court: If a stroke is caused by a shoulder of the pen, it is caused always by that shoulder which will lean towards the paper when the stroke is being made. In R 21 the shoulder stroke is on the left. Any shoulder stroke that takes places on the right would be an unnatural

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stroke. The stroke caused by the shoulder must be behind the point of the nib. A line caused by the shoulder should be below the original stroke. That is so in R 21. If the pen is presented in such a way that the left shoulder is slightly inclined downwards, the shoulder will touch the paper. (Witness demonstrates this by drawing a stroke and showing how the left shoulder touches the paper).

Between the "F" there is an oval loop which is totally absent in all the standards, except in the first signature in R 21. I have called attention to that. The "r" of the "Siriwardene" approximates the normal way it is written. I would not infer from a single specimen of 1925 that when the signature was written in 1925, the deceased wrote "iri" as one movement. In the first signature in R 21 there is that feature found but it does not follow that he wrote in that way in 1925. I cannot say that to write up to "i" and then "w" was not a feature in 1925. That particular signature shows six pen movements. I cannot say whether the flourishes in the signature are characteristic of the earlier writing of the deceased; I have no other specimens to say so. I would not say that one swallow makes a summer. I have only one signature of 1925 and I cannot expect to represent characteristics of his earlier writing. The last portion of the signature is not well developed.

The next standard signature was written in 1930, the next in 1933, the fourth in 1936 and the fifth in 1937, the last signature having been written five years before the deceased's death.

Q. It is to be expected that in the case of a man who is old and ill, his signature written at that time will vary from his older signatures?

A. He may have had a protracted illness of ten years. During those ten years his signature will exhibit the same qualities. If the deceased was ill at the time he signed the will I should expect to find in the signature such variation as to indicate deterioration and not improvement of the writing. Except in the angular portion of the signature, there is evidence of over writing. In the final part of the impugned signature, there are two strokes. The final stroke could have been widened by the pen points diverging as a result of pressure upon failure of ink. But it would not have inscribed a stroke such as that where there are not two split points but four. There are four splits at the end and therefore I say there are two strokes there. To say that the 1925 signature contains more flourishes than in any other signature would be an incorrect description. The dates of the four standards range from 1925 to 1936. At six out of the eight points where there are loops are definite and marked loops.

Q. That characteristic fades away with the passage of time?

A. In the signatures on the coupons produced by the other side there are very large loops. Those signatures were all written between 1941 and 1942 such as P 12-P 14. There the loops are as large as those shown in the earlier signatures. But after 1933 the loop of the "F" does not appear as a definite open loop.

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As I have already stated only two of the proxies were available to me and I have made enlargements of the two signatures there. The other four were seen by me for the first time in the District Court Office only at 4-30 p.m. yesterday after they were produced in Court.
10 Osborne states that you can choose your standards so as to bring about the maximum difference between the standards and the questioned documents. One can do so but I cannot. I endorse that statement of Osborne. One can do what he has stated but I cannot in this case. Here I cannot be a picker or chooser of the documents.

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I do not recall having seen proxies where the initial letters "D.F" and "S" are apparently written in one pen movement. (Shown P 33): I do not agree that here, "D.F" and "S" are all written as one pen movement.

20 Q. In normal writing the pressure on the downward stroke is heavy and light on the upward stroke ?

A. It depends on the muscular organism of each hand. I would admit that only sometimes the upward stroke is written fine and the downward stroke thick. It may well be within Counsel's experience that 50 per cent of people write upward strokes fine and down strokes thick but that is not within my experience. I have come across very strong, firm up strokes by people who write their signatures savagely. To them the hand has not been trained to make the writing process very finely. I am willing to concede that they are in a minority. In the signature in question the final stroke of the "F" apparently goes
30 upward but it is not really so. That stroke does not go up from the stem of "F". I say that the start of the link with the "S" is in contact with the bottom of the "F" but does not flow from it. It is connected up with the "S". That is so in all the standards. That seeming link in the initials does not appear in P 35, the second signature in R 32. The triangle is formed by the spur of the "F" going upwards and at the point or a little beyond the spur of the "S" is made so that there is the contact.

(To Court: I say that the "D. F" and "S" are not written out in one pen movement. I say the "D" is formed, then the stem of the
40 "F" and then there is an upward stroke and just at that exact point there is the beginning of the "S". At the spot where the "S" begins the pen might have been lifted. Therefore "D.F" and "S" may have all formed one interrupted movement. That does not necessarily show a pen lift; there has been a slight pen pause. In P 35 these letters

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might have all been made without pen lifts though there may have been one pen pause at the junction of the top of the spur of "F" and the start).

The bottom of the initial "S" may have been touched up in P 35. The "neck" is definitely darker towards the end of the down stroke and the up stroke. Besides being touched up, there may have been a little more flow of ink there. I wont say that suddenly there was a bigger flow of ink there; there may have been.

(To Court : The writer may have pressed harder on the paper. If there was retouching one can separate the new part from the older part. If the parts were separable I would definitely say there was retouching. There may not have been retouching also. If that is so the pen may have been pressed harder at the little acute angle).

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The writing there exhibits a firm pressure of the pen. In the formation of the loop of the "S" there was no ink failure but there was a skidding of the pen. In several loops, "S" has not contacted the paper, not when the ink failed but when the pen lost contact with the paper. The writer did not lift the pen as he moved but when the pen ceased to be in contact with the paper.

(To Court : If there had been ink failure he would have dipped the pen in ink and continued the loop).

20

After Lunch.

With regard to the dotting of the "i" s, there is consistency only in the limited way that the first mark is in the form of a dash in the standards. In no two of my standards are both the dashes alike. In the first of those standards the dot goes in a south easterly direction, in a wedge diagonally and the second one is something like the latter part of a comma. The first dot of the "i" in those standards is definitely horizontal. The second dot exhibits a diverging and coming back of the points of the nib. It is wide at the top and narrow at the bottom. In the third signature there is a dash over the first "i". The second dot is a more marked comma. In the fourth signature the first "i" has a shorter dot. In the fifth signature the second "i" shows a divergence in the points of the nib.

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In the standards "Suri" has been written rather than "Siri". That does not apply to the first signature where that part of the signature reads more like "Siri". In the second signature the initial stroke of the "iri" looks like the second "i". The "i" is really the second upward line. In that respect that signature differs from the other signatures. The deceased has written his "r's" like an "n", sometimes pointed on top, sometimes a little rounded. In my fourth standard that letter is pointed and in the fifth also. In the third signature, the initial "i" is written like an "e"; that is a peculiar formation. In the first, second

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and fourth of the signatures there is a gap between the "a" and the "ar" and the "dene". In all the signatures there is a gap between the "w" and the "a". In the last signature of R 21 written in 1937 there is a gap between the "a" and something like an upward stroke of "d". One cannot denominate the letters after "Siriw". After that something has been bitten off. Before the "d" there should be "ar". What is written there might be "a" and part of "r"; then there is a winding off. The lower of the two lines in the signature is a continuation of the signature. Then there is a scroll with a sort of tick. That is an unique feature found only in that signature. That signature is one written in 1937.

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The only one of the signatures referred to that was written like "Suri...." is the second. The fifth looks like "Suriwardene". The second signature is the only one that looks like "Suriwardene". There is an extra stroke in front of the "i". The appearance of the fourth and fifth signatures is "Suri...." But when you examine them it is "Siri...." With regard to the full stops, the second stop is not higher than the first stop. In all the five standards they are a little below the base line. In those standards the second stop is generally placed higher than the first one. That is so in R 22 also where I have three further standards. In the second of my standards the second dot is small; it looks like a dot. In the second the second stop looks like a dash. In the third, the first is a smudge.

30

In the first signature both the "i's" are written from left to right. The tendency is to write downwards although the angle is different. In the first signature the angle is a slope towards the right, in the fourth the slope is towards the left but the direction is always downwards. In the fifth the second "i" is marked with a dot, a very fine one. In the original the first dot looks like a shake of the hand. It must have been an involuntary movement of the hand.

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Two of the proxies have been photographed by me, namely P 32 and P 35. P 35 is the last of the three signatures I have photographed in R 32. I notice the horizontal stroke after the "r" before the second "i" in that signature. That is not exactly a horizontal stroke; it is slightly curved. It is also slightly curved in the smudged signature. There the second "i" must be presumed to be the second summit, ("i" is marked with a perpendicular in red pencil in P 28). The second "i" is not the second summit because in P 32 and other customary signatures the "r" is written like an "n". I do not admit that in the questioned document and in P 32 the writing of "iri" is similar. In both there is exactly the same "i", starting from above coming downwards. The normal "r" has a double hump; so has the writing following the "i" in the impeached document. The disputed "r" is not similar to the "r" in the fourth signature in R 21. Even inexactly there is no approximation of the two. In all the genuine signatures except the first signatures in R 21, the "r" is written with a double hump, sometimes curved and sometimes pointed.

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In the impeached signature "i" has that double hump. That is not the "r" because we have to find a character there which will do duty for "i" and there is no such character so that the horizontal part there is, in my opinion, part of the "w".

Q. That same horizontal stroke on R 32 is an "i" ?

A. It is not a horizontal stroke. Here is "w" (points it out in R 32); then comes the horizontal dash, reading from the end of the signature.

(To Court : In order to fix these letters I am reading both ways, leftways and rightways).

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The only way I can say that in R 32 the "i" is where I marked it is by reading it downwards. But you must understand how you read backwards. There is the "w" and before "w" is "i" and attached to the "i" is a horizontal curve, attached to the "i", not to the "w" as in the impeached signature.

(To Court : The horizontal line in one instance is the beginning of "w" and in the other case it is the beginning of "i").

Both the impeached signature and the signature on P 32 have a horizontal line but not in the same position. As I have stated one is at the beginning of "w" and the other at the beginning of "i".

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We are trying to read into what is a defective form of copying letters which occur in the standards. This statement does not indicate at all that I approached the subject with the determination of holding that the disputed signature is a forgery. The resemblance between the signature on the proxy and the signature on the impeached document with regard to the first four forms are not very similar.

(To Court : I do not admit that on P 28 and the third signature on R 32 the going up of the point of the horizontal line is much the same. I persist in that opinion. This morning I stated there were a number of strokes absent. According to the standards there are about 8 strokes before the "w" and not 6).

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On R 32 the middle signature is a photograph of the signature in P 35. There also the "Siri" is not written similar to the third signature. (Second "i" of the second signature in R 32 marked by witness). In both those signatures there is a very, very minute gap between "ar" and "dene". The original of the top signature on R 32 is a rubber coupon card. In that signature also there are two double horizontal curves one after the other. The second one is the prefix to the "w". (Second "i" in the first signature of R 32 marked by witness). After "Siri" you get an attachment before "w".

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(To Court : The long horizontal curve is the "i" which begins from the angle marked by me).

(Shown P 36): In the signature here there is no loop of the "D" at all. That is an example of where the pen has been flourished. There is no imprint on the paper of even a dry nib point. The connecting line between "D" and "F" is more horizontal than in any of my standards. It is almost a straight line, a very, very shallow curve. The stroke connecting "F" with the "S" almost touches the horizontal line of the "F". I wish to qualify that last statement. There is a straighter stroke; the connecting line in the top signature in R 32 is even straighter. In the proxy the last capital appears very close to the horizontal line of the "F" and is peculiarly curved. That curve is present in other signatures in that shape but not in that position. Between "D" and "F" comes a joining line. It goes downwards. The curve is the same sort of curve as occurs in the third signature in R 21. I admit that the distance between the downward stroke of the "S" and the downward stroke of the "F" is greater than the distance between "D" and "F". In all the signatures that is so. In the disputed signature that comparative difference has been exaggerated. (Disputed signature shown): There is not very much difference between the spacing here and the spacing of the standards.

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(Shown signature on P 37): Here the downward stroke of the "F" and the downward stroke of the "S" tend to converge, similar to those strokes in the impeached signature. I draw attention to the fact that between "D" and "F" there is more space in P 37 than in the impeached signature. The down strokes of the "F" and "S" are written roughly like an "H" in P 37. Here I notice that the down stroke of the "D" is present only as a tick written at the top. In several cases it is so and the writer continues the letter from the bottom.

(Shown P 35): Here the gap between what goes to form "S" is pretty wide, as wide as in the impeached signature.

The club shaped ending of the signature in P 36 is the effect of one pen stroke; that is so in P 34 and P 37 as well. Those are natural finishes to the signature.

(To Court: Every one of them thickens towards the end. That is so in the impunged signature also but there are two different strokes at the end. In the impunged signature the thickening out towards the end is not one stroke but two strokes. It shows signs of laboured two strokes).

(Shown P 33): Here there is an inverted angle at the base of "D". There has been some peculiar formation just after the "S" where the normal "i" would come and it somewhat presents the appearance of an "r". That is not paralleled by any of the other standards. In the first "i" there has been some little shake of the hand. In P 33 there is a gap between the "w" and the "a" not very wide; it is almost invisible.

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Out of the six signatures there is no underscore in one and on another it is very short. There is a very short underscore just under the "F" in R 32. In the others there are underscores of varying lengths. The will has been written on ruled paper. Where the paper is ruled almost invariably the deceased did not put a scroll under his name. I would not say that is due to rules. Because the underscore is almost part and parcel of the signature. In one of the proxies it is certainly absent. In what one sets out in a formal document there need be no details. In documents of that kind—casual things—we do not reproduce our signature fully. I cannot admit that when signing on ruled paper a man does not worry to put an underscore. The will is the only example of a signature written on ruled paper. In P 9 there is letter press matter, under the signature, and that might have possibly discouraged the writer from putting an underscore there. Ordinarily he would have included the underscore but in cases where he wrote his signature casually, even a pen signature, he may have omitted the under- score. (Shown P 15). Out of 11 signatures, here, there are only two with an underscore. They are all pencil signatures. The first one has a very short underscore.

In the formation of the "D" in the disputed signature I say there have been pen lifts. According to me the writer stopped where the loop of the "D" occurred. He stopped there and began the continuation lower. There is also a pen lift at the top of "F". A slight upward movement has been made at the base of "F", the purport being to give the effect of a longer stroke, because the writer would have noticed that if "F" ended too far below the base it would have appeared singular. The intention was to make the "F" longer. There may not have been any need to project the tick so long. The intention must have been to bring the base of the "F" in a horizontal line with "D". The bottom of the "F" is not invariably in line with the bottom of the "D". In the third signature on R 32 the base of the "F" is definitely higher than the base of the "D". The "F" in the disputed signature is not a little lower than the top of the "D".

I do not admit that one effect of magnification of writing is to cause the impression that there are a number of pen pauses, when there are no such pauses. The magnification of a signature written on rough paper will present the appearance of gaps in the signature; if it is magnified excessively gaps, not continuous lines. That is so if the surface of the paper is crushed. But that is a hypothetical question. We are considering a particular kind of paper and a particular signature. In the 3rd signature in R 22 which has been excessively magnified by me the effect of magnification referred to is markedly present. That signature has been magnified by me four to six times of the normal; the first part of the signature I have magnified 12 times. As a result of the magnification what appears to be a continuous line appears to be a series of dots and other lines in that document. That

is due to the writing itself in P 32. The pen has slightly lacerated the paper in one spot. I do not admit that in the "H" in P 32 there is no laceration of the paper. But that the effect of the magnification is to present a broken appearance. The photograph is not a particularly good one. The appearance of the signature is due to the paper on which the signature has been written. The magnification shows the proportion; the proportion remains. If you magnify excessively you cannot distort a letter because to distort a letter the letter should be flexible and able to be removed from the rest of the writing. A signature as a whole may be photographed at a wrong angle to give it a larger width or a larger length, bad perspective etc. Apart from that the camera cannot introduce new features. As a result of magnification a writing cannot show the absence of features which are present. I do not claim infallibility. As in the case of other experts, there have been opinions by me not agreed upon by the Court. I remember the case in which I, Fr. Julian and Mr. Geerasinghe gave evidence as to the signature on a promissory note. Mr. Mc. Intyre gave evidence that it was genuine and the District Judge held that it was genuine; so did the Supreme Court. I also gave evidence in the case of a will propounded by Mr. Kalpage as Proctor and Notary. I may have given a long report in that case running into about 12 typewritten pages. I gave evidence in that case very definitely that the signature of the testator was a forgery and Mr. Crossette Thambyah rejected the will as a forgery. In the Supreme Court it was held that the will was genuine. In that case there was no expert on the other side. I was the only expert.

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I also gave evidence in the Vander Poorten case in Kandy. I was of opinion that there was a forgery. I do not know whether the District Court held that there was no forgery. I know the case in which Mr. Emmanuel, Secretary of the District Court of Jaffna was prosecuted. I gave evidence in that case for the Crown. I was called by the Crown to give evidence for the Crown. Mr. de Kretser was then the District Judge. I gave evidence for the Attorney-General. I was paid a very handsome fee in that case. I received my batta.

Q. Mr. de Kretser did not make an order refusing your batta?

A. I find it so long ago—To the best of my belief I received all my expenses for going there and a very substantial fee from the Attorney-General's Department. In that case Mr. de Kretser did not hold that I had prostituted my knowledge of handwriting. No handwriting was involved in that case. That was an accounts case. I was not called as an expert on handwriting. That case had nothing to do with handwriting. Mr. de Kretser did not characterise my evidence as prostitution of my knowledge of handwriting. It is shocking for me to hear that he did so.

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I do not definitely suggest that P 12 is a forgery. It may be genuine. I would say that it is either genuine or a very good forgery. I did not exactly suggest that P 12 formed a model for the signature on that last will. I said that the signature might have been a model. I found most of the abnormalities in P 12 reproduced in the impunged signature and therefore there is a close connection between P 12 and the impunged signature. I cannot account for the ways and thoughts of different types of forgers. There are intermittent forgers and clumsy forgers. No skilled forger would adopt another forgery as a model. It is not likely that anybody would adopt forgery as a model if he knew it was a forgery. If P 12 was used as a model whoever tried to imitate it would necessarily have gone on the assumption that it was a genuine signature. Supposing it is the same forger who forged P 12 and the impunged signature where is the difference? It is not likely that any forger would take as his model what he knows to be a forgery. Assuming that the questioned document, is a forgery and that P 12 was the model taken the writer may have assumed that it was a genuine signature or he may have thought that it was a good enough forgery to make it the basis for a second and better attempt. The forger might have modelled the impunged signature on the model which he had used for P 12. Therefore you find common characteristics. I am aware of the fact that the deceased owned a large number of rubber properties. I cannot say whether he sold rubber and obtained rubber coupon cards and whether specimens of his signature would have been easily procurable by a forger. Probably there might have been quite a number of genuine signatures available if the forger wanted to look for them.

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On P 12 P. K. Somaratne is a written-out name rather than a signature and written as one would write in a Sinhalese copy book. The name is written in a very free hand in the first of the documents P 10—P 12, not in the second one; in the first one it is freer; in the second it is more restrained and in the third it is entirely different. My suggestion is that we may suppose that this person has not signed his name but written it out. If so the writing is not consistent with the signature of Somaratne on other documents.

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Sgd. JAMES JOSEPH,
Addl. District Judge.
 31-8-43.

It is now 4 p.m.

“ Further hearing on 2-9-43.

Sgd. JAMES JOSEPH,
Addl. District Judge.
 31-8-43.

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2nd September 1943.

Inquiry resumed.

Parties and appearances as before.

Mr. Advocate R. L. Pereira, K.C., senior counsel for the petitioner has not come into court yet. Mr. Advocate Rajendram, his junior, is unable to carry on the cross-examination. He asks that the cross-examination of the witness be continued when Mr. Pereira appears in Court.

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Mr. Malalgoda has no objection to this.

10 He calls.

DON VELUN SIRIWARDENA: Affd.

50. Landed proprietor and cultivator, Kolahekkada. Fredrick Siriwardene is my elder brother. He is my step-brother. My father was Don Cornelis Siriwardene. He was married three times. I do not remember his first wife's name. The deceased was by the first bed. My father then married Engo Nona Hamy. He had four children by the second bed. They are Jane Nona Siriwardene, myself, Don Davith Siriwardene and Eminona Siriwardene. Jane Nona is dead. She died leaving four children. They are Cecilia Kannangara, Emi-
20 nona Kannangara, Asilin Nona Kannangara and Joslyin Nona Kannangara. Davith also died. His wife Sopy Nona is living. He left five children. I do not remember the names of his children. Eminona is living. I know that Jane Nona's child Cecilia is a party to this case. My position is that the deceased left no last will. At the time of his death the deceased was about 62 years. He was residing at Galmatta. I was living about three miles away from Galmatta. I knew the deceased very well. I moved about with him often. I used to visit him at his house. My children also used to visit him.

30 I remember the time the deceased fell ill. That was somewhere about the end of September 1942. Prior to that he was in good health. He attended to all his affairs. I am aware that he had a number of cases in Court. He attended to them personally. When the deceased fell ill in September a message was sent to me and I went to see him on the 1st of October. I spoke to the deceased. I asked him from whom he was taking treatment. He said he was being treated by the Meegama native doctor. He was said to be suffering from some stomach trouble. I went to see him on that day after, that is the 2nd October. The native doctor was there on that occasion. I noticed
40 that there was no improvement in his condition and the native doctor changed the medicine. I asked the deceased whether I should bring him another native doctor. He said he had a case on the 20th and desired to take English treatment in order to recover soon and to attend the case. I was not able to see the deceased on the 3rd. I could not go on that day as there was a "Pinkama" ceremony in my

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house. I went to see him on the 4th in the evening. On the evening of the 4th the deceased told me that he was taking English treatment. He also told me that as he wanted to get a medical certificate to be sent to Court for a postponement of the case, he took English treatment. He said Dr. Rutnam was treating him, no, Dr. Ratnayake. I did not approve of this English treatment. I asked him to take treatment from the Podivedamahatmaya as that Medicine was better. I left for my house late in the evening that day, at about 7 p.m. The pinkama at my house continued for three days. It was over on the 7th. I went to the deceased's house on the 7th evening. The deceased was not at home. I was told by Gomis who was in the house that the deceased had gone to Colombo for treatment. I was under the impression that the deceased would return on that day. I waited for him till about 9 p.m. He did not return that day. On the 8th also I went to his house and I found that he had not returned. I then came to Colombo. I met the deceased in the General Hospital, Colombo on the 8th. Dr. Jayasuriya was attending on him in the hospital. I saw the deceased in the hospital ward. I spoke to him for about 20 minutes. I asked him whether he required anything. He said he did not want anything. One Amarasinghe was with me at the time. Later that day I went to Kalutara with him and I went home on the following day. I stayed at Kalutara that night as there was no bus to go home. I did not come to Colombo on the 10th but I sent my son Dharmasena. He is also called Ukkumahatmaya. On the 12th I left home with the intention of coming to Colombo as my son told me that there was no improvement in the deceased's condition. I was not able to get to Colombo on the 12th as there was no bus. I went back home. I expected to go the following day, that is the 13th. I left home in the early dawn to Galmatta to go to Colombo. On the 13th the body of the deceased had been brought. In the meantime a telegram had been received at my house on the 13th during my absence. I do not know at what time the body was brought to Galwatta.

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(To Court : I do not know at what time the telegram was received at my house).

(Shown R 3) : R 3 is the telegram that was sent to me.

(To Court ; The address on the telegram is not correct. My postal town is Katugahahena. The telegram is addressed to Welipenna).

I produce marked R 4 a telegraphic communication from the Chief Telegraph Master.

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I began making the funeral arrangements. I spent my own money for this purpose. It is not correct to say that the petitioner gave me Rs. 500/- to carry on these arrangements. I did not tell the petitioner to receive the deceased's friends as I did not know them well and that

I would look after the rest of the arrangements. There was an incident about keys. I asked for the keys from Carthelis. He did not give them to me. He said that he would hand them over to the headman. He did not give me any reason for his refusal. He told me that he was giving an account of the things in the house and was trying to leave the place and that therefore he could not give the keys. I also agreed. I informed the Headman thereafter and he came there that day. I cannot say at what time he came there. He arrived I think on the noon of the 13th. The Headman put all the keys of the house into one drawer, locked the drawer and removed the key. The cremation took place on the 15th. I attended to the arrangements together with the other relations. At the funeral nobody mentioned anything about a last will or at any time thereafter. I produce marked R 12 a statement of funeral expenses incurred by me in the writing of Sammy Jayasinghe. There is a writing in different ink at the very top (Witness reads the top entry). That was not written at my request. Sammy Jayasinghe wrote that I swear I incurred that expenditure.

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tion
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Carthelis did not come to the house after the cremation. I do not know where he lived. There was an Inspector of Police when the inventory was being taken. On that day too Carthelis did not come. The Headman was there. (Shown R 15). R 15 is one of the copies of the inventory taken on that day. The headman gave me the keys and I took charge. Even on that day I was not told by the Headman or anybody else that there was a last will. The inventory was taken on the 18th. There was an almsgiving on the 19th. The almsgiving was given by me. I spent for the almsgiving. Carthelis was not present. The Inspector came there on the 18th when the inventory was taken. There were also other relations of the deceased present at that time. I told them that there would be an almsgiving on the next day.

(Shown R 16). I received R 16 of 26th October 1942 from the A. G. A. requesting me to administer the deceased's estate. I also received R 35 a notice of the 19th November 1942 from the District Court, Kalutara. On the 19th of November I applied for letters in Case No. 10238 of this Court. (Shown R 5). That notice was issued by the deceased to another brother. I produce R 17 decree of the divorce between Alpy Nona and her husband. The date of the decree is 14th March 1910. I also produce marked R 18 marriage certificate of Cecilia in which her age is given as 23. I produce marked R 19 marriage certificate of Alpy Nona.

To Mr. de Saram :

Before I applied for the administration of the estate I did not know anything about the will. Nor did I know anything about the will before the deceased died. He did not make any indication of writing

No. 19. a last will. I came to know for the first time about this alleged will
 Respon- two months after I applied for letters in this case. On the death of
 dent's the deceased the administration was taken charge by me. I continued
 Evidences. Don Velun to be in charge thereafter and I am still in charge of the administration.
 Don Velun to be in charge up to the time I got notice from the respondents in
 Siriwardena. I was in charge up to the time I got notice from the respondents in
 Examination. this case. Carthelis did not raise any objection to my being in charge
 —continued until he filed his petition in this case.

Don Velun *Cross-examined.*

Siriwardena. I was a witness to the marriage of Lily. She was not accepted
 Cross- by everybody as a daughter of Cornelis. I had to be a witness to her
 Examination. marriage because she was in my house. When I say "my house" I
 mean Cornelis' house. I was interested in seeing that the girls were
 all disposed of before they went astray. My daughter did not get
 married at the age of 35. She was in her twenties when she married
 but I am not sure of her age. She could not have been 29 or a little
 more. I cannot remember her actual age at the time of her marriage.
 I have not passed 30 years of married life yet. I cannot remember in
 what year I married. My daughter was not 29 years of age when she
 married. I do not admit that she is rather old for a village girl to be
 married. I consulted her horoscope, there was a bad period, I considered
 all that and delayed her wedding.

The deceased brought a partition action for a land called
 Nethewagahalandawatta. The deceased was the 5th plaintiff in that
 case. Alpy Nona was the 1st plaintiff, Cecilia the 2nd and her husband
 the 3rd plaintiff. Arnolis Siriwardena was the 4th plaintiff. At that
 time my father was not living. I was the 1st defendant and my brother
 Davith was the 2nd. Lilyona was also a defendant. Davith and I
 did not claim to have made the whole of the plantation. We claimed
 in our father's right. Davith claimed some rubber trees, that too he
 waived off later. I deny that I contested the case on the footing that
 the 2nd defendant and I were entitled to the whole of the plantations.

Q. When the judge dismissed your claim and that of the 2nd
 defendant for the plantations it was a very unnecessary order?

A. Davith claimed planter's interest in some trees which he
 waived.

I did not claim prescriptive title to the whole land in my answer. I
 filed my answer through Messrs. Ebert and Kannangara, proctors. My
 father owned 5 acres and I owned 7 acres. I claimed my 7 acres. My
 claim was not dismissed. I did not claim any compensation. I deny
 that I claimed the entire land by prescription. I do not know whether
 Davith Siriwardena sued the deceased for a declaration of title for the
 whole of Galketiyasendu.

Q. The case was not for declaration of title for land but for the
 award of compensation to Davith for having planted 300 rubber trees?

A. I am not aware of it, but I know that the two brothers planted that land.

I was not a witness for Davith in that case. I did not give evidence. I am D. V. Siriwardana of Kolahekada. I do not know whether I was the 7th witness in that case. I was not the first witness called by Davith. I do not know whether Davith's claim against the deceased was dismissed.

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tion.
—continued

10 In my application to administer the estate of the deceased I have stated that I am worth about Rs. 30,000 not Rs. 35,000. I have never paid a cent of income tax up to date. I have sent income tax returns. I deny that I was fined Rs. 100/- for felling trees in Crown land. I have never been charged in my life by anybody nor have I charged any one.

I was a witness to Lily Nona's marriage because it was the marriage of a girl who was in my house.

Q. For that purpose, in order to give her in marriage, that you said she was a daughter of Cornelis?

A. No.

20 Q. You did not even for the purpose of giving her in marriage wrongfully say so?

A. For the purpose of the marriage, at the time of marriage I said she was a sister of ours, but not on other occasions.

(To Court: I admit having stated that she was a sister for the purpose of giving her in marriage).

(Witness is referred to cage 6 of P 38).

30 Alpy Nona was not kept by Cornelis for some years before the marriage. I deny that he was keeping her for a long time. I produced a document to show that Alpy Nona was divorced in 1910. Alpy Nona and the deceased started living together only after their marriage. Cornelis and Alpy Nona were married after the divorce. I deny that Alpy Nona and Cornelis were living together for about ten years before that.

Q. Is there any reason why the deceased should have made Cecilia and Lily parties to a partition action of an ancestral property that was not so?

40 A. My father's advice was to acknowledge them as sisters and give them in marriage. Later he advised to bring an action and settle the claims. We brought an action and half the land went to Alpy Nona his wife and the balance came to us. I know the deceased Frederick administered Cornelis' estate. Cecilia and Lily were given by the deceased in his application to administer the estate as heirs of Cornelis. It is not a fact that Frederick recognised Cecilia and Lily

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as sisters even though they were born before Alpy Nona's marriage. I deny that I was angry with the deceased because he recognised them as sisters. I deny that I never visited the deceased for several years before his death. I was paying one or two visits every week. I could not accompany him to the hospital as there was a pinkama at my house. I visited on the 4th and waited there till 7 p.m. I went again on the 8th to learn that he had been removed to the hospital. The deceased had never told me that it was his intention to go to the hospital. It is not correct to say that my visits of the 2nd and 4th are purely my imagination. The Headman came on the 13th. He himself put the keys in a drawer, locked the drawer and took the key away. No, I do not recollect who put the keys. I was present in Court when the headman gave evidence. I do not remember his saying that I sent for him at 8 or 8-30 in the morning. I am not sure about the time he came. I have no recollection of his saying that it was Carthelis who put the keys in the drawer and shut the drawer and handed him the keys. I don't deny that it was Carthelis who did all that. I cannot say who did all that. I won't say that Cecilia was staying at the deceased's house for some years before his death. She used to come and stay there at intervals. Lily did not stay with the deceased after her second husband's death. She remained in her husband's house. I deny that Lily came and lived with the deceased. I do not know whether Lily's husband's estate was administered by the deceased; I am unable to say that he administered the estate. I am not aware of the estate being administered by Lily herself and the deceased being appointed guardian-ad-litem of her 7 minor children. I did not see Lily and Cecilia on my visits to the deceased's house. I saw them on the funeral day. Nor did I see them the 2nd or 4th of October when I went there. They were there on the 13th. I did not ask for the keys from the headman shortly after the cremation. I deny that I went to the headman and asked for the keys. The headman did not tell me on that occasion that there was a talk of a will and that he was not prepared to give the key except in the presence of some responsible Government Official. The headman is giving false evidence on that point. I brought the Welipenna Inspector of Police because there were other heirs to this estate and it was not safe that I should take charge of this except in the presence of the headman and a responsible officer.

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Q. There was nothing to prevent the headman giving you the key?

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A. I did not ask. When it was given for safekeeping why should I ask for it.

I deny that I asked the headman and the headman refused to give it unless in the presence of an Inspector. I deny that I went to the Welipenna Inspector because the headman wanted an Inspector to be present. I did not consult anybody before I went to the Inspector.

That was my own idea. The headman gave the keys to the Inspector. The key was not given after an inventory had been made in triplicate of the furniture and other property. I deny that an inventory was made in triplicate. Only two copies were made. The headman had one signed by all five witnesses. The other copy was kept by me. I cannot say how many signed as witnesses in my copy. At that time I did not give my mind to that question. It is a fact that the deceased spent over Rs. 10,000 to the building of the Prince of Wales' School. Cecil's children attended that school later. They did not attend that school for some 5 or 6 years.

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Q. None of your children or Jane's children or Davith's children attend that school?

A. No. That was too far.

Q. That was the best school within a radius of 10 miles of that place?

A. No. There are two schools about half a mile away from our place.

The Prince of Wales' school was a bilingual school; so were the other schools.

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The telegram sent to me was addressed to Welipenna. Welipenna is not $4\frac{1}{2}$ miles from Kolahekada, it is about 6 miles. Katugahahena is not about 10 miles from Kolahekade. It is about three-quarter of a mile from my place. Porterage had been paid for that telegram. I do not know how much was paid. My idea is that he sent the telegram intending that I should not receive it.

Q. Is there any reason why he should pay porterage Rs. 1/60?

A. The usual Post Office through which letters are delivered to us is only three-quarter of a mile from my house. If a telegram is sent to a Post Office six miles away from my place the delivery peon will not be able to trace me.

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Q. The Welipenna Post Office is a well known one?

A. Matugama is better known.

Q. It is not Matugama you are talking of but Katugahena.

A. Katugahena is our Post Office but Matugama is a big office.

On the 12th I intended going to Colombo. I could not get a bus and did not go there.

Q. Then the next best thing was to go to the deceased's house?

A. I returned to my house; I told the boy who was there that I was coming the following morning to go to Colombo.

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Q. The fact remains that although a telegram was sent to you from Colombo you did not go to the deceased's house on the 13th till about 10 o'clock in the morning?

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Evidence.
Don Velun
Siriwar-
dena.
Cross
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—continued.

A. No. It was about 5-30 in the morning when I went there.

I prosecuted Peter Jayasinghe for the theft of a cow worth about Rs. 75/-. Cecilia's husband was the 2nd accused. That case was filed on the 28th December 1942 and came on for trial on the 13th of July. I was asked to sue for damages and I withdrew the case. (Certified copy of the case is marked P 39).

I filed an inventory of the deceased's property with my application for administration. I have valued there four cattle belonging to the deceased all for Rs. 70/-.

Q. I put it to you that you did that deliberately to intimidate them not to give evidence? 10

A. No.

I got my nephew to sue Philip Siriwardena for the theft of a cycle. Philip Siriwardena is in Court. I do not know whether he was acquitted in that case.

Don Velun
Siriwar-
dena.
Re-exami-
nation.

Re-examination.

I produce marked R 1 evidence given by the deceased in the partition case No. 3560. I produce marked R 36 a certified copy of the decree in that case. On the 4th of October the deceased showed no signs of illness. 20

Sgd. JAMES JOSEPH,
Addl. District Judge.
2-9-43.

(Lunch-Interval)

Lawrie
Muthu-
krishna.
Cross-
Exami-
nation.
—continued

LAWRIE MUTTUKRISHNA: Sworn (recalled).

Cross-examination (Continued): I got the rubber coupon card from Mr. Kannangara, Proctor. I don't remember his having told me that there were other proxies when he gave me the number of the records of the 2nd and 3rd photographs.

(To Court: There are two proxies, the dates are 6-11-41 and 2-12-41). 30

Q. The photograph of yours was only printed after the production of the records in this case?

A. R 32 was taken some considerable time ago—may have been about two weeks after R 31.

My report was given on the 12th of June 1943. The report was given after the photographs in R 32 were taken. I don't particularly draw pointed attention to R 31 in my report. (Shown enlarged photograph of the six proxies).

P 40 and 41 are the photographs of the 6 proxies of which the first one in P 40 is the middle one in my R 32 and the second one is the first one in P 41.

I gave evidence in a Court of Requests case to the effect that some 23 signatures of a motor car driver were forgeries. The signatures were in a salaries book. Mr. Mc Intyre also gave evidence in that case and he said that the signatures were genuine. Mr. Mc Intyre's view was upheld by the Court of Requests but I do not know about the Appeal Court.

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Respon-
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tion.
—continued

10 *Re-examination.*

As regards the opinion I expressed in this Court I say that it is after the consideration of all the standards produced both by the petitioner and the respondent. Among the standards themselves there is a wide variation in the forms. I also found in the standards the combination of characteristics. In spite of such apparent diversity there are identifying characteristics not contained in the outlet formations but in the process of writing and alignment of pen pressure. I did not find those characteristics in the impugned signature.

Lawrie
Muthu-
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tion.

20 (To Court: I found a good many of those characteristics in P 12. While they are entirely absent in the impugned signature a good many of them are in P 12).

Q. Therefore can you say P 12 was made on the character of the standards?

A. It is in all probability a genuine document but I only say it is not a desirable document to be admitted as a standard because it has suffered some kind of treatment and therefore it is better to avoid as standards documents about which there may be some suspicion.

30 *Q.* If the document in respect of which an opinion had been sought from you was P 12 and not the signature on the will; what would you say?

A. I should say in all probability it was a genuine signature although it was not a normal genuine signature. That is with regard to the shapes of letters. P 12 is genuine but the forms of some of those letters make it abnormal from the other genuine signatures.

40 My attention was invited to what may be called pictorial resemblances. I was pointed out various dissimilarities among the genuine signatures—the standards. It is not safe to stress an opinion on mere forms. That is quite unscientific and empiric. We must go to the root of the matter. Two ovals may look alike; one may have been done with the leftward motion of the pen and the other with the rightward motion. They may match exactly, they may present an identity of appearance, yet the formative process remains different. Incidentally they are two different ovals. It is in that way I would attach no importance to pictorial resemblances or dissimilarities.

No. 19
 Respondent's
 Evidence.
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 Re-exami-
 nation.
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There are certain disconnections that had been referred to and are present in the impugned writing. They are not writing characteristics. That is to say, disconnections are not a writing characteristic found in the standards. Those disconnections did not appear in the standards. They did not appear in P 12. I emphasise the corrections found in the impugned signature because of their unnecessary character. Any one may make a correction normally and bona fide but to try to reshape and remodel a letter quite unnecessarily argues the mentality of the writer that he wanted it to approximate some form. It will be correct to say that the number of strokes by which the impugned signature has been written is less than the number of strokes in the standard signature. That is an important matter to be taken into account for the genuineness of the signature. In taking P 12 into account as a genuine document, the signature on the will as compared with P 12 is a forgery. If there were only two signatures in document P 12 and the questioned signature there would be fundamental differences between them.

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(To Court: If I had only P 12 and the signature on the will, all that I could have said was that these two signatures could not have been made by the same man. If it is assumed that the signature on the will was quite genuine I would have pronounced the signature on P 12 to be a forgery if I were instructed).

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Q. And vice versa?

A. Yes.

(To Court: If P 12 had been excluded and if I had compared the signature on the will with the remaining standards, there again my pronouncement would have been against the signature on the will).

The fundamental differences between P 12 and the impugned signature are that there is no break, disconnection or reconnection in the formation of the first initial in P 12 as there is in the impugned writing; that the first initial and the second initial are joint fluently and freely at the top in the same manner as they are joined in the other standards; that there is no correction in P 12 of any part of a letter as there is in the questioned writing; that the letters after the capital "S" which in the questioned signature are written stroke by stroke involving a fresh pen effort every time are written continuously and uninterruptedly in P 12; where there is a blotch in the questioned signature, there is a blur which still suggests that an effort was made to inscribe one or more letters but which did not succeed in fully developing such letters to render them decipherable; the first mark over the signature for the first "i" is in the customary form of a heavy dash in P 12, whereas that customary sign does not appear in the questioned document. As against all these genuine features the "D" has an angular formation, whereas in all the standards it is well rounded. And then there is forgery of the signature of one of the witnesses.

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I am serving now on a Board called the Government Accountancy Board of which Mr. Balfour is the Chairman. I have also been appointed by Government to investigate certain irregularities in a Joint Stock Company. I am doing that now. It is correct to say that I have given evidence in a much larger number of cases than Mr. Mc Intyre. I agree with the passage of Osborne as reported at page 230. The characteristics I found in the standards are absent in the disputed signature. It is the combination of characteristics which are found in the standards and which are absent in the impugned signature which makes those two writings mutually inclusive, which makes it absolutely different in authorship.

No. 19.
Respondent's
Evidence.
Lawrie
Muthu-
krishna.
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nation.
—continued

Sgd. JAMES JOSEPH,
Addl. District Judge.
2-9-43.

C. S. A. SAMARAKOON, Affirmed.

35, Photographer, Panchikawatte.

C. S. A.
Samara-
koon.
Examina-
tion.

(Shown last will A) On the instructions of Mr. Muttukrishna I photographed certain documents. I first photographed the signature shown on 'A'. I produce the first photograph marked R 20. It is an enlargement of about 30 times. I also photographed certain standards that were given to me by Mr. Muttukrishna. (Shown R 27, R 28, R 29, R 30, R 31) The signatures on those documents appear in the composite photograph R 31. I made that enlarged photograph. That is enlarged about 10 times. I was given three other standards P 35, P 32 and R 33 which I photographed at Kalutara and I produce the composite photograph marked R 32. This is also enlarged about ten times. I photographed signatures on certain rubber coupon forms. I photographed six of them P 9 to P 14. I produce marked R 22 the signatures of D. F. Siriwardene, and R 23 signatures of the witnesses to that document as a composite document.

Cross-examination. Nil.

Sgd. JAMES JOSEPH,
Addl. District Judge.
2-9-43.

DEVARAKKOTAGE GOMIS: Affirmed, 48, Rubber Maker, Walagedera.

Devarak-
kotage
Gomis.
Examina-
tion.

I was employed under the deceased for about 25 or 30 years. I was making rubber and I was also attending to work at home. I worked in the smoke-room. During the latter period I was in that house. Samy Jayasinghe was staying there. He was a clerk. Cecilia was staying there. Cecilia came to live there three months before the death of the deceased. Her permanent residence was at Bentota. Lily was residing at Hapurugala. During the last illness of the deceased, Lily was at Hapurugala. This place is 15 miles from Galmatta. The petitioner Carthelis was staying at Induruwa. He used.

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tion.
--continued

to come to the deceased's house once a week or so. Besides myself there was a boy called Carolis in the house. There was also a man called Amarasinghe. He was supervising the rubber lands.

I remember the deceased falling ill. That was about the end of September. First of all he was treated by the Meegama native doctor. I was attending on the deceased. I was continually with him during his last illness. He had a stomach complaint. He used to go to the closet and so on. The Meegama native doctor treated him for about four days. On the fifth day Dr. Ratnayake was brought in from Beruwala. Carthelis used to come to the deceased's house. He came once and went back. Then he came again and brought the doctor with him. That is Dr. Ratnayake.

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I know the 1st respondent, Velun Siriwardene. He was in the habit of visiting his deceased brother. He came there about two or three times before the deceased was brought to Colombo. I remember the deceased being taken to the General Hospital in Colombo. He went in a car accompanied by the petitioner and Baddavitharna. Two days before the deceased left for Colombo I was in the house. I was at home all the day. I know Samy Jayasinghe. I know Thomas, I know Peter Jayasinghe and Handy Singho. I do not know Parlis Goonetilleke. I know four of these people. I did not see them together in the deceased's house at any time on that day. I did not see these four people entering the deceased's room and closing the door. If such a thing had happened I would have known. Handy came to the deceased's house about two or three weeks before the death. He did not come after that. On the occasion of his last visit the deceased spoke to him harshly and sent him away. I think Handy had done some wrong and he was scolded by the deceased on that day. Handy never came again after that. Peter Jayasinghe is also known as Katumahatmaya. To my knowledge there was no friendship between him and the deceased. They had some displeasure over an election; it was the Village Committee election. The election was about four years before the deceased's death. Katumahatmaya was not in the habit of coming to the deceased's house after that election trouble. Thomas used to visit the deceased before he fell ill whenever there was any business. On the 12th, that is some days after the deceased was brought to the Hospital in Colombo, I came to Colombo. On that occasion I went to Samy Jayasinghe's uncle's house. Samy, Lily and I came to Colombo. Samy's mother-in-law asked whether a telegram was received. I learnt here that the deceased was dead. I went to the hospital. At that time Amarasinghe was in the hospital. He was the only man there. The body was brought in the evening to Galmatta. Dharmasena, Velun's son, was in the house at that time. Funeral arrangements were made the next day. The arrangements were made by Velun Siriwardene. I remember the cremation. I did not see Carthelis after the cremation. He did not

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come to the deceased's house thereafter. Velun Siriwardene took charge of the affairs of the deceased after the cremation. I continued to be in his employment and I am still in his employment. I met Samy after the cremation. He did not tell me about the last will but I heard of it about two months after.

No. 19.
Respon-
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Evidence.
Devarak-
kotage
Gomis.
Examina-
tion.
—continued

To Mr. Advocate de Saram: No questions.

Cross-examined:

Devarak-
kotage
Gomis.
Cross-
Examina-
tion.

10 Latterly I was paid a sum of Rs. 20/-. I took employment under the deceased originally on a salary of. Rs. 15/-. I was a smoke-room cooly. I have no property of my own. I have some of my parents' property. I have no deed in my favour for anything. I was not living in a hut on a rubber land of the deceased. I was living in his house. I did not live in a house in a rubber land. I did not live in a land called Bataketiawatta. I never lived in that land. I deny that the deceased would not admit me to his house. I do not know Handy Jayasinghe, nor do I know Pody Singho. I deny that Handy Jaysinghe and I were convicted for stealing a moor man's bundle of cloths. I was never prosecuted.

20 Cecilia was living at the deceased's house during the last three months of his illness. She was not living there for about six years. Lewis Baddavitharna is the husband of Cecilia. About 150 yards from the deceased's house is Baddavitharna's rubber store. It is not a fact that Cecilia and Baddavitharna both stayed at Frederick Siriwardene's house. Baddavitharna had a boutique and he was staying there. He did not come to sleep in the deceased's house when the boutique was closed. I stayed in the same house. I slept in the verandah.

Q. Not in the deceased's house, you were in the verandah of the smoke-room?

A. Yes.

30 As smoke-room cooly I did not have to break the fire about twice in the night. The last fire is set in the evening and I don't attend to the fire in the night. I only keep watch in the night against thieves. I got all my meals from the bungalow. I did not go anywhere else for my meals. I have not been in the employ of the deceased from time to time. I was under him all throughout. Whenever I fell ill I went to my village, otherwise I was employed under the deceased all throughout. I have no certificate from the deceased. I seriously say that Lily Nona was not there during the last illness. She was not there during the illness of the deceased. I cannot remember the day
40 on which she turned up. It is not correct to say that both of them are still living in that house. Cecilia is living in that house but Lily is not there. Lewis Baddavitarne is not in that house but he lives in the boutique. He visits the house,

No. 19.
Respon-
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Evidence.
Devarak-
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Cross-
Examina-
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—continued

The Meegama native doctor attended on the deceased. He is popularly known as Sangawatta Vedamahatmaya. He lives at Meegama. Thereafter Dr. Ratnayake was brought. I saw the deceased leaving for Colombo with Baddavitarne and Carthelis but not Thomas. I saw the car depart. Thomas was not picked up on the way. At the time they left, Thomas was not there.

I was present when the headman came. The headman was sent for because Velun was demanding the keys and Carthelis refused to give them.

Q. Eventually Carthelis agreed to hand the key of a drawer putting all the other keys into the drawer, to the headman? 10

A. I do not know.

On that day Velun did not get any money from Carthelis for funeral expenses.

(To Court: I did not see any money being paid by Carthelis).

I know there were calamander almirahs. Velun did not remove some of those almirahs. Those almirahs are still in the bungalow. Since October last year I am working under Velun Siriwardene. I am the smoke-room cooly under him. I am paid Rs. 21/- with meals. I have a wife. It is not a fact that my wife and I when we worked for the deceased, lived in a small house on one of his rubber lands. My wife is in her village. She did not get ill when she was living at Balaketiyawa. She was not living there. I used to visit my wife's home weekly. 20

Sgd. JAMES JOSEPH,
Addl. District Judge.
2-9-43.

Francis
Amara-
singhe.
Examina-
tion.

FRANCIS AMARASINGHE: Affirmed.

40, I was employed under the deceased. I was in charge of his rubber lands. I was drawing a salary of Rs. 22/50 a month with food. I resided in the bungalow. 30

(To Court: Gomis was also living in the bungalow. To my knowledge he was not living with his wife in a hut in one of the rubber lands).

I had been in the deceased's house for about 2½ or 3 years. During all that period Gomis was also residing in the bungalow.

(To Court: We both had our meals there).

I slept in an outer room in the bungalow. I visited the rubber lands daily. I go at about 7 or 7-30 in the morning and return at about 10 or 11. I was supervising the work of the tappers and I also had to see that there were no thefts of rubber. I remained in the bungalow in the afternoon. I did not do any work in the bungalow. 40

10 Towards the end of September I went to Kalutara with the deceased to attend to a case of his. He took me with him. After I returned from Kalutara I remained at the house of the deceased. I did not go anywhere for a few days. I remember the deceased falling ill. I was in the house then. The others in the house at the time were Gomis, Thomas, Carthelis a cook. Apart from these servants Cecilia and Lily were there. Carthelis was not in the house. He came later from the Induruwa boutique. Samy Jayasinghe was present. The Meegama native doctor attended on the deceased. He treated for about five or six days. Gomis, I and Cecilia's husband were attending on the deceased personally. I was there all the time during the illness. Dr. Ratnayake also treated the deceased. The petitioner brought this doctor. I remember the deceased being removed to the General Hospital. Two days before that I was in the bungalow. I cannot recall any particular incident that took place on this day.

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Respondent's
Evidence.
Francis
Amara-
singhe.
Cross-
Exami-
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—continued

(To Court: Velun Siriwardene came to see the deceased on the 1st of October and once after that. A message was sent to him by Thomas a carter and Velun came).

20 Before the deceased fell ill, Velun was in the habit of visiting his brother. He used to pay two or three visits a month. I cannot remember any event that took place two days before the deceased was removed to Colombo. I know Samy Jayasinghe, I know Thomas. Thomas used to come there off and on. He was a witness in a case of the deceased. I know Peter Jayasinghe. I know Handy Singho. Handy Singho came some months before the deceased fell ill, not after that. Palis Gunatilleke never came. I know the man.

(To Court: No will was executed. If a testament had been written I would have known about that).

30 If five people came and they went into the room of the deceased and the room closed and something took place, I would have known about it.

40 I went to see the deceased after he left Galmatta to Colombo. I came to Colombo on the 8th. I saw the deceased in the hospital on the 8th. I saw him again on the 10th. I remained back when I came on the 10th. On the morning of the 12th the deceased died. I was in the hospital when the deceased expired. There were no others present at the time. Carthelis and Lewis Vedamahatmaya left the previous day at about 3 p.m. to fetch a Vedamahatmaya. Velun visited the deceased at the hospital. I met him in the hospital on the 8th. I know Dharmasena. I met him once in the hospital. The body was removed on the 12th. I attended to the registration of the death. I signed a form to remove the body. I was present in the house when the funeral arrangements were made. The younger brother of the deceased made the arrangements, that is Velun Siriwardene. I remem-

No. 19.
Respon-
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Evidence.
Francis
Amara-
singhe.
Examina-
tion.
—continued

ber the date of the cremation. After the cremation Carthelis did not come to the house. I am unable to say where he was. I remained in the house. I continued in the employment. I am still in the same employment. Velun is in charge now. Samy Jayasinghe continued in his employment for two or three months thereafter. I used to meet him everyday. He did not tell me that there was a last will.

Cross-examined :

Francis
Amara-
singhe.
Cross-
Examina-
tion.

I am a man of Hikkaduwa. I was working in a plumbago pit under the deceased.

(To Court : I did not work at Hikkaduwa).

10

I came to the deceased as a man who knew how to work plumbago pits. The deceased had a plumbago pit at Leeniyawa. I was in charge of that pit. This place is about 12 miles from Galmatta. I was paid to do that work at the beginning. At the start I was working in the plumbago pit. About six months before the deceased died the work in the plumbago pit was stopped as there was difficulty in obtaining rice.

Q. You suggest there is no plumbago pit worked in Ceylon because of the rice shortage ?

A. They could not get dynamite.

20

Q. Despite the high prices of dynamite and so on plumbago mining is going on at a terrific rate ?

A. The deceased stopped because he could not get the licence for dynamite.

Q. The deceased was a well-to-do-man ?

A. Yes. But he could not get his licence passed.

The plumbago mine was not being worked right down to the time of the deceased's death. Work was stopped six months before. The books of the deceased were all stolen. On the day of the cremation a thief stole all the books in the plumbago pit. I was informed by the watcher and I informed the headman.

30

Q. What is the value of a check roll kept in a plumbago pit for a thief ?

A. I do not know.

Q. I put it to you that this is a cock and bull story of yours for the non-production of the plumbago pit accounts because the book will show that you were working there all throughout ?

A. No answer.

(To Court : My name may have been in the book).

I did not keep the books. There was a boy from Paiyagala who wrote the books. I was in charge of the pit. The boy was not under me. He was writing the accounts.

(To Court: I know what he has been writing. My name is entered in that book and the pay that was made to me).

Everything that was in the pit was stolen. Six months before the death of the deceased I came to his house. Before that I was at Leeniyawa. After I came to the deceased's house I supervised the tapping. I have not done that work previously but I had a general knowledge.

Q. You know that it is a highly skilled job; the K. P. has got to teach the tappers how to tap and check the damage to the bark and so on—he must be an expert tapper?

A. I had a fair knowledge.

I have never tapped in my life.

Q. Then you cannot be an expert tapper?

A. Yes.

Q. You cannot teach a tapper how to tap a tree?

A. At that time I did not have that knowledge but the deceased asked me to attend to this work. I have that knowledge now.

I do not know whether my name appears in any account or books kept at Galmatta after I came there. Samy Jayasinghe kept the books. The labourers under the deceased, the supervisors and others were all paid according to the books kept by Samy Jayasinghe. When I was attending to the work at the plumbago pit I was paid Rs. 22/50 every month. Thereafter the deceased paid me sometimes as much as Rs. 30/- and Rs. 40/-. All the names of those who worked for the deceased may appear in the check roll. The deceased's house was at Galmattawatta. I sign as F. Amarasinghe. I am also known as Hikkaduwe Amarasinghe. I was not known as Thiranagama Amarasinghe. I am a resident of Thiranagama. I did not come to the deceased's house only on the 8th of October. I was in the house even when he was ill.

Q. I put it to you that you were only brought there because the deceased and Carthelis went to the hospital on the 7th—you were sent for from Meegahatenna and came there only on the 8th?

A. No. On the 20th September the deceased and myself went to Kalutara. He remained there and asked me to go back to the bungalow.

Q. From what day do you say you were living in the deceased's house.

A. About six months before,

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Evidence.
Francis
Amara-
singha.
Cross-
Examina-
tion.
—continued

Q. From about April or May?

A. I am not quite certain of the month.

(Shown R 13—remarked P 41) My name appears under dated 1942 October as Hikkaduwe Amarasinghe.

Q. Your name appears under the date 8th October for the first time?

A. This is a book prepared for payment of salary after the death of the deceased. It was done by Velun who instructed Samy to put my name also down.

I do not know whether my name appears in the book before that. I can read Sinhalese. My name does not appear in September, August and July. 10

Q. If what you say is true, your name ought to appear only after the 12th October because you say after the deceased's death Velun instructed Samy to write your name?

A. I do not know how the name appears.

Q. Your story is that your salary was Rs. 22/50 a month?

A. Yes.

Q. Will you be surprised to find that you are put down as Rs. 20/- a month? 20

A. I was paid Rs. 22/50.

Q. Your story is that you were a sort of supervisor of all the properties although you had no knowledge of tapping?

A. Yes.

Q. Therefore your name ought to appear as the first name on the roll?

A. I do not know.

This book is written by Samy Jayasinghe. In November I have worked every day but for a day or two when I had gone to my village. So, also in December. 30

Q. Will you be surprised to find from the 19 to the 31st October you have not worked?

A. I do not know.

Q. You notice in this book there is a tick on each of the date that you were absent?

A. It is so in the book.

Q. In December how long do you say you worked?

A. I cannot say.

Q. From the 20th November right down to the 13th December you have not worked ?

A. I worked. I cannot say why my name has not been marked.

According to the book there is a tick against the name of a person who is absent. There is no such tick from the 1st to 7th October. According to the book I have only started work on the 8th of October. I am still working under the deceased. I live in his house.

No. 19.
Respon-
dent's
Evidence.
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Amaras-
singhe.
Cross-
Examina-
tion.
—continued

10 Q. I put it to you that you were being paid Rs. 20/- a month although you did not work much more than half a month according to this book in order that you may give false evidence in this case ?

A. No.

Q. You came from Hikkaduwa to work under the deceased for the first time in December 1941 ?

A. I cannot remember.

(To Court: Q. Is it not a year before his death that you came for employment under the deceased ?

A. Yes.)

20 Pussehena Patala was the actual name for this plumbago pit. (Shown account of Pussehena patala). This is also in Samy Jayasinghe's writing. The name Thiranagama Amarasinghe appearing in this book may be my name.

Q. You have begun work only on the 24th December 1941 ?

A. I do not know how my name has been entered in the books but I was paid my salary during the time I worked there.

(It is now 4.10 p.m. Counsel say they are unable to have a date earlier than the 25th and 26th October for the further hearing and conclusion of this case. Further hearing for the 25th and 26th October 1943.

30 Mr. Advocate Obeysekera applies for summons on witness L. Baddavitharana to give evidence and to produce the register of rubber application forms. Issue summons on him to appear on the 25th October 1943).

Sgd. JAMES JOSEPH,
Addl. District Judge.
2-9-43.

October 25, 1943.

Inquiry resumed.

Parties present and appearances as on the last date.

40 FRANCIS AMARASINGHE: Recalled. Affirmed.

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 dent's
 Evidence.
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 Amara-
 singhe.
 Cross-
 Examina-
 tion.
 —continued

I have not stated that P 42 does not show that I worked in the deceased's house in July, August and September. I have said that the book was kept by Samy Jayasinghe when he was working under Welin. I notice that in that book my name is the 16th and it has been written in a different ink to that in which the other contents of the book have been written. I do not know whether my name does not appear in the book till the 8th of October. (P 42 shown): My name appears there for the first time on the 8th of October; that is how it appears in the book. My name does not appear there for the months of June, July and August. R 14 shows that I worked at Pusapathala, my name given there being Tiranagama Amarasinghe.

10

The place referred to is the deceased's plumbago mine at Lineawa

Q. So that till June you were working in the plumbago pit?

A. That is shown in the book.

According to P 42, my name appears for November also as having worked for 17 days. According to that book the last day I worked in November was not the 18th of that month. The last four names on the page in question are in a different ink to that in which the earlier entries have been written.

A man called Gomis did not work under me. He worked under my master. According to the book P 42, his name appears as Podi Singho Kankana for September as well as October. The Galmatta property is one of 10 or 11 acres. It was I who was in charge of the work relating to that property. The first name appearing in the book is Podisingho Kankana.

20

A kangany also used to look after the estate, but as the deceased's faith in him was not sufficient, I was also asked to look after the work by the deceased. According to the book, I have not worked for the first 12 or 13 days in December.

I filled up householders forms at Hikkaduwa on a date on which I happened to be there.

30

Q. In March 1942, you paid your capitation tax at Hikkaduwa?

A. I pay my capitation tax wherever I am.

My wife is Orlena Karunaratne and my children are Irangi and Marlene. I call myself Francis Amarasinghe Aratchy. That is my full name. I cannot write in English. I sign in Sinhalese. (Shown Householders' list marked P 43): I sent this list at Hikkaduwa on the 3rd of July, 1942. It was not filled up by me. It was filled up by someone else at the request of my wife. She has signed it. My residence has been given there as "Hikkaduwa" and my occupation as "trader". I have been a trader from the start. The return is one made for obtaining rice coupon books. A rice coupon book was issued

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to me in the month of July at Hikkaduwa. My wife received the book. (Shown the reverse of P 43): I have signed this as the chief occupant stating that the information on the form is true.

Q. Your wife has signed the face of the form and you have signed the back of the form?

A. I have not signed the form.

Q. This certified copy P 43 shows that you Francis Amarasinghe Aratchy signed the form?

A. I did not sign the form.

10 I deny that I am a rowdy. I have been convicted for causing grievous hurt. In that case I was charged along with Panditharatne for causing grievous hurt. Panditharatne was acquitted but I was convicted.

Q. Welin got hold of you as being a fellow who could go and assert yourself?

A. I deny that.

Re-examined :

(Shown R 13, page for October 1942): This page is headed :
 20 "Check roll of the ordinary workmen of Galmatte Estate for the month of October". The next page refers to the check roll of the tappers of Galmatte Estate for September. A few pages beyond that is a page with the heading : "The check roll of the tappers at Galmatte Estate for the month of October, 1942". The page which I was asked to look at first shows that I worked every day from the 8th of October up to the end. On the 8th of October I was in the General Hospital, Colombo, having gone there to see the deceased who was ill at the time. I went there early that day and left the Hospital at 5-30 or 6-30 p.m. On the 8th I did not work on the rubber estate. On the 10th of October also I was in the Hospital. I went there at about 11-30
 30 a.m. or 12 noon leaving Galmatte at about 8-30 a.m. I remained in the Hospital from that date till the 12th of October, till the body of the deceased was removed to his village. When the deceased died I was in the Hospital, at his bedside. It was I who signed the certificate of death and took charge of the body. On the 12th I was in the hospital the whole day. But the book shows that I worked on the 10th, 11th and 12th.

The deceased was cremated on the 15th of October. From the evening of the 12th of October till the cremation on the 15th the body was in the deceased's house. Whilst the body was there no work was
 40 done, but the book shows that I worked from the 12th to the 15th. On the 17th of October I came to Colombo in order to obtain "atapirikara" for the almsgiving. The almsgiving took place on the 19th. The book however shows that I worked on the 17th also. Gomis and I are in

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 Francis
 Amarasinghe.
 Cross-
 Examination.
 —continued

Francis
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 Re-examination.

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dent's
Evidence.
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singhe.
Re-examina-
tion.
—continued

the photograph produced in this case. I had nothing to do with the entries in the book (P 42). I say that Sammy Jayasinghe made the entries. During the deceased's last illness, I looked after him and procured the necessary medicine. During that time I was not working on any of the lands owned by the deceased. He owned coconut lands. Coconuts had to be picked on these lands. I used to go to those lands to get the nuts picked. He had paddy lands also, and I also saw to the cultivation of those lands. I worked under him generally; not on any particular coconut or rubber land. I was paid a monthly salary of Rs. 22/-, not a daily wage based upon a checkroll. In addition to my salary, my food was given to me at the bungalow.

10

When I was employed under the deceased I used to go home once a month. I was issued a rice ration book and that book was at home. My ration was taken by my family living there. I say that I did not sign the form referred to. But my wife signed it. I was fined Rs. 40/- in a certain case.

That was about 10 years ago. That was for causing grievous hurt. I was not convicted in any other case. After that I have not been charged in any other case.

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-10-43.

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B. Don
Lewis
Appuhamy.
Examina-
tion.

B. DON LEWIS APPUHAMY: Affirmed, 50, Native Medical Practitioner and trader, Galmatte.

I am the husband of Cecilia. I am a native of Bentota. I married Cecilia in 1925 and went with her to Bentote to live there. I lived there till 1937. I have a boutique at Galmatte. That was opened in 1941. I am also a registered rubber dealer. As a registered rubber dealer I have to keep a register. (Shown P 9—P 14): These are "C" forms which a seller has to sign when he sells rubber to a dealer. There is a register kept by the dealer. When a sale takes place, particulars from the "C" forms must be entered in that register. If P 9—P 14 are "C" forms in respect of purchases made at my boutique the relevant particulars will appear in my register. I have been summoned to produce that register. I have not brought it. The particulars found on P 9—P 14 are entered there. That register was lost after the 29th of August this year, while this case was on.

30

I brought the book to Court on the 25th and 27th of August, I lost it after I had been summoned to produce it. On the 27th I brought the book to Court and on the 28th I travelled home with it by bus. I had the book with me when I got into the bus. The bus was

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crowded. When I got out of the bus, I found the book missing. It was lost in the bus. Someone must have taken it. There were several people in the bus who were interested in this case. The register is signed or initialled every month by an Inspector of Police. He checks up the entries in that book from the "C" forms. I deny that the particulars in the "C" forms do not appear in the register I lost.

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dent's
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tion.
—continued

Cross-examined (by Mr. Advocate R. L. Pereira):

I was summoned by Mr. Kannangara to produce the register in Court, and I duly brought it to Court. I had it in my hand in Court. Later I left it on the railing of the Court verandah. While it was there it dropped down and one Mr. Vedasinghe picked it up for me. He is a witness for Welin. I showed the book to the petitioner's proctor and also to Senior Counsel Mr. R. L. Pereira. I was in attendance in Court on the whole of the 27th and 28th of August in answer to the summons. The bus in which I was travelling with the register on the 28th met with an accident at Panadura, and it took about an hour to put the bus to right. Normally I get down at Alutgama to go home. On the 28th when I got down at Alutgama I inquired from the conductor about my suitcase. I had put the register in that suitcase and the suitcase had been put on the roof of the bus by the conductor when I was in the bus. I could not get the suitcase; it was missing. I stayed over the night in a boutique and early in the following morning I went and made a complaint to the Police. I have a certified copy of that complaint. (Certified copy of the complaint produced marked P 44). On my way home I do not pass the Welipenne Police Station. To go to the Welipenne Police Station I have to go past my house. On my way home I went to that Police Station and made a complaint. That was on the 29th of August. I produce a copy of that complaint marked P 45. I complained to the Walagedera Headman also. I was summoned to give evidence today.

B. Don
Lewis
Appuhamy.
Cross-
Examina-
tion.

I have been living at Walagedera from 1937. I have been dealing in rubber from 1941. The deceased sold me his rubber frequently. When he sold me rubber he signed "C" forms. I had in my employ a lad called Somaratne. At the request of the Proctor for the petitioner I handed a number of "C" forms to the petitioner's younger brother. I handed about six or seven forms to him. (Shown P 9—P 14): D. L. Baddavitarne is myself. (Shown P 9): This was signed by the deceased in my presence as well as P 10, P 11, P 12 and P 13 (shown). I cannot remember whether Somaratne signs in one set form. He has come here today. I swear that P 9—P 14 were signed by the deceased in my presence.

At the time I married her, Cecilia was living at Kalahakade. At the time of the deceased's death, she was living in the deceased's house. She took up residence there in 1937, and from that time lived there continuously till his death. Her sister Lily lived there from 1925

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tion.
—continued

till 1934. In 1934 she married a man of Dodangoda and went to live with him there. He is dead. He died four months after she went to Dodangoda. Then she came back to the deceased's house and lived there till she married a second time. That was in 1937. Then she went to live at Hakurugala. When the deceased fell ill, she came back to his house. That was about a day or two after he fell ill. As he was interested in her deceased husband's estate, she used to visit him very frequently. As a matter of fact he was the guardian of her minor children by the second marriage in the testamentary case. Her second husband died leaving two children. The deceased was the guardian of those children and the estate was being administered by Lily. After Lily returned to the house a day or two after the deceased fell ill, she remained there till about a week after the deceased's death.

10

Gomis was employed under the deceased. He was a smoke room cooly and he used to slit firewood also. He lived on one of the deceased's properties, a rubber land. He used to take his meals in his own house. It is not true that he was supplied with meals by the deceased.

I know the last witness Amarasinghe. He was also at one time employed under the deceased in the plumbago pit at Leenehawa. It is not true that during the deceased's life time, during the last six months, Amarasinghe was in the deceased's house. I cannot say when he first came to the house. He was brought there by Handy Singho Vidane. Amarasinghe never lived in the deceased's house. He is living there now. He came to live there after the deceased's death. He was brought there by Welin Siriwardena after the deceased's death. Before the deceased's death, Amarasinghe never lived there. He used to visit it.

20

Cross-examined. (By Mr. de Saram) :

I did not make a note of the number of the bus in which I lost the suitcase. When I got down at Alutgama, it was dark. At that time I looked at the number; it was not discernible. I inquired from the conductor what his name was and he gave it. I did not note it. I also asked him for the number of the bus. He lives at Balapitiya. I did not note the number. I was desirous of recovering the suitcase and its contents. I did not think it would help the Police to note the number of the bus and the name of the conductor.

30

(To Court: I did not mention the name of the conductor to the Police.)

Re-examined.

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 dent's
 Evidence.
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 Lewis
 Appuhamy.
 Re-exami-
 nation.

The case on the 27th was over at about 4 or 4.30 p.m. I got into the bus on the 28th. I delayed to do so because I had transactions with a boutique keeper in Colombo. He owed me some money. He had asked me to wait for him till he came from Wattedgama. I there-fore waited and he came to the boutique at 3.30 or 4 p.m. on the 28th. The bus left Colombo at 7 p.m. and reached Alutgama at 11.30 p.m. The delay was due to an accident on the way. I was delayed one hour. In the complaints I have not stated about this delay. I did not
 10 do so because I was not questioned by the Police. I told the Police I could not identify either the driver or the conductor of the bus. The suitcase was put on the roof of the bus sometime after I got into the bus, about 10 or 15 minutes after the bus started. It was after I got into the bus that the suitcase was put on the hood.

I got down at Alutgama at 11.30 p.m. and stayed over the night there. The next morning I made the complaint at the Alutgama Police Station. From Alutgama I went in a bus to the Headman of Walagedera and made a statement to him also. Then I walked from there to Welipenne Police Station about 1½ miles away.

20 Q. What was the need for three complaints?

A. I thought I should complain to the headman also. It is the Welipenne Police who inspect my books; so I had to inform them.

I have not advertised for recovery of the register in the Daily News and Dinamina.

(To Court: I did not tell the petitioner about the loss of the book. I never told him about it, but he learnt about it about two or three days after the loss).

30 I have bill books. Those books will show entries in "C" forms, the amount of rubber sold. I have not brought my bill book. It is at home. It might be possible to bring it here tomorrow. That book may be in the deceased's house. When he was ill he kept the book with him. Once when he was ill he took the book from me and he did not return it to me. When I go home I shall see whether the book is available.

Sgd. JAMES JOSEPH,
Addl. District Judge.
 25-10-43.

40 Mr. Advocate Obeysekera closes his case reading in evidence
 R 1—R 36.

Sgd. JAMES JOSEPH,
Addl. District Judge.
 25-10-43.

No. 19
Respon-
dent's
Evidence.
B. Don
Lewis
Appuhamy.
Re-exami-
nation.
—continued

Mr. Advocate Saram says he is not calling any evidence.

Mr. Advocate R. L. Pereira moves to call Somaratne who he says is in attendance in Court. He points out that he has to call him in view of the opinion expressed by Mr. Lawrie Muttukrishna that the alleged signature of Somaratne on P 12 is a forgery.

Mr. Advocate Obeysekera and Mr. Advocate de Saram object to this. I disallow the application.

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-10-43.

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No. 20

No. 20.
Addresses to
Court,

Addresses to Court

Mr. Advocate Obeysekera addresses Court :

The onus in this case is on the petitioner, the person propounding the will. This case is reeking with suspicion. He cites

39 N.L.R., page 494

6 Ceylon Weekly Reporter, page 362

20 N.L.R., page 481 (at page 493)

The propounder has interest in the will: He gets a third share of the estate. The burden is upon him to remove the suspicion that will arise in the mind of the Court regarding the circumstances surrounding the alleged will. He should satisfy the Court as to the righteousness of the transaction.

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The dispositions in the will are unnatural and unreasonable. The circumstances of the execution are suspicious, and the will is said to have been discovered under unnatural circumstances. That being so the petitioner must remove these suspicious circumstances and satisfy the conscious of the Court that the document is a genuine one. The deceased was a bachelor. His father married three times. By his second marriage he had children and also by the third marriage. Frederick the deceased was the only child of his father by his first wife Sero Nona. By the second wife of the deceased's father (Engo) there is a child Jane Nona who had four children. The second child is Don Welin. The third child was Davith who is dead and who has left five children some of whom are Mr. de Saram's clients. The fourth child was Emy Nona who is alive. The third marriage was with one Elpi Nona Weerakoon. There were no children by that marriage. The

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petitioner says that Cecilia and Lily are children of the third wife Elpi Nona. The 1st respondent says that they are children of Elpi Nona by a previous husband. They are adulterine bastards. See: No. 20.
Addresses to
Court.
—continued

R 1: Copy of the deceased's evidence in D. C. Kalutara Case No. 13560;

Decree of Divorce *R 17* which shows that Cecilia's mother was divorced from her husband on the 14th of December, 1909, and Cecilia's marriage certificate *R 18* which shows that she must have been born in 1902.

10 Cecilia has said in evidence that her sister is two years younger than she, and therefore she must have been born in 1904, that is, during the subsistence of Elpi Nona's marriage with her former husband. Why should the deceased have ignored all his step-brothers and step-sisters and their children?

There is no evidence in support of the allegation made by the petitioner that there was litigation between the deceased and the respondent Welin. The petitioner produced P 17 which is a copy of a case between the deceased and his step-brother Davith. See *R 5*: funeral notice of Davith issued by the deceased Frederick. That shows 20 that at the time Davith died good feelings had been restored among the brothers. The petitioner replies to this by saying that *R 5* is a forgery in so far as the name of Frederick had been inserted in the funeral notice without his knowledge or authority. No suggestions of any ill-will between the deceased and the other brothers and sisters. The priest Jinaratane is a brother of Welin's wife. There was a dispute between Jinaratana and the deceased and it is suggested by the petitioner that in that dispute Welin took the side of the priest. The evidence for the 1st respondent is that Welin took the side of his step-brother, the deceased. Was there want of good feeling between the 30 deceased and Welin? If Welin was not on good terms with the deceased why did the petitioner send a telegram about the deceased's death to Welin? See telegram *R 3*. Welin made the funeral arrangements and spent for the funeral. See *R 12*. See headman's evidence.

No evidence of any previous expression of his testamentary intentions by the deceased. The will is alleged to have been executed on the 5th of October. No evidence of any preparation until the previous day. Some of the witnesses had been sent for on the 4th informing them that there was going to be a will on the 5th. The deceased was fond of litigation. (See Wilson de Silva's evidence). The deceased 40 came to Colombo on the 7th of October. It is quite clear that he did not anticipate death. His condition was not bad. Why did the deceased carry with him Mr. Nadarajah's opinion when he visited Mr. Wilson de Silva, unless it was to hand it over to Mr. de Silva, either to act upon it or to obtain a further opinion from other Counsel? If he

No. 20.
Addresses to
Court.
—continued

did carry it, the natural consequence of it would have been that he would have handed it over to Mr. Wilson de Silva. (See Mr. Wilson de Silva's evidence). If the deceased had these papers he would have handed them over to Mr. Wilson de Silva. The deceased never carried these papers with him. Thomas identified the envelope by the mark P 8 inserted in blue pencil on it. Is it likely that the deceased would have sent for the ex-Buddhist priest Sammy Jayasinghe and asked him to write down the will to his dictation when he knew a number of Proctors and Notaries and was in business contact with them?

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The deceased fell ill on the 29th of September. He had some Ayurvedic treatment but there was no improvement. On the 4th of October, Dr. Ratnayake was called. Why did the deceased keep the fact of the execution of the will a secret from the three main beneficiaries? The alleged will has in some respects the legal form of a will. Is it likely that such a will would have been dictated by the deceased to Sammy Jayasinghe? See Sammy Jayasinghe's evidence.

(After Lunch).

The attesting witnesses, except Sammy Jayasinghe, did not live in the house of the testator and no evidence has been given as to how they happened to come together on the 5th of October. See evidence. Edwin the carter who conveyed the message to Peter Jayasinghe has not been called. See Sammy Jayasinghe's evidence, and Thomas' evidence. What is the need for this secrecy about the will even to the witnesses? Apparently they had been sent for without any previous intimation that they were required for a will. After the will was witnessed by them they were warned to keep the matter a secret. The witnesses are all men of a lower status than the testator. See Sammy Jayasinghe's evidence regarding his status, and Thomas' evidence. Thomas is the man who identified the envelope by P 8.

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The most suspicious feature with regard to the will is the manner in which it was discovered. The conduct of the witnesses immediately after the death of the deceased is entirely inconsistent with their knowledge of the fact that a will had been executed. See petitioner's evidence. The evidence indicates the state of his mind which was the germ of the subsequent developments with regard to the fabrication of the will. Neither Carthelis nor Sammy Jayasinghe nor Thomas who were all there when the headman went to the deceased's house did not say anything about the will to him on the 13th. See Thomas' evidence and headman's evidence. The evidence of the Headman is false. See his evidence. Even on the 18th there was no mention of the will. See headman's evidence on that point. Sammy Jayasinghe continues in the employment of Welin from

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the 18th of October for three months and not a word about the will, No. 20.
 was told by him, to Welin. See Sammy Jayasinghe's evidence. Addresses to
 Carthelis says that on the 13th Sammy told him there was a Court.
 will; no further details. Sammy did not discuss this matter with —continued
 Carthelis after that. Thomas gives almost similar information to
 Carthelis at the cremation. On the 16th Carthelis goes to Mr. N. de
 Alwis. See N. de Alwis' evidence. Carthelis says that he went
 to Mr. N. de Alwis on the 16th of October. How did Carthelis
 know on the 16th that the will was a five-witness will? On what infor-
 10 mation did Carthelis come to know the names of these witnesses and
 take these men to Mr. de Alwis. Carthelis says that the names
 of the witnesses had been given to him on the evening of the
 cremation, on the 15th of October. Sammy's evidence contradicts
 Carthelis's evidence. The fact is that when Carthelis and the
 witnesses appeared before Mr. de Alwis on the 20th of October,
 they did not give him any particulars about the contents
 of the will. See evidence of Mr. de Alwis. On the 26th of October
 the Government Agent notifies Welin to apply for letters. See
 20 R 16. The applicant applies for letters on the 19th of November
 in Case No. 10238. The application for probate in this case was made
 on the 9th of December.

See petitioner's evidence. See John Perera's evidence. It is all false.
 Why did not the deceased leave his will behind under lock and
 key in his house? Why did he carry it with him? Is it likely that the
 deceased would have handed over the will to a stranger like the hotel
 keeper? Why did not the deceased entrust the will to the executor
 when he found his condition was growing worse? There was no reason
 for John Perera to answer the advertisement. See Thomas' evidence.

30 Sgd. JAMES JOSEPH,
Addl. District Judge.
 25-10-43.

It is now 4-15 p.m.

Further hearing tomorrow at 10-30 a.m.

Sgd. JAMES JOSEPH,
Addl. District Judge.
 25-10-43.

26th October, 1943.

Parties and appearances as before.

Mr. Advocate Obeysekera continues his address :

40 The driver of the motor car in which the deceased travelled to
 Maliban Hotel has not been called. This hotel is not enroute between
 Kalutara and the General Hospital.

No. 20.
 Addresses to
 Court.
 continued

See Peter Jayasinghe's evidence. It is obvious there are people behind the petitioner and that they are spending lavishly for this litigation on his behalf. Note the number of counsel appearing for him. The evidence of Baddavitharne regarding the disappearance of the register is false. His information at the Police Station is all a fake.

See evidence of Gomis.

See evidence of Carthelis where he admits that Amarasinghe was employed under the deceased during his last illness.

Mr. Mc Intyre is not quite so experienced as Mr. Muttukrishna who has experience of a third of a century. He cites *32 N.L.R. at page 139; 10 N.L.R. 359; 22 N.L.R. 361 at 363*. The standards used by Mr. Mc Intyre are P 9 to P 14 and P 15 and six proxies. Mr. Muttukrishna's opinion is based not only on the standards used by Mr. Mc Intyre but on other standards also. The capital "D" in the impugned signature seems to have been made with five strokes.

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Mr. Advocate de Saram :

It is improbable that the deceased would have made a will with five witnesses. Deceased was a shrewd active business man who was in the habit of employing lawyers and therefore it is more likely that he would have employed a notary for the purpose of the will. He was not far away from the reach of notaries.

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A forgery may be enacted in the shape of a drama.

Mr. Advocate R. L. Pereira :

The law recognises a will attested by five witnesses. Many men have left wills witnessed by five witnesses. The deceased Frederick was a headman of his time and before him his father Karnelis was the headman. Frederick was a man of striking personality. Three of the witnesses to the will appear in photograph P 25. Peter Jayasinghe, Handy Welvitharne and Thomas are on the right of the picture. The persons in that picture must have been responsible persons. Otherwise they would not have found a place in that photograph.

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(At this stage Mr. Advocate R. L. Pereira moves to read in evidence P 40 to P 45. It is allowed).

No evidence whatever that the witnesses were of a status below that of the testator. Was this an unnatural will?

Velun denies that Lily and Cecilia are the children of his father by the third wife Alpy Nona but see his evidence contra. See marriage certificates P 20 and P 38. See deeds P 26 and P 27. This will deals only with the acquired property of the deceased. The inherited property has not been disposed of and devolves on the half-

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brothers and sisters. See P.16, para 8. See also P 17, para 5. See Fredrick's evidence in P 17. See Velun's evidence. See P 17. Obviously there was illfeeling between the deceased and Velun.

No. 20.
Addresses to
Court
—continued

Amarasinghe and Gomis are still in the employ of Velun. Their salaries have been raised, on their own admission, by Velun. Sammy was doing not only conductor's work but he was visiting the deceased's rubber estates also. See Sammy Jayasinghe's evidence Francis Amarasinghe admitted in cross-examination that he was living in the plumbago mines.

10 P 42—R 13 book kept by Sammy Jayasinghe. Some of the names are written in different coloured inks for the months of October, November and December. See P 43 which shows that Francis Amarasinghe was at Hikkaduwa.

The moment the propounder of the will satisfied the conscience of the Court about the genuineness of the will the onus is shifted upon the challenger to prove that it is a forgery.

20 See P 1 which shows that the deceased and Carthelis were carrying on business together. Nothing could have been easier than for Karthelis, Cecilia and others to have said that the deceased left a will and that he had told them that such a will had been executed. The fact that the will was a secret document is no argument against it.

See Velun's evidence to explain the reasons why Velun was questioned about the age of his daughter at the time of her marriage.

The petitioner Karthelis went to Mr. Alwis' house on the day after the cremation, on the 16th.

John Perera was very keen on earning the reward of Rs. 50/.; that is why he wrote two letters in reply to the advertisement.

Velun was determined to harass the witnesses for the petitioner.

30 How did Velun come by R 7?

(Lunch Interval)

Sgd. JAMES JOSEPH,
Addl. District Judge.
26-10-43.

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(After Lunch)

Mr. Advocate R. L. Pereira :

40 Why was not the chauffeur, the Inspector and the Vedarala who were summoned by the respondent not called by him to give evidence. See No. 52 of the record.

No. 20.
Addresses to
Court.
—continued

The signatures in R 21 are R 27 of August 1925.
R 28 of March 1930
R 29 of March 1933
R 30 of March 1936 and
R 31 of December 1937.

During this interval of 12 years the deceased's signature has been changing. The last signature on R 21 has almost a straight line at the end of it. Mr. Muttukrishna showed samples of which the last was about five years before the date of the impugned will.

See Osborne, pages 27 and 28

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Osborne page 365

P 40: There is a double hump after "a" in "dene".

It would be very difficult to reproduce the letter "D" on P 12 as well as on the impugned signature.

P 37 is a more hesitant signature.

Page 32, Osborne.

C. A. V.

Sgd. JAMES JOSEPH,
Addl. District Judge.
26-10-43.

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No. 21.
Judgment
of the
District
Court.
4-2-44.

No. 21.

Judgment of the District Court.

JUDGMENT

In this case the Last Will of a wealthy rubber land owner called Don Frederick Siriwardene is challenged as a forgery. The Will is alleged to have been made by the deceased in the presence of five witnesses on the 5th of October 1942 in the house of the deceased at Galmatte in Welagedera in the Kalutara District. The deceased died a week later (12-10-42) at the General Hospital, Colombo. He was unmarried and at the time of his death he was between 66 and 70 years of age. In the event of intestacy his admitted heirs would be his step-brother Welin (1st respondent) and his sep-sister Eminona Siriwardene and the children of a step-brother and of a step-sister of the deceased who had predeceased him. Besides the above mentioned persons two others namely Cecilia Siriwardene and Lily Siriwardene

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also claim to be the step-sisters of the deceased, but their claim to share in the estate of the deceased is denied by the admitted heirs who say that these two sisters are adulterine bastards of Caranelis the father of the deceased and his admitted step-brothers and step-sisters. The beneficiaries under the Will are these two sisters and a man called Karthelis the petitioner who was also appointed executor. Karthelis who is now 32 years old was taken as a servant in the employ of the deceased about 20 years ago and it would appear he rose in the service and estimation of the deceased till in 1940 he became a partner with the deceased in the business of a boutique in Induruwa. The deceased disposed of all his acquired property by the alleged Will. As to the nature and extent of his inherited property which was not disposed of there is no evidence in the case. He devised his acquired property except his residing house "Sirini Vasa" equally among Karthelis the petitioner, Cecelia and Lily. The residing house he devised in equal shares to Karthelis and Cecelia. Welin (the 1st respondent) applied for Letters of Administration to the estate of the deceased in case No. 10238 of the Court and he filed papers on 19-11-42. This application for Probate was by Karthelis on 8-12-42.

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4-2-44.
—continued

The Last Will which is marked "A" was not forthcoming at the death of the deceased and the petitioner says that on the advice of the headman of Induruwa and of certain others who were assembled at his boutique at Induruwa he published notices P 4 and P 5 in the newspapers "Daily News" and "Dinamina" offering a reward for information leading to the discovery of the missing Will. This notice brought him into contact with one John Perera, Manager of the Maliban Hotel in the Pettah, Colombo, and Perera handed over the Will to him on 20-11-42 in return for the payment to him of the reward of Rs. 50/-. The petitioner says that the Last Will must have found its way into the hands of John Perera in the following manner:—The deceased contracted some stomach trouble on 29-9-42. Medical treatment in his village having proved ineffective he left home on 7-10-42 with the intention of entering the General Hospital for treatment. On the way he had a talk with Mr. Proctor Wilson de Silva opposite the Magistrate's Court at Kalutara in connection with some case which was in Mr. de Silva's hands. The deceased who was travelling in a hired motor car accompanied by the petitioner, Lewis Appuhamy the husband of Cecelia and Thomas Appuhamy proceeded on his Journey to Colombo, but on the way he made a halt at Colpetty to answer a call of nature. Thereafter the party went to the Maliban Hotel where the deceased rested for a little time and had a bottle of soda before going to the General Hospital at about 1 p.m. The petitioner's evidence is that he was not aware of the making of the Will till the day after the death of the deceased (13-10-42). What John Perera says is that the deceased handed over to him an envelope containing certain documents when the deceased's co-travellers in the car were away from the hotel. The petitioner also says that before the

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—continued

advertisement in the papers he made search for the Will at the Maliban Hotel but without success owing to the absence of John Perera from the hotel on that occasion. I also find as a fact that within reasonable time after the petitioner says that he became aware of the alleged Will namely on the day after the cremation of the deceased (15-10-42) he sought the advice of Mr. N. de Alwis, Crown Proctor of Balapitiya with regard to the missing Will and an affidavit P 18 was affirmed before him by the witnesses to the Will on 20-10-42.

I felt some difficulty in deciding this case and the special difficulty arose from the episode at the Maliban Hotel and the legal advice sought from Mr. N. de Alwis. I could not easily reconcile myself to the view that these villagers possessed the degree of cleverness to think out and execute a plan so elaborate and so full of circumstances as the Maliban Hotel episode and the legal advice from Mr. N. de Alwis. At the same time I am unable to refer to any particular witness and say that his evidence can be accepted as true or rejected as false. They are all village witnesses whose story cannot be said to be demonstrably true or false. Perhaps the only witness whose looks and appearance caused a prejudice in my mind is Sammy Jayasinghe and the only witness who impressed me as speaking nothing but the truth is Gomis. As regards the witness Jayanetti headman of Walagedera and Don Lewis Appuhamy I think they cut a sorry figure under cross-examination. This is all I can say about demeanour and deportment of witnesses. I have therefore to decide the case on probabilities and after much see-sawing I have settled to the view that the story of the witnesses in support of the Will is irreconcilable with probabilities; that the Maliban Hotel episode is a fake and the legal advice from Mr. Proctor N. de Alwis is a make-believe. The story told by the witnesses in support of the Will has not satisfied my judicial conscience that the Will is the act and deed of the deceased Don Frederick Siriwardene.

As I have already said none of the admitted relatives of the deceased is a beneficiary under the Will. Even if there was no cordiality between the deceased and Welin as the petitioner sought to make out, there was no reason why the deceased should have left out his other relatives in the Will. I am bearing in mind the evidence of Cecelia who says that the deceased was not on very good terms with anybody except with her, her sister Lily and Karthelis and that he was on good terms only with those who were living in his house and not with those living outside. It may be that the sisters were the special objects of his bounty but that is no reason for thinking that the deceased would have left all his valuable estate to the sisters and to Karthelis to the exclusion of even such of his admitted relatives as had not incurred his displeasure. What I think is this. Karthelis is not an heir. The heirship of the sisters is problematic. These were the persons who enjoyed benefits from the deceased. His intestacy would have cut them off completely from further enjoyment. Therefore Karthelis fabricated the will giving shares to the sisters also. It

may be that the sisters acquiesced in the fabrication and my conjecture is that the Will was fabricated on the 11th October when Karthelis returned to the village leaving the deceased in the hospital. For one thing the Will could not have been fabricated after the death of the deceased.

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—continued

10 Never before the date of its execution namely 5-10-42 did the deceased give any indication that he was going to execute a Will. On that day in the morning he called the ex-Buddhist priest Sammy Jayasinghe, so the evidence of the witness is, and got him to take down the terms of the Will to his dictation. Sammy Jayasinghe wrote
20 down in pencil to the dictation and then made a fair copy in ink. This was at about 10.30 or 11 am. The Will was however signed at 4.30 p.m. the reason for the long interval being the late arrival of Thomas on the scene. Thomas who had gone to Kalutara on an errand from the deceased to Mr. Proctor Wilson de Silva had not been informed by the deceased about the proposed Will nor had he been asked to return early and it is difficult to understand why the deceased and the other witnesses waited for his return. Peter Jayasinghe says that he went to the house of the deceased at about 1 or 1.30 p.m. and had a talk with him and he was asked to wait for the purpose of witnessing the Will. That evidence of Peter Jayasinghe is irreconcilable with that of Sammy Jayasinghe who was called into the room by the deceased at about 2.30 p.m. and was asked whether Peter Jayasinghe and other witnesses had come to the house. Peter Jayasinghe says that during all the time he waited in the house of the deceased before signing the Will, Handy Vel Vidane and Parlis Gunatilake who were also there did not tell him why they were there. If all these three witnesses had been wanted by the deceased to witness his Will and if they had been asked to wait for that purpose it is but
30 natural they would have talked about it.

40 On the day of the execution of the Will the petitioner says that he was away from home for a good part of it but he has not told us that he was away from home from 10-30 a.m. to 4-30 p.m. The only purpose for which he was out was to fetch the doctor and thereafter to procure medicine. It is not at all likely that this would have kept him away from home for so long an interval. The very fact that he went out to bring medicine for a sick man should have brought him back promptly home. If the intention of the deceased was to keep the Will a secret he could not have adopted a more effective method to defeat the purpose than to have it witnessed by five villagers. The deceased had litigation in the Kalutara Courts. He knew several Proctors. He had given work to them. He could have easily arranged for a quiet execution of the Will before a Notary. Even if it be conceded that the deceased wanted the Will to be kept a secret that injunction of secrecy would not have applied to the petitioner who was the executor appointed under the Will and into whose custody the

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Will should have gone. It would appear that the deceased's keys were more often in the custody of the petitioner than that of the deceased. That being so the Will which is said to have been put into a drawer after its execution could have been easily got at by petitioner. The petitioner did not see the deceased taking the Will with him on his journey to Colombo. It was Thomas who saw it and Thomas told the petitioner that it had been enclosed in an envelope bearing the name of Mr. Wilson de Silva Proctor. Here again it would look as if the deceased contrived to put into the suit case the envelope containing the Will at a time when the petitioner was not on the spot. I have serious doubts however as to whether any envelope was put into the suit case. If that envelope had been in the suit case it would have been returned to Mr. Wilson de Silva at Kalutara. If that had not been done the petitioner would have seen it at Colpetty when he opened the suit case.

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At the Maliban Hotel too the envelope was handed over by the deceased to John Perera when the petitioner and the other companions of the deceased were away from the hotel. I find great difficulty in believing the story that the petitioner left the hotel in search of the motor car which was late in returning from the petrol station and that when he saw the motor car returning he did not get into it but walked along the pavement back to the hotel. The evidence of Thomas on this point is that when he returned with the car after getting petrol he saw the deceased and the petitioner in the hotel. If as a matter of fact the deceased took away the Will with him when he left home for the hospital which there was absolutely no reason whatever for him to do there was no conceivable reason why he should have handed it over to John Perera who was no more than an acquaintance of his in connection with his visits to the hotel. If as a matter of fact the deceased apprehended danger to his life when he reached the hotel he would have handed over the Will to the petitioner, or if he had handed over to John Perera he would have informed the petitioner about it. John Perera did not question the deceased about the contents of the envelope; but he asked some gentlemen who stood by the Cashier at that time and he found out that it was an envelope addressed to Mr. Wilson de Silva Proctor. There is a bit of artificiality in this evidence. There is also a coincidence between this bit of evidence regarding the envelope and its address and the wording of the advertisements P 4 and P 5. Indeed the whole story of the happenings at the Maliban Hotel on the 7th October and the subsequent events which led to the discovery of the Will is too good to be true. It should be noted that the petitioner went to Maliban Hotel so he says in search of the Will some 5 or 6 days after the cremation. If he did so of which I am very doubtful he did not make anything like a serious effort to get at the Will. One word more before I leave the Maliban Hotel episode. John Perera says he knew the deceased very well. He also says that when the deceased handed over the envelope to him he (deceased) said that

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the envelope contained "very valuable liyun". John Perera reads newspapers and the notices and advertisements in them. The death of the deceased was notified in the papers. He would have read the obituary notice of the deceased and I am unable to attribute to him such great virtues as would have enabled him to resist the temptation to find out the "valuable liyun" in the envelope P 8, when the sick man who had promised to return in 3 or 4 days' time failed to do so for more than a month.

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10 Mr. N. de Alwis is a Proctor of Balapitiya. Galmatte is within the jurisdiction of the District Court of Kalutara and ordinarily people of Galmatte would transact their business at Kalutara. The petitioner had never before gone to Mr. N. de Alwis nor did Mr. de Alwis know the deceased at all. The last proctor whom the deceased saw on the way to the General Hospital was Mr. Wilson de Silva and it was an envelope with the name of Mr. Wilson de Silva upon it that was missing. That being so it is difficult to understand why the petitioner did not go to Mr. Wilson de Silva or to some other Proctor of Kalutara but went to Mr. de Alwis. And the readiness with which the five witnesses to the Will appeared before Mr. de Alwis for affirming to the affidavit makes me think that they are conspirators who are prepared to collaborate to the end. I cannot resist the feeling that the petitioner who does not seem to be a man of much substance is receiving powerful backing both in money and mind in this litigation. I think Lewis Appuhamy to whose wife Cecelia a half share of "Sirini Vasa" was devised and whose evidence regarding the manner in which he lost the suit case containing his books is quite untrustworthy is one collaborator.

30 On the 13th October Sammy Jayasinghe told the petitioner about the Will. The petitioner says that his reply to Jayasinghe was that he did not get the Will and that was not the time to think of Wills. Truly a noble answer on the part of Karthelis. Again on the 15th of October after the cremation he asked Sammy Jayasinghe what sort of a Will it was and who the attesting witnesses were. It would have been more natural if he had asked for the attesting Notary. And Sammy Jayasinghe's evidence on this point is as follows:— "When Welin was asking for the keys I told the petitioner that a Last Will had been written by the deceased and signed by him and five witnesses and I asked him whether he had not got it. I also told him that it had been written in his favour and that he ought to have got it. The deceased asked me to keep the Will a secret during his lifetime. It was after his death that I told the petitioner about the Will. As the 1st respondent was pressing for the keys I asked the petitioner 'Have you got the Last Will?' What I thought was that the petitioner was the owner of the Will and that he ought to get it. At that stage on the 13th I told the petitioner 'You are the executor under the Will as well as the principal devisee'. I did tell him that he was the executor

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—continued

and I also asked him to get hold of the Will. When I told him that there was a Last Will he said 'I have not got it. There is no use talking about it. Now our duty is to attend to the burial.' I did not tell Welin about the Will". This discloses strange conduct indeed on the part of the petitioner and Sammy Jayasinghe. There was Welin on the spot pressing for the keys. There was the man appointed executor under the Will which has given him a third share of the estate and yet the petitioner does not challenge Welin's claim for the keys. Nor does Sammy Jayasinghe tell Welin that there was a Will in terms of which Welin had no right to any share in the estate of the deceased. Welin also questioned Sammy Jayasinghe whether there was a Last Will and Sammy Jayasinghe's reply was "I worked loyally under the deceased. Now I will work under you". I can quite understand an answer like that from Sammy Jayasinghe. The evidence of the headman Jayanetti is that on the morning of the 13th October at 9-30 o'clock Thomas called on him at his house and told him that the deceased had left a Last Will making Karthelis one of his heirs; and his (Jayanetti's) advice to Thomas was "Do not speak about the Last Will now in the deceased's house. If you do so there will be a big row". It is difficult to believe his evidence, because I cannot conceive of any row ensuing from an announcement from this headman that he had information from attesting witnesses that the deceased had left a Will. On the 18th October the Inspector of Police went to the place to make an inventory of the deceased's goods. Jayanetti who accompanied the Inspector did not tell him about the existence of the Will. Here again I cannot believe the explanation of Jayanetti that because he had not seen the Will he did not tell the Inspector about it. Jayanetti had information about the Will from Thomas on the 13th. Five or six days later he reported to the Revenue Officer about the death of the deceased for the purpose of the administration of his estate. He did not mention anything about the Will in that report. But what he said was "that Welin Siriwardene has come forward claiming to be a brother of the deceased"; and it was Welin Siriwardene who had been noticed by the Assistant Government Agent to administer the estate of the deceased (see notice R 16). He was also noticed by the District Court to the same effect. (See R 35).

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The Will in question is not a reasonable or natural Will. Claims of kinship have not been recognised in the Will. It is a Will shrouded in suspicious circumstances and "where a suspicion attaches to a Will a Court must be vigilant and jealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true Will of the deceased". (Rajasooriar against Rajasooriar 1937 39 N.L.R. page 494). (The Alim Will case 20 N.L.R. page 481). The evidence produced before me has not satisfied me that the Will propounded is the act and deed of the deceased.

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I have arrived at the above view without taking into consideration the evidence of the expert witnesses. Three of them were called in the case, Father Mr. A. Julien and Mr. Mc Intyre on the side of the petitioner and Mr. Lawrie Muttukrishna on the side of the respondents. Even if Mr. Muttukrishna had agreed with the other two experts in pronouncing in favour of the Will I would have found very great difficulty indeed in subordinating my convictions based on the circumstances of this case to be concord of their opinions. But I should say that at the time when these experts gave evidence I felt that Mr. Muttukrishna with his verbal amplitude and exactitude guided me into the observation of features and peculiarities in the signatures that were under consideration with regard to which I could satisfy myself by my own ocular test. I also felt that I could agree with him in the opinions that he expressed upon these features and peculiarities. This took place at the time when the proceedings in the case were going on. At that time I had an open mind as to the genuineness or otherwise of the Will in question. But I cannot say that I was able to agree with Mr. Mc Intyre in the reasons he has set out in P 31. Rather I should say the reasons are good, but the facts to which these reasons are sought to be applied are not correct. What I mean is this. While I was able to agree with Mr. Muttukrishna regarding the features and peculiarities in the signatures which were pointed out by him in his evidence I was unable to agree with Mr. Mc Intyre that the features and peculiarities pointed out by him were such at all. As regards Father Julien's evidence which I deeply appreciate the bona fides of his views I was unable to derive from his evidence that guidance and help that Mr. Muttukrishna gave me in studying the document. I may say in conclusion that if the case had been equally balanced on probabilities and circumstances I would have preferred the guidance of Mr. Muttukrishna's evidence to that of the other two gentlemen.

The Order Nisi in this case is discharged.

The petitioner will pay one set of costs to the 1st respondent and another set of costs to the intervenients for whom Mr. Proctor Gomes appeared.

Sgd. JAMES JOSEPH,
Additional District Judge.

Jaffna, 17-1-44.

Pronounced in open Court in the presence of Mr. Paranavitarne for petitioner and of Mr. Advocate J. E. M. Obeysekera for Objector and Interveniants on 4th February, 1944.

Sgd. S. J. C. SCHOKMAN,
A. D. J.

4-2-44.

No. 22.

No. 22.
Petition of
Appeal of
the Petitioner to the
Supreme
Court.
16-2-44.

Petition of Appeal of the Petitioner to the Supreme Court,
IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

D. C. (Int) 75/1944

In the matter of the Last Will and Testament of Katri Aratchige Don Frederick Siriwardene of Walagedera in Pasdun Korale West deceased.

D. C. No.
Testy Jurs.
No. 10277

Aratchi Appuhamillage Don Carthelis Appuhamy of Walagedera aforesaid
.....*Petitioner & Appellant.* 10

vs.

Katri Aratchige Don Welin Siriwardene of Kelahekada in Katugahahena in Iddagoda Pattu of Pasdun Korale West
.....*Respondent.*

- 2. K. Premawathie Siriwardene, and
- 3. Cecilia Kannangara, both of Kelahakada.....*Intervenients-Respondents.* 20

On this 16th day of February, 1944.

The petition of Appeal of the Petitioner abovenamed appearing by his Proctor John Samuel Paranavitarne states as follows:—

1. This was an application for probate of the Last Will of Don Frederick Siriwardene executed on October 5, 1942. The Petitioner is the Executor named in the Will. The deceased was unmarried and had no children. The 1st Respondent is a step-brother and the 2nd and 3rd Respondents who are step-sisters intervened in these proceedings.

2. By his said Last Will the deceased devised his property to the Petitioner and to Cecilia and Lily Siriwardene who claimed to be step sisters of the deceased. The deceased also made certain bequests to the Temple in which he worshipped and to Ananda College of which he was a benefactor. His inherited property was excluded from the operation of the said Will and would therefore have passed as on an intestacy to the Respondent and to certain others of his intestate heirs. 30

3. The 1st Respondent who was made a Respondent to the application for probate as he had already applied for Letters of Administration to the estate of the deceased as on an intestacy in case

No. 10238 of the District Court of Colombo impeached the said Will as a forgery. The same position was taken up by the 2nd and 3rd Respondents who intervened in these proceedings at a later stage.

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4. The case proceeded to trial on the following issues:—

1. Is the Last Will produced in Court the act and deed of the deceased Don Frederick Siriwardene?
2. Was the said Last Will duly executed?
3. Is the signature "D. F. Siriwardene" appearing on the document marked 'A' annexed to the Petition the signature of the deceased?

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5. After enquiry which lasted several months the proceedings terminated on the 25th day of October, 1943. Judgment was delivered on February 4, 1944, after the lapse of three and a half months, rejecting the said Will and dismissing the Petitioner's application for probate.

6. Feeling aggrieved by the said Judgment and order the appellant begs leave to appeal to Your Lordships' Honourable Court on the following among other grounds that may be argued at the hearing of the appeal:—

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(a) The said judgment is contrary to law and the weight of the evidence led in this case.

(b) It is submitted that the long delay which elapsed between the conclusion of the trial and the delivery of the Judgment must necessarily have affected the impression created on the learned Judge's mind by the many witnesses who gave evidence in a case which depended mainly on the weight to be attached to the oral evidence led.

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(c) The learned Judge says that he is unable to say whether the evidence of a particular witness can be accepted as true or rejected as false. He then proceeds to say

"I have therefore to decide the case on probabilities and after much see-sawing I have settled to the view that the story of the witness in support of the Will is irreconcilable with probabilities."

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(d) It is submitted that the learned District Judge has misdirected himself in not deciding on the oral evidence in this case and also in taking the view that the probabilities are not reconcilable with the evidence led for the appellant.

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 —continued

- (e) It is submitted that the learned Judge is clearly wrong in taking the view that the Will is not a reasonable or natural Will. The Testator had for many years cut himself off from the Respondents and the other members of the family except the children of his father's third marriage, namely Cecilia, and Lily Siriwardene and their mother. He had lived with the Petitioner for over 20 years and with Cecilia and Lily Siriwardene and their mother (who was also the deceased's step-mother) for even a longer period. He left his inherited property undisposed of and gave his acquired property to those of his step-brothers and sisters with whom he had lived and associated and who had become attached to him, not unmindful of the Temple in which he had worshipped and the College which had received his benefactions for many a year. 10
- (f) The learned Judge has taken a wrong view when he says that the relationship of Cecilia and Lily Siriwardene to the deceased is problematic. The testator himself had acknowledged the relationship on every possible public occasion and it was his view of the matter that was relevant in regard to his conduct. 20
- (g) The learned Judge's view that Lewis Appuhamy the husband of Cecilia is assisting the Appellant to propound the Will was not even suggested by the Respondents in the course of a protracted trial.
- (h) One of the grounds on which the learned Judge takes a view against the appellant is that, if the Testator desired to keep the Will a secret, as spoken to by some of the Witnesses for the Petitioner, he would have had his Will attested by a Notary and two witnesses rather than by five Witnesses. It is submitted that the object of the Testator was more likely to have been achieved by the selection of his own Witnesses who were his personal friends. 30
- (i) The learned Judge takes the view that, if the Will was a genuine one, the Petitioner would have challenged the 1st Respondent when he came to take possession of the deceased's estate. The case for the appellant was that on that date he was personally unaware of the execution of the Will and, although the fact of its execution was mentioned to him, the Will had not been seen by him and he was more concerned with the proper burial of the Master whom 40

he had served for twenty years. It is submitted that the case for the Appellant was quite consistent with the genuineness of the Will in this matter. Furthermore the learned Judge holds that the Will was fabricated by the Appellant on October 11, 1942—one day before the Testator's death. If the Appellant had fabricated the Will—and he would necessarily have been aware of its existence—there was no reason why he should not have asserted his rights as against the 1st Respondent on the 13th October.

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(j) The evidence of Mr. N. de Alwis, J.P., U.P.M., that he was consulted on October 16 and the Affidavit dated October 20 are facts which the learned Judge has accepted. It was proved further that the advertisements had been inserted in the local papers in order to trace the Will. It is submitted that it is most unlikely that the Appellant and the Witnesses who are villagers without any education could have conceived of a plan so perfect in detail in order to prove due execution and to account for the finding of the Will.

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(k) It is submitted that there is no real reason why the learned Judge should not have accepted the appellant's story of the manner in which the Will was found at the Maliban Hotel. The evidence is that the Testator had known John Perera and had frequented Maliban Hotel. The illness of the Testator although at that time serious was not considered likely to be fatal. It was not unnatural for the Testator to have taken with him a Will which had then been just executed and to have kept his bag in the Hotel in which he ordinarily lived when in Colombo nor was it necessary for the Testator in the circumstances to have informed the Appellant that he had handed the Will to John Perera.

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(l) The learned Judge's observation that the Will is "a Will shrouded in suspicious circumstances" is not borne out by the evidence nor do the Judgments cited by the learned Judge apply to the facts before him.

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(m) It is also submitted that the learned Judge has erred in the view that the evidence of Mr. Muttukrishna would have been preferred by him if it had become necessary to act on his evidence. It is submitted that the experts called by the appellant was more reliable and worthy of credit.

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(n) Three of the attesting witnesses to the Will gave evidence. They were cross-examined at great length yet cross-examination failed to show that their evidence on the question of the execution of the Will was false.

It is submitted that in the circumstances the execution of the Will must be held to be sufficiently proved and the Court should have upheld the Will, quite irrespective of the nature of its dispositions.

Wherefore the Appellant prays that the learned Judge's Order be set aside, and

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2. that the Order 'Nisi' entered in this case be made absolute, and

3. For costs of these proceedings and for such other and further relief in the premises as to Your Lordships' Honourable Court may seem meet.

Sgd. J. S. PARANAVITARNE,
Proctor for Appellant.

No. 23.

Judgment of the Supreme Court.

No. 23.
Judgment
of the
Supreme
Court.
22-11-45.

S. C. No. 75

D. C. (Inty) Colombo No. 10277

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Argued: 7th, 8th, 9th and 14th November 1945.

Decided on: 22nd November 1945.

KEUNEMAN, S. P. J. & CANEKERATNE, J.

N. NADARAJAH, K.C., and N. E. WEERASOORIYA, K.C.,
with WIJETILEKE and RAJENDRA for petitioner-appellant.

H. V. PERERA, K.C., with WIJEWICKREME and H. W.
JAYAWARDENE for 1st respondent.

Keuneman, S. P. J.

The petitioner claimed probate of a will alleged to have been made by Don Frederick Siriwardene (hereafter referred to as the testator) on the 5th of October 1942. The testator died on the 12th October 1942 in Colombo. He excluded from the operation of his Will the properties which he had inherited from his father, and out of his acquired properties he devised specified lands to the Sailanthayatana Pirivena of Bentara and to Ananda College-

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The remainder of his acquired property the testator devised to the petitioner "who has been assisting me chiefly, residing in my house for about 20 years and regularly serving me obediently", and to his

“two poor sisters” Cecilia Siriwardene and Lily Siriwardene in equal shares, with the proviso that “they, their children and grandchildren shall be entitled to possess the said properties”. The testator also devised his residing house to the petitioner and Cecilia Siriwardene and directed that the three beneficiaries he had named should pay Rs. 300/- to the preaching hall fund of the Welagedera Vihare. The petitioner was appointed executor of the Will.

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10 The 1st respondent opposed the grant of probate, and the trial Judge held that the evidence produced before him had not satisfied him that the will propounded was the act and deed of the deceased and dismissed the application of the petitioner. From this judgment the petitioner appeals.

20 It was in evidence that the testator's father Don Cornelis Siriwardene married three times. The testator was the only child of the first marriage, and himself did not marry. The children of the second bed were the 1st respondent and Davith who died leaving children, and two daughters. On the third occasion Don Cornelis married Elpi Nona who had two daughters Cecilia and Lily Siriwardene, the devisees. But on the evidence recorded in this case it is at least doubtful whether these two can be regarded as the lawful children of Don Cornelis. The petitioner himself is not a relation of the testator and appears to have entered the house of the testator at the age of 12 in the capacity of a servant, but the petitioner stated that for 20 years he had been living with the testator and assisting him in all his personal and business affairs, including the management of his properties for a few years before the testator's death, and had become his trusted Manager and Steward. In this capacity he used to visit the deceased's estates and pay all his labourers, and was also entrusted with the control both of his domestic and his business matters.

30 The will was alleged to have been signed by the testator on the 5th October 1942 in the presence of five witnesses, at the time when the testator was ill. The petitioner says he was unaware of the execution of the will at the time and till after the death of the testator. On the 7th October the testator was removed to the General Hospital, Colombo, and on his way is said to have stayed for a short time at the Maliban Hotel in the Pettah, where John Perera was Manager.

40 The testator died at the General Hospital on the 12th October but his death had not been anticipated earlier. The body was brought to his village. On the 13th October the 1st respondent as next of kin arrived at the testator's house and demanded the keys, which the petitioner refused to give up except to the headman. Eventually the headman Jayanetti was brought and in his presence the petitioner locked up all the drawers and cupboards and handed the keys to him. At this stage the petitioner did not make any claim as executor under the will. There is evidence on the part of another servant of the

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testator, Sammy Jayasinghe, that he told the petitioner on the 13th that he was executor and devisee under a will executed by the testator. Sammy Jayasinghe is said to have been the person who took down the terms of the will from the testator and transcribed the will, and also signed as a witness.

There is a discrepancy in the evidence here, for the petitioner says that Sammy Jayasinghe only gave him this information on the 15th, though he had heard on the 13th from another witness to the will, Thomas Appuhamy, of the execution of a will. But no one appears to have informed the 1st respondent about the execution of the will, and the will itself was not forthcoming at this stage. 10

The cremation took place on the 15th October. A few days before the 20th October the petitioner consulted Neil de Alwis, Crown Proctor of Balapitiya, about this matter, and on his advice the five witnesses to the alleged will were taken to the proctor and swore affidavit P 18 on the 20th October. In P 18 it was stated that a will was signed and attested by them on the 5th October, and the witness Thomas Appuhamy added that the will was taken in the testator's suitcase to Colombo when he went to enter the hospital.

Later, on the 5th November an advertisement P 4 was inserted in the "Daily News" offering a reward of Rs. 50/- for an "important document" lost on the 7th October between Colpetty and the General Hospital. The document was said to be enclosed in a cover bearing the name of Wilson de Silva, Proctor, Kalutara. The name and address of the advertiser were not given but merely a number. A similar advertisement P 5 was inserted in the "Dinamina" of the 6th November. 20

In response to this, John Perera of the Maliban Hotel, wrote P 6 on the 12th November to the "Dinamina" that he had the document in the envelope described and requested that the advertiser should see him. Owing to delay—which the evidence shows was attributable to the office of the "Dinamina", the letter of John Perera was not forwarded to the advertiser for some time. So on the 17th November John Perera wrote another letter (P 7) to the "Dinamina". Eventually the petitioner met John Perera and obtained the envelope. Inside the envelope were found the will in question, and also certain documents relating to a different matter in respect of which Proctor Wilson de Silva had obtained a legal opinion for the testator. John Perera's evidence was that on the 7th October the testator had handed him the envelope to keep for him as he was going to enter hospital and would return in three or four days. 30 40

A large body of evidence was called on both sides. With regard to this evidence the Trial Judge said he was "unable to refer to any particular witness and say that his evidence can be accepted as true or rejected as false". He added that "the only witness whose looks and appearance caused a prejudice in my mind is Sammy Jayasinghe,

and the only witness who impressed me as speaking nothing but the truth is Gomis. As regards the witnesses Jayanetti headmen of Welagedera and Don Lewis Appuhamy I think they cut a sorry figure under cross-examination." But he makes it clear in his next sentence that he is referring to "demeanour and deportment" and adds "I have *therefore* to decide the case on probabilities". I think the Judge held here that he was unable to say that the evidence of any witness was true, though he was favourably impressed by the demeanour of Gomis and unfavourably by the demeanour of Sammy Jayasinghe, and probably also of headman Jayanetti and Don Lewis Appuhamy.

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It was been argued by counsel for the 1st respondent that the evidence of Gomis has been accepted as true and that this evidence demolishes the case of the petitioner that a will was signed on the 5th October. The District Judge has made it abundantly clear that he was unable to say that the evidence of any single witness "can be accepted as true" and was unable to decide the case on the oral evidence. He has certainly not regarded the evidence of Gomis as decisive of the case. I think it would be wrong on our part to hold in appeal that the evidence of Gomis destroys the story of the petitioner and his witnesses. The Judge has really decided the case on the "probabilities", and I think it is our duty to consider the case upon that basis.

At an earlier stage of his judgment the trial Judge said—"I felt some difficulty in deciding this case and the special difficulty arose from the episode of the Maliban Hotel and the legal advice sought from Mr. N. de Alwis. I could not easily reconcile myself to the view that these villagers possessed the degree of cleverness to think out and execute a plan so elaborate and so full of circumstances as the Maliban episode and the legal advice from Mr. N. de Alwis". There is no doubt that the Judge has touched upon a very important factor in the case which may well be regarded as favouring the case for the petitioner. Unfortunately the Judge has not discussed this matter in detail, and he has not touched upon the advertisement in the papers and the two letters written by John Perera to the "Dinamina". Possibly his language may be regarded as covering that also, but the language is not clear. In my opinion this aspect of the case should have been fully discussed and the Judge should have given us the benefit of his findings and the reasons on which they were based. All that he has done is to mention that "after much see-sawing" he settled to the view that the story of the witnesses in support of the will is "irreconcilable with probabilities", the Maliban episode "a fake", and the legal advice from N. de Alwis "a make-believe". In my opinion the Judge has not been helpful in assisting us to form a just appreciation of the case.

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As regards the “probabilities”, the first and also the last point the Judge makes is that “None of the admitted relatives of the deceased is a beneficiary under the will” and that “The will in question is not a reasonable or natural will”. There can be little doubt that these findings affected the Judge’s attitude towards the case and I think they should be examined. If by these words the Judge suggested that the “admitted relatives” have been entirely cut off, that suggestion is incorrect. For the testator purports to have excluded from the operation of the will the property he inherited from his father, and this property would devolve as on intestacy on the “admitted relatives”. Perhaps the Judge was not entirely unmindful of this, as he had earlier pointed out that it was only the acquired property of the testator that had been devised to the named beneficiaries, but he said that there was no evidence in the case as to the nature and extent of the inherited property. This last comment is however not accurate, for the document P 16 shows that the testator’s father left to his heirs an intestate estate consisting of 31 lands which in 1923 were valued at about Rs. 10,000/- and at the time of the testator’s death would probably have been more valuable. On the face of the will then the testator had drawn a sharp and intelligible distinction between his inherited and his acquired property, and had contrived that the inherited property should pass to his “admitted heirs”.

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The Judge has not given his reasons for holding that the will was unreasonable or unnatural. It has to be remembered that the testator had left behind him no wife, no children, and no full brothers and sisters. The only “admitted heirs” were half brothers and sisters of the second bed. That the testator had a special kindness for Cecelia and Lily there can be little doubt. Whatever their real claims to be the children of the testator’s father, the testator had always recognised them as sisters. In fact the Judge does not reject and appears to accept the evidence of Cecelia that the testator was not on very good terms with anybody except her, her sister Lily, and the petitioner, and the Judge himself recognises the likelihood “that the sisters were the special objects of his bounty”. The documents P 2, P 25, P 26 and P 27 also show that the testator was fond of Cecilia and Lily and regarded them as sisters. Admittedly Cecilia was living with the testator for some time before his death. The petitioner said that Lily was also living with the testator. That was denied by Gomis, but another witness for the 1st respondent, Amarasinghe, admitted that Lily also lived with the testator for some time. In fact the 1st respondent himself admitted that he had stated that Lily was his sister “for the purpose of giving her in marriage”. There had been no objection to the inclusion of the names of Cecilia and Lily as heirs of the testator’s father in the testamentary proceedings (P 16) although the question of their descent was raised in a later partition case (P 17).

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There has been a considerable body of evidence as to the relations between the testator and his half brothers, the 1st respondent and Davith. There had been litigation between Davith and the testator in 1927 (see P 3), and the petitioner alleged that the 1st respondent was not in the habit of visiting the testator. At the same time there was the evidence of Gomis and others that 1st respondent visited the testator. The Judge has not discussed this important question nor recorded his findings. I am not satisfied that the Judge gave his attention to these matters and the failure to consider them considerably vitiates his judgement.

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Let me turn to the case of the petitioner. Admittedly he was not a relation and had joined the testator as a servant at the age of twelve. But about 20 years had elapsed since that time. The bill-head P 1 shows that he had risen to the position of a partner whose name was included in the business name in at least one important venture by the testator. The Petitioner claimed that he was also in reality the manager of all the testator's affairs and had performed genuine and valuable service on behalf of the testator. The witness Thomas Appuhamy said that the petitioner was "like an adopted son" to the testator. The Trial Judge should have considered all this evidence as well as evidence to the contrary, but there is nothing to show that he has done so, and I think he has misdirected himself in this connection.

Finally there is the fact that on the face of the will the testator had provided for certain devises to charities.

All these matters which I have mentioned have a strong bearing on the question whether the will in question can be regarded as unreasonable or unnatural. I think it would be an error to suggest that the preference of a testator for persons who are on terms of friendship and cordiality, though not of relationship, over those who are to some extent connected by blood but are not on terms of intimacy can be branded as unreasonable or unnatural. On the contrary I should regard it as natural and reasonable that a testator should choose as recipients of his bounty those who are near and dear to him, whether connected by blood or otherwise, and in this respect I do not think a Sinhalese testator differs from any other testator.

I have dealt at some length on this subject because I think it shows a fundamental weakness in the judgment and because the Judge's views on this matter must inevitably have coloured his opinion on the other aspects of the case.

The other points which the Judge makes as regards the "probabilities" are as follows :—

- (1) He records his "conjecture" that the will was fabricated on the 11th October when the petitioner returned to the village after leaving the testator in hospital. He also holds that the will could not have been fabricated after the death of the

deceased. There is not an atom of evidence to support either of these points. The second point may actually be regarded as favouring the petitioner's story, and counsel for the 1st respondent himself strongly attacked that finding.

- (2) The Judge comments on the fact that the testator did not before the date of the execution of the will give any indication that he was going to execute a Will. I do not say that this point could not be considered by the Judge but it does not appeal to me as a conclusive argument.
- (3) The Trial Judge said that the evidence of Peter Jayasinghe was "irreconcilable" with that of Sammy Jayasinghe because Sammy Jayasinghe says he was called into the room by the testator and asked whether Peter Jayasinghe and other witnesses had come to the house, while Peter Jayasinghe says that during all that time he waited in the house of the deceased. In the first place the evidence of Peter Jayasinghe is not correctly given: what he did say was—"I waited from 1.30 till about 4.30 p.m. *Meanwhile I went to a school and came back*". This shows that Peter Jayasinghe was not in the house all the time, and it is possible that the testator had discovered this. In the second place, even if at the most there was a discrepancy, that does not make the evidence of the two witnesses "irreconcilable". In fact the two witnesses corroborate each other on material points. 10
- (4) The trial Judge says that as regards the 5th October the petitioner said he was away from home for a good part of it, he did not say that he was away from home from 10.30 a.m. to 4.30 p.m. What the petitioner actually said was—"In the morning I went out to fetch Dr. Ratnayake and returned with the doctor. Then I went back in the same car to fetch medicine and returned home about 6 p.m. I was out practically the whole day. I had also on that day to go to a boutique". It is at least possible that the short interval during which the petitioner was in the house did not coincide with the dictation or the drafting or the signing of the will. 20
- (5) The Trial Judge says that if the testator desired secrecy as regards the will, as the witnesses assert, his object was likely to be defeated by having it witnessed by five villagers, and that he could easily have arranged for a quiet execution of the will before a notary. The testator could not easily have gone out that day without having caused comment. To my mind it is a question whether the coming of a notary or of the five villagers to the house would have caused greater publicity,—and even a notary would have needed two witnesses. I do not regard this argument as a strong or unequivocal one. 30
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- (6) The Judge says that he doubts whether the envelope containing the will was put into the suitcase; it would have been returned to Proctor Wilson de Silva at Kalutara, or at any rate the petitioner would have seen it at Colpetty when he opened the suitcase. The first point has some substance, for the testator actually met and talked to Proctor Wilson de Silva on his way to the hospital, and he certainly had an opportunity to give over the envelope with its contents to the proctor. As regards the second point, it would depend on how the bag was packed and unpacked, as to whether the petitioner would have seen the envelope—and even if he saw it he may not, if his story be true, have known what the importance of the envelope was, and may not have registered the fact of having seen the envelope in his mind.

No. 23.
Judgment
of the
Supreme
Court.
22-11-45.
—continued

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The Judge comments on the fact that the testator kept the envelope containing the will with John Perera rather than with Proctor Wilson de Silva. As I suggested before, this is a point which was worthy of consideration, but at the same time one has to bear in mind the fact that individual testators have their idiosyncracies and that explanations which may have been available if they were alive are not obtainable after their death.

- (7) The Judge also comments on the fact that no mention was made by the testator to the petitioner, who had been appointed executor, of the making of the will. Here again, this is a point worthy of consideration, but as against it one has to bear in mind the desire for secrecy spoken to by the witnesses. Further, there is the fact that the testator did not anticipate that he was going to die so soon.

30

- (8) The Trial Judge thought that the Maliban incident and the subsequent incidents which led to the discovery of the will were "too good to be true". As I suggested before, this is too facile a finding, and the Judge has not thought fit to examine the whole of those events in detail and to record his reasons for the finding.

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- (9) The Judge comments on the fact that the petitioner had gone to Proctor N. de Alwis. He says "Galmatte is within the jurisdiction of the District Court of Kalutara, and ordinarily people of Galmatte would transact their business at Kalutara". This may be true with regard to cases instituted in the Kalutara Courts but there is nothing to show that for legal advice people of Galmatte always go to Kalutara, and there is definite evidence in this case that Proctor de Alwis' residence is much nearer to Galmatte than is Kalutara.

No. 29.
Judgment
of the
Supreme
Court.
22-11-45.
—continued.

- (10) The Judge says that the readiness with which the five witnesses appeared before Mr. de Alwis for affirming to the affidavit made him think “that they are conspirators who are prepared to collaborate to the end”. All I can say is that this is a most startling assumption, and no reasons are given for it. Further the Judge held that Lewis Appuhamy the husband of Cecilia was a collaborator. Not only is this not supported by any evidence but in fact Lewis was called by counsel for for the 1st respondent into the witness box and no suggestion whatsoever of collaboration was put to him. I think the assumption of the Judge is unwarranted. 10
- (11) The Trial Judge makes a very strong comment on the fact that the 1st respondent was never told shortly after the death that a will had been executed, and that his claim for the keys was not challenged. Here I think the Judge is on much stronger ground and that this is a matter which deserved the fullest consideration. This aspect of the case affects the petitioner, Sammy Jayasinghe, the headman Jayanetti, and possibly Thomas Appuhamy. One difficulty however is that the Judge has not really considered possible explanations. In fact throughout his judgment—although he does mention the fact that it was “after much see-sawing” that he arrived at his decision—there is hardly anything to show why the “sea-saw” was necessary or what considerations really caused any judicial vacillation. 20
- (12) The Judge has not decided the case on the expert evidence called as regards the genuineness of the signature.

I have been at great pains to consider the Trial Judge's reasons because it has been strongly urged on us that we should not interfere with findings of fact by the Trial Judge, and a long series of cases upon this matter decided both in Ceylon and in England have been cited to us. I may say that in this case, as I have shewn earlier, we are not dealing with a finding as to the truth of oral evidence based upon observation of the manner and demeanour of witnesses, although even in such a case we are not entirely absolved from the obligation of rehearing the case: see *Yuill vs. Yuill* (29 C. L. W. 27). In this case the Judge has decided upon the “probabilities” of the case, and a Court of Appeal is in as good a position to weigh the probabilities as the Trial Judge. On one matter—viz. whether the will can be regarded as an “unnatural or unreasonable” will—the Judge has come to a conclusion without weighing or deciding the facts on which he could base his inference, and I think this conclusion has coloured the attitude of the Judge to the other features in the case. I think this amounts to a misdirection and a serious one. To some extent the Judge has depended on the conjectures and assumptions which cannot be justified. There have been a number of points decided by the Judge on an incorrect appreciation of the 30 40

evidence. For some of his findings the Judge has given no reasons or inadequate reasons. And finally, though it was obvious—and at one stage the Judge himself so felt—that there were some strong points in favour of the petitioner, the Judge has drawn a picture of the petitioner's case in unrelieved funeral colours.

No. 23.
Judgment
of the
Supreme
Court.
22-11-45.

10 In the circumstances I am unable to support the judgement of the District Judge, and I think it must be set aside. I have carefully considered what further order should be made in this matter. In my opinion it is not possible for us to enter any final order in this matter, more especially as many points of importance have not been decided by the Judge, some of which have been indicated in this order. In these circumstances I set aside the judgment and send the case back for trial *de novo*.

20 It may be possible by agreement of parties to make the evidence already taken evidence in the case, but I think it is desirable that each witness should at least be retendered for cross-examination so that the Judge who re-hears the case may have an opportunity of deciding on the truth or otherwise of the evidence given. I wish to impress on the Judge that he is not to take as final any arguments on fact which may appear in this order but that he should give his consideration to all aspects of the case.

The appellant is entitled to the cost of appeal. The costs of the trial already held will be in the discretion of the Judge who retries the case.

Sgd. A. E. KEUNEMAN
Senior Puisne Justice.

CANEKERATNE, J.

I agree.

30 Sgd. A. R. H. CANEKERATNE
Puisne Justice.

No. 24

Decree of the Supreme Court.

No. 24.
Decree
of the
Supreme
Court.
22-11-45.

GEORGE THE SIXTH, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

No. 24.
Decree
of the
Supreme
Court
22-11-45.
—continued

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

D. C. (Int) 75s
1944

KATRI ARATCHIGE DON WELIN
SIRIWARDENE

.....1st Respondent.

Against.

ARATCHI APPUHAMILLAGE DON
CARTHELIS APPUHAMY

.....Petitioner-Appellant.

10

Action No. 10277 T. District Court of Colombo.

This cause coming on for hearing and determination on the 7th, 8th, 9th, 14th and 22nd days of November 1945, and on this day, upon an appeal preferred by the Petitioner before the Hon. Mr. A. E. Keuneman, K.C., Senior Puisne Justice, and the Hon. Mr. A. R. H. Canekeratne, K.C., Puisne Justice, of this Court, in the presence of Counsel for the Appellant and Respondent.

It is considered and adjudged that the Order entered in this action by the District Court of Colombo and dated the 4th day of February, 1944, be and the same is hereby set aside and the case is sent back for trial *de novo*.

20

And it is further ordered and decreed that the 1st respondent do pay to the Appellant his taxed costs of this appeal. The costs of the trial already held will be in the discretion of the Judge who retries the case.

Witness the Hon. Mr. Francis Joseph Soertsz, K.C., Acting Chief Justice, at Colombo, the 22nd day of November, in the year of our Lord One thousand Nine hundred and forty five, and of Our Reign the Ninth.

Sgd. N. NAVARATNAM

Dy. Registrar; S.C.

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No. 25

Petitioner's Evidence.

No. 25.
Petitioner's
Evidence.

31st May, 1946.

MR. PARANAVITARNE for the petitioner.

MR. ADV. WICKREMENAYAKE instructed by MR. KAN-ANGARA for the objectors.

Mr. Paranavitarnne moves for a postponement of the inquiry into this case fixed for the 11th, 12th and the 17th of June 1946 on

the ground that the Counsel specially retained by the petitioner has got to be on State duty in that he is a member of the Delimitation Commission. He states that the Counsel retained has appeared in the appeal court and is aware of all the facts pertaining to this inquiry.

No. 25.
Petitioner's
Evidence
—continued

Mr. Wickremenayake objects to the inquiry being postponed. He submits that this is a very old case, that the inquiry is specially fixed for the 11th, 12th and 17th June and that there is ample time for another counsel to be retained.

10 Mr. Paranavitarne states that there is no question of any prejudice being caused to the objectors as at present the estate is being administered as on an intestacy and the objectors are in possession of the properties and are recovering the rents as if they are the sole heirs. The petitioner desires to have no other counsel.

Mr. Wickremenayake states that Mr. Obeysekera had appeared at the earlier inquiry and that he is now dead. He has been retained thereafter and the petitioner himself can retain other Counsel to go on with the case on the dates already fixed. He submits that there is not sufficient ground for the Court to alter the dates specially fixed to suit parties and counsel.

20 Mr. Paranavitarne submits that he approached Mr. R. L. Pereira, K.C., who appeared in the original inquiry and he is not available as he is engaged in a murder case in Galle. The other counsel who appeared originally in the District Court was Mr. Chelvanayagam and he too is not available.

ORDER.

This is an application by the proctor for the petitioner in this case for a postponement of this inquiry which is specially fixed for the 11th, 12th and 17th of June 1946. The application for this
30 postponement is made on the ground that the Counsel who is to lead in this case for the petitioner is unable to appear in view of the fact that the Counsel will be on other duty appertaining to State work, viz: that he has been appointed a member of the Delimitation Commission.

The grounds urged for a postponement are that as soon as the Proctor was intimated by Counsel that he would not be in a position to appear on the said dates, the Proctor contacted the other counsel who had appeared in the District Court at the original inquiry, viz: Mr. R. L. Pereira and Mr. Chelvanayagam. The Proctor states
40 that when he approached them Mr. Pereira stated that he was engaged already in a murder case at the Galle Assizes and Mr. Chelvanayagam was also engaged in other cases. The Proctor submits that a postponement will not cause much prejudice to the other side inasmuch as this wealthy estate is in possession of the respondents at the moment and they are in the enjoyment of the income of the estate.

No. 25.
Petitioner's
Evidence.
—continued

He submits that he is not in a position, on instructions from his client, to retain any other counsel and moves for a postponement after the 31st of August 1946.

This application for a postponement is strenuously opposed by the learned Counsel for the objectors. He submits that it is open to the petitioner to retain other counsel who may be agreeable to appear for him in the absence of the Counsel who is retained to lead in this case for the petitioner and that inasmuch as the inquiry has been fixed for three dates specially before this Court, that certain dislocation of work will take place, not only in the court but so far as other work which the learned Counsel may have to attend to in courts.

10

I understand that there is an anxiety on the part of the petitioner that he needs the services of the Counsel who was to appear for him on the 11th, 12th and 17th of June. Taking all the facts into consideration I do not think that I can refuse this application for a postponement; the postponement really will be a matter of two months from June 11th, and the handling of this case in the Appellate Court has been by the Counsel who was retained for the petitioner to appear at this inquiry. It may well be that that Counsel is well conversant with all the facts of the case. I allow the application for a postponement.

20

There remains the question of costs consequent upon the postponement of this inquiry. Learned Counsel for the Objectors submitted that in the event of the court granting this application, he will be entitled to the costs of the three dates this case was fixed for inquiry. I think the ends of justice will be well met by directing that the petitioner pays the full taxed costs of the inquiry of June 11th 1946, to the Objectors.

(At this stage Mr. Wickremenayake submits that he has already got cases postponed, fixed for the 12th and 17th of June and he asks for the costs of those dates also.)

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The order I have made as to costs will stand, that the petitioner shall pay the full taxed costs of this inquiry of the 11th of June to the Objectors.

Call case on the 7th of June 1946 to fix dates of inquiry.

Sgd. V. E. RAJAKARIER
Addl. District Judge.
31-5-46.

1st October 1946.

MR. PARANAVITARNE for the petitioner.

No. 25.
Petitioner's
Evidence.
—continued

MR. ADVOCATE GRATIAEN with MR. ADVOCATE H. W. JAYAWARDENE instructed by MR. KANNANGARA for the 1st respondent.

MR. ADVOCATE E. G. WICKREMENAYAKE instructed by MR. GOMES for the intervenient.

10 Of consent it is agreed that the inquiry be postponed on condition that the petitioner pays the objector and/or the intervenient Rs. 750/- in part payment of their taxed costs of the 27th September 1946 and 1st, 2nd and 3rd October 1946, on or before the 29th of January 1947. If so paid, inquiry will be held on the 5th and 7th of February 1947. If not paid it is agreed that the petitioner's application will be dismissed with costs. This order is made on the understanding that the objector and the intervenient are entitled to their taxed costs of the four dates mentioned above.

Sgd. N. SINNATHAMBY

Adtl. District Judge.

1-10-46

20 5-2-47.

ADVOCATE NADARAJAH, K.C., with ADVOCATE CHELVANA-YAGAM and ADVOCATE JAYETILEKE for the petitioner.

ADVOCATE GRATIAEN, K.C., with ADVOCATE JAYAWARDENE for 1st respondent.

ADVOCATE E. G. WICKREMENAYAKE with ADVOCATE MALALGODA for the Intervenients.

30 This case has been fixed for today and Friday, but I am given to understand that it cannot be concluded in two days. I am therefore unable to take up this case. I myself have a partly heard case which will take a good part of today and which will have to be concluded on Friday. I therefore postpone this case down the roll for 7th to 11th July 1947.

Sgd. S. C. SWAN

A. D. J.

9-7-47.

ADVOCATE HAYLEY, K.C., with ADVOCATE JAYATILEKE instructed by MR. J. S. PARANAVITANE for petitioner.

ADVOCATE GRATIAEN, K.C., with ADVOCATE H. W. JAYAWARDENE for 1st respondent.

40 ADVOCATE E. G. WICKREMENAYAKE with ADVOCATE MALALGODA instructed by MR. GOMES for intervenients-respondents.

No. 25.
Petitioner's
Evidence.
—continued

The issue already framed at the previous hearing are adopted by consent.

Mr. Hayley addresses Court: Don Fredrick Siriwardene died on 12th October 1942 aged between 65 and 70. The will in question marked A was dated 5th October 1942, one week before deceased died. Pedigree of those concerned is as follows: Original father of the parties was Don Cornelis (or Karthelis) who married 3 times, (1) Saralath Hamine by whom he had one son Don Frederick the deceased whose Will is contested; he is the eldest, the only son by that marriage who himself did not marry; then Don Cornelis married (2) Engo Nona and had 4 children by her, the 1st Jane Nona who married one Kannangara and had 4 children: the 3rd intervenient respondent in this case Cecilia is the eldest child, and three others Don Velin, Davith and Emi Nona; Cornelis married again (3) Alpi Nona who was previously married to a man called Nomis Appuhamy and was divorced from him on 14th December 1909; Don Cornelis married her on 12th June 1910 and had by her 4 children, Brampy the eldest and three others, but the third and fourth died. The second was Lily. Cecilia and Lily are both legatees under the Will. Cecilia married Appuhamy and had 2 children. Lily also married but her husband died and she is a widow. 10 20

The Will only deals with acquired property; inherited property is excluded. Deceased makes certain provision for a Pirivena and another for Ananda College; he leaves the bulk of the residue to Carthelis the petitioner in this case who was made the executor in whom he had the utmost confidence and faith. The other 2/3 is left to the 2 younger children of Alpi Nona, Cecilia and Lily. Out of the last bequest he excludes Lily.

Don Cornelis died in 1923 when Cecilia and Lily were young girls. More or less from that date Don Frederick had little to do with the children of Engo Nono, and there is evidence of ill-feeling and disputes about lands etc. When he died Don Fredrick left his property to his two little sisters Cecilia and Lily and to Carthelis, and cut out the others. It is common ground that these two girls were born in adultery in law, but from the beginning Cornelis had looked upon them, as his children. There are documents in which he refers to them as daughters. Alpi Nona was divorced on 14th December 1909. Document P 20, marriage certificate of Lily, describes her as being 35 years old in 1937. Cecilia's marriage certificate P 38 says she was 23 in 1925. 30 40

At this stage it is agreed that Cecilia and Lily were regarded by Cornelis as his children and by Don Frederick as his step sisters although in fact they were born at a time when Alpi Nona was the married wife of Nomis Appuhamy.

Carthelis himself, the executor and one of the legatees, was a servant at the beginning and then custodian of everything of Don

Frederick's. P. 1 shows business he had carried on with the deceased; he had the deceased's keys and did everything for the deceased for many years.

No. 25.
Petitioner's
Evidence.
—continued

Re the story of the will, how it came to be found: the deceased lived at Galmatte in Welagedera, in his Mulgedera. In September 1942 he fell ill. His Dr. Ratnayake advised early in October that he should enter hospital. On the 7th October deceased set out for Colombo in a hired car accompanied by Lewis Appuhamy who was Cecilia's husband, Thomas Appuhamy a cousin and Carthelis with the view of entering hospital; they came to Dr. Ratnayake's dispensary, obtained a chit from him to Dr. Jayasuriya who in turn would help him to enter hospital; then they stopped on the way to talk to Proctor Wilson de Silva at Kalutara, thence to Maliban Hotel deceased's favourite resort. Lewis and Thomas went away with the car from there to get petrol. When the car was delayed Carthelis strolled out to the road to look for it and he saw the car coming back and he himself walked back to the hotel where Don Frederick was alone. They all got in and went to Dr. Jayasuriya's and thence to hospital. Carthelis remained in hospital from 7th to 11th October. On the 11th deceased asked Karthelis to go back home and fetch some things for him. He came back on the 12th and was told that Don Frederick had died on the 12th. Karthelis made arrangements, had the body taken back to Welagedera on the 13th after embalming. On the 13th the present surviving eldest son of Don Cornelis came to the house and said he would take charge of everything. Karthelis gave him some money, Rs. 500/-, for the expenses. Then he demanded all the keys of the house but Karthelis refused. Later the Headman was brought and Carthelis put all the keys into a drawer, locked it up, and gave the drawer keys to the Headman. Up to that time Karthelis had no knowledge that there was a Will. On the 13th a man called Sammy Jayasinghe a clerk under the deceased for some time told Karthelis that there was a Will. Karthelis said that was not the time to discuss Wills in view of the funeral. The funeral was on the 15th when again Sammy spoke to Karthelis about the existence of a Will. Karthelis looked for it but could not find it. Then he spoke to Thomas Appuhamy with whom the deceased went to Colombo before his death and Thomas said that the deceased took the Will to Colombo with him, that he saw the deceased putting into an envelope bearing the name of Wilson de Silva on the cover which was put into the old gentleman's bag. Still they could not find the Will; it became the subject of talk and someone suggested to Karthelis to advertise for it in case the deceased had dropped it somewhere. Before that Carthelis went and told Crown Proctor Alwis on the 16th about the loss; Mr. Alwis asked him to bring the witnesses to the Will if he knew them; these witnesses appeared before Mr. Alwis and swore affidavit P 18 on 20th October. in which they said they signed as witnesses to a Will made by the deceased. Karthelis

No. 25
Petitioner's
Evidence.
—continued

advertised for the Will and a few days later he got a letter from a man called John Perera, Manager of Maliban Hotel, Pettah, who said the Will was there with him. Karthelis went up to see John Perera on the 20th; Rs. 50/- had been promised as reward to the finder. John Perera told him that Don Frederick when he was resting there on the day in question before he went to hospital gave the Will to him and asked him to keep it till he came back. Karthelis explained how Don Frederick had died and he paid the reward Rs. 50/- and got back the will. John Perera will be examined in regard to what he did. John Perera knew Karthelis by sight.

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Was it likely that all this very complicated pantomime could be invented. Mr. Hayley submits that Court cannot but come to the conclusion that it is a true narration.

As to the Will itself Karthelis knew nothing about it and had nothing to do with it. Sammy Jayasinghe the clerk under the deceased—he had done business of his own but failed and deceased had offered him work till he found employment—says that on the 5th October, 2 days before he was taken to hospital, the deceased told him to get pen and paper to dictate a document to him. Sammy Jayasinghe who is educated in English and Sinhalese says deceased dictated to him and he took it all down; deceased asked him to make a fair copy of it early in the morning of 5th October; he brought the fair copy and read it out to the deceased whereupon the deceased said it was all right and asked him to put it in the drawer; later on in the morning deceased again sent for Sammy Jayasinghe and told him to go and ask the headman to come; he could not find him and told so to deceased. About 2-30 p.m. deceased mentioned the names of witnesses whom he had wanted and asked him whether they had come; it appears some of them had come but not Thomas who came a little later; after all had come the Will was read over and was signed in each other's presence, but before signing it the deceased asked Sammy Jayasinghe to find out the full names of all the witnesses and write them on the Will. After signature the Will was put back in the drawer again. The witnesses were men of substance, friends and relatives of the deceased. One was the clerk himself, Sammy Jayasinghe, the second was Thomas Appuhamy his cousin, the third was Peter Jayasinghe well known to the deceased and a distant relative, the 4th was the Vel Vidane Handy and the 5th Peter Goonetilleke.

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A. D. Kar-
thelis
Appuhamy.
Examina-
tion.

MR. HAYLEY calls:—

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A. D. KARTHELIS APPUHAMY. Affirmed 37, Trader, Gampaha.

I am 37 years old. In 1942 I was a merchant and so I am now. I reside at Gampaha and go about from place to place. In 1943 I was at Induruwa. I am the petitioner in this case and the executor named in the Will in question. I had known the deceased Don Frederick Siriwardene before he died for over 20 years, first through

my elder brother who was employed by the deceased; I was employed in the deceased's house Siriniwasa in Galmatte as a lad, in the deceased's mulgedera. After I was there for some time the deceased trained me up to the work pertaining to his business, to visit his estates, pay labourers, entering up books etc. He taught me how to keep accounts. He entrusted me with the looking after of a portion of his business. At Induruwa the deceased had a boutique in which I was also a shareholder, but not in the other boutiques in which also I worked.

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Petitioner's
Evidence.
A. D. Karthelis
Appuhamy.
Examination.
—continued

10 (Shown P 1) The heading of this is D. F. S. & A. D. Karthelis Appuhamy, General Merchants, Maha Induruwa. D. F. S. refers to Don Frederick Siriwardene and A. D. Karthelis Appuhamy is myself. Don Frederick had about 20 or 25 blocks of rubber land which were looked after by me; he also owned paddy land which I looked after; he was interested in plumbago also and I looked after those interests. Handy Singho, Vel Vidane, was a partner with the deceased in the plumbago business; that is the same Vel Vidane whose signature appears on the Will who is now dead. He was alive during the
20 previous hearing. I knew and was familiar with the people who lived in the deceased's house. At the time of his death there were living with him deceased's sister Cecilia, her husband Lewis Beddevitane and children, Cecilia's step-mother Alpi Nona, a servant Podihamy and myself. Cecilia's sister Lily was at Haburugala about 9 miles away, at the time of deceased's death. Cecilia went to live in the deceased's house about 7 or 8 years before deceased's death. Lily had been residing there for a longer period. Lily married in this house, her husband died and then deceased got her down to his own house; at present she is a widow, but after the death of her first husband she married again in the same house while she was staying
30 with the deceased. First of all Lily was in Frederick's mulgedera for about 12 or 15 years after I went there; then she was given in marriage to a man from Dodangoda and she went to live at Dodangoda; after her husband died she came back to the deceased's house, was there for a few months; then she was given in marriage to a man from Haburugala for the second time and she went to live in Haburugala; then her 2nd husband died also and she continued to stay at Haburugala with her two children enjoying the second husband's properties; her 2nd husband died somewhere in 1939 or 1940, before Frederick died. The relations between Frederick and
40 these two girls were very cordial; I don't know whether the deceased paid any monies to Cecilia and Lily but he looked after them like his own sisters. I am not aware whether he paid them anything in kind or money. I know about Lily's marriage. It was Frederick who bore all the expenditure in connection with them; I cannot say whether he himself arranged those marriages. Both of them used to call the deceased Loku Ayya. During the time I attended to deceased's books I knew that the deceased gave monies to charities; I was living in the

No. 25.
 Petitioner's
 Evidence.
 A. D. Kar-
 thelis
 Appuhamy.
 Examina-
 tion.
 —continued

same house all this time. The deceased himself built that mulgedera Siriniwasa.

In 1942 September Frederick fell ill and Dr. Ratnayake of Beruwala attended on him; he advised him to go to Colombo, and he went to Colombo with Lewis Appuhamy, Cecilia's husband; (Lewis Appuhamy and Veda Mahatmaya are the same), Thomas Appuhamy the deceased's sister's son who is also a signatory to the will and who was considered his nephew—may be he is the son of a cousin of the deceased—and myself. We went to Colombo about a week before Frederick died, in October 1942 on the 7th. We left Welagedera about 7 a.m., stopped at Beruwala to get a letter from Dr. Ratnayake who attended on the deceased, to be handed to another doctor in Colombo. Again we stopped at Kalutara opposite Proctor Wilson de Silva's office, met Proctor de Silva, deceased had a conversation with him. Deceased was the guardian of Lily's children in some litigation.

10

I produce, P 2, copy of proceedings in the case in which Lily's husband's estate was administered, showing that Frederick was guardian of the minor children. Deceased had other litigation about which he had to speak to Mr. Wilson de Silva.

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Reaching Colombo we went to Maliban Hotel which was the deceased's usual hotel. There the driver of the car wanted to get petrol and the deceased wanted to answer a call of nature. I got out of the car along with the deceased and the others went to bring the petrol. After some time I went out of the hotel because the deceased asked me to see why the car was getting delayed. As I went along the pavement a short distance I saw the car coming ahead, and I turned back to the hotel. Maliban Hotel is opposite the Fort Railway Station. When the car came back we all got in and went to Dr. Jayasuriya's bungalow. Dr. Jayasuriya gave a letter for admission to the hospital; we went to the hospital and the deceased was admitted. I remained in the hospital with the deceased and the other two went away; the deceased asked me to stay in Colombo, not to go home, because I might be required to procure medicines; he also asked me to come and see him frequently; he also asked me to tell the other two to return home. I was in and out of the hospital to see the deceased. I had no permit but I was able to see the deceased. I remained there for 4 days and then the deceased asked me to go to Welagedera; he said it looked as if he was not recovering in hospital, he wanted me to see an ayurvedic physician at Kelaniya and find out whether he could stay there and get treatment. I went in the morning and after seeing the physician went to the village on the 11th evening about 9 or 10. The following morning I came back to Colombo. First I went to meet a rubber dealer, one Mr. D. B. Perera, before I went to the hospital, and there I learnt that Frederick had died. A little later I went to the hospital where I made the necessary arrangements for removing the body. We went to Welagedera on the night of the 12th.

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I know Velin, Frederick's step brother; I did not see Velin that night; I saw him the following day, the 13th. The deceased and Velin had differences and were not on visiting terms. I had not seen him visiting the deceased before he died. Velin took no part in deciding to remove the deceased to Colombo or in any other moves. On the 13th Velin spoke to me about the death: he said he was not aware of the friends and relations of the deceased, that I was the only person who knew them, and asked me to look after those arrangements in the house while he would see to the arrangements about the cremation. Velin was the eldest living step brother of the deceased. I was a little consoled about it and accepted what Velin said; he asked me whether I had money for the expenses; I had deceased's money. I looked after his affairs and I had his keys. At Velin's request I gave him Rs. 500/-. Then Velin suggested that he should take charge of the other things. Velin had told Sammy Jayasinghe to ask me for the keys. I was not willing to do so, I did not take any notice of it. I said I was in no mood to do that because the corpse was still in the house and on a more suitable occasion I would give the keys. For a long time before his death I was the only one in charge of the deceased's things and managing his affairs. Later I gave the keys over to the Village headman: I collected all the keys, put them in a drawer, locked it and handed the drawer key to the headman. This was before the cremation, on the 13th. On the same day for the first time I got some information about the Will; the deceased had not told me about it. I got this information before I handed the key to the headman. Sammy Jayasinghe who was a clerk of the deceased and who signed as a witness to the will told me about it. When Sammy Jayasinghe told me that Velin had asked for the keys he also told me that the deceased had written a Last Will and asked me whether I was in possession of it. I was in no mood to discuss about these matters at that time. Later on, I cannot remember when, Sammy Jayasinghe again told me that it was a will witnessed by five persons and deceased also had signed it; he gave me the names of the witnesses; he was not aware where the will was at the time. I cannot remember whether Sammy Jayasinghe gave me particulars, contents, of the Will at that time. After Sammy Jayasinghe told me this I met these witnesses that day and asked them about it. They told me. Thomas Appuhamy told me that the Will was put inside the suitcase and taken to Colombo. I did not search the house for the Will on Sammy's information, before Thomas spoke to me. Thomas asked me whether I did not get the Will. I brought the suitcase to Colombo on the 12th along with the clothes and if the Will had been in the suitcase naturally I would have come across it. I told Thomas Appuhamy that there was no Will in the suitcase because I had seen it earlier. After Thomas spoke to me I consulted Mr. Alwis the Crown Proctor. He asked me whether the witnesses to the Will were available and whether I could bring them to him. I took those witnesses to Mr. Alwis, and there an affidavit was sworn to.

No. 25.
Petitioner's
Evidence.
A. D. Kar-
thelis
Appuhamy.
Examina-
tion.
—continued

No 25-
Petitioner's
Evidence.
A. D. Kar-
thelis
Appuhamy.
Examina-
tion.
—continued

(Shown P 18). This is the affidavit sworn to by these witnesses before Mr. Alwis. The Headman of Induruwa and others who happened to be in the boutique at the time advised me to advertise for the will.

(Shown P 4 & P 5). These are the notices in the Daily News and the Dinamina which I put in. In P 4 the Daily News notice I ask for documents enclosed in a cover bearing the name of Mr. Wilson de Silva, Proctor.

Q. Why did you describe the document as containing Wilson de Silva's name? 10

A. Thomas Appuhamy gave me that information.

After this advertisement I received one reply a number of days later, I cannot say how many days later. (Shown P 6) This may be the reply I got; P 6a is the letter sent to the paper by the writer and it was enclosed in P 6b and sent to me. The post mark of P 6b from the Daily News is dated 16th November. 2 or 3 days later I got another letter P 7 from John Perera addressed to the Daily News—envelopes are marked P 7a and P 7b. I went to see John Perera; I did not know him before; I had seen him at Maliban Hotel, but I did not know in what position he was there. When I went there he gave me the envelope P 8 bearing the name of Mr. Wilson de Silva. I found in this envelope a Last Will and two letters in English. (Shown A). This is the last will. I produce P 8a and P 8b, a letter and opinion from the late Mr. Nadarajah to Mr. Wilson de Silva. 20

P 8a, P 8b and P 8c were all in that envelope. Then I handed the Will to my Proctor Mr. Parnavitarne and asked him to take the necessary steps.

Q. Were you familiar yourself with the deceased's signature?

A. Yes. 30

(Shown A). (Witness points out the deceased's signature). This is the deceased's signature. Deceased was about 66 years old. Palis Goonetilleke is one from Bentota, a friend of the deceased, a timber and firewood contractor with whom deceased had dealings. To my knowledge all these witnesses were well known to the deceased.

I produce P 25, a photograph which I got from Lewis Appuhamy Vedamahatmaya at Bentota; this photograph was taken at the opening of a school about 10 or 12 years before the death of Frederick.

Q. Are there any witnesses to the will in this photograph?

A. There are three witnesses in addition to the deceased. 40

(Witness points out Thomas Appuhamy, Peter Jayasinghe, Handy Singho the Vel Vidane).

After I heard that the respondents were going to oppose the petition my Proctor asked me to bring any documents I could find with the deceased's signature, and I handed over to him P 9 to P 14, rubber coupon cards etc. (Mr. Gratiaen says at this stage he does not object to these documents being produced but he accepts them subject to proof). (Shown P 9 to P 14). These are all signed by the deceased. I obtained them from Lewis Appuhamy's boutique at Galmatte; Lewis Appuhamy is Cecilia's husband.

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Petitioner's
Evidence.
A. D. Kar-
thelis
Appuhamy.
Examina-
tion.
—continued

10 I produce as P 16 extracts from a testamentary case proceedings, No. 1584, Kalutara in which the 15th and 16th respondents were Cecilia and Lily Siriwardene. I produce as P 17 an extract of proceedings from a partition action in D. C. Kalutara, No. 13560 in which the deceased is recorded as having said 'my step mother and her children are living with me'. Deceased also says there that he had been a headman and had to resign because the priest petitioned against him. I know that priest; he is Meegama Jinaratane, brother-in-law of Velin Siriwardene, 1st respondent. I produce as P 20 certificate of marriage of Lily, and P 21 receipt from John Perera in respect of Rs. 50/- which I paid him. P 26 and P 27 are two deeds in which Cornelis referred to
20 Cecilia and Lily as his two daughters.

Sgd. N. SINNATHAMBY,
Addl. District Judge.

9-7-47.

(After Lunch).

Mr. Hayley applies to have Mr. Alwis's evidence taken first. Counsel appearing for the Respondents have no objection. I accordingly allow the application.

N. de Alwis. Affirmed.

N. de Alwis.
Examina-
tion.

30 I was Crown Proctor for Balapitiya. I retired in 1945. I was Crown Proctor at the time I gave evidence in this case. I was Crown Proctor for 20 years.

I live at Bentota, but Induruwa Station is closer to my residence.

(Petitioner called into Court) I know this man. He was having a boutique at Induruwa. I remember the occasion in 1942 when he came to see me about a will. I cannot now remember the date; it may be about the end of 1942. He told me of the loss of a will which his master or employer had written and I asked him whether it was a notarial document. He said no. He said it was signed by five witnesses. I gave him the advice to get an affidavit from those witnesses. The witnesses to the will came to my office a few days later.
40 I questioned them as to whether they signed the will of that man and they said yes. That was all I questioned them about.

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Petitioner's
Evidence.
N. de Alwis.
Examina-
tion.
—continued

(Shown P 18) This is the affidavit. It was sworn to before me. The people who swore to that affidavit were the persons who said that they were the witnesses to the last will. I drafted this document and it was typed by my clerk. The petitioner was present and also the witnesses. I questioned them for facts. I obtained all the material for this document from them. Nothing beyond what they told me was embodied in the document. The document is dated 20th October, 1942. That is the correct date.

N. de Alwis.
Cross-
Examina-
tion.

Cross-examined by Mr. Gratiaen.

I had not acted professionally for Karthelis or the deceased. I knew Karthelis only by sight. I knew some of the other witnesses. I think one or two were from Bentota. I did not know the deceased. 10

Petitioner consulted me a few days before the 20th October. What is embodied in the affidavit is what the witnesses told me. It is correct that they did not tell me what the terms of the last will were or what the dispositions were, nor who had been appointed executor.

I know that there is a provision for propounding a last will. The terms of the last will cannot be expected from the witnesses. It could be ascertained from a draft. If the contents of the will were given to me I would have included them in the affidavit. One of the witnesses, Jaysinghe, according to the affidavit, swore that he actually prepared the draft of the will. He told me that. But he did not tell me what the will contained. He said, "Mata kiyapuhatiyata mama lewva". That means that I wrote what I was told to write. He may have meant, "Take this down". I cannot say whether he actually meant dictation. 20

When the petitioner saw me on the first occasion I did not observe anything unusual in his manner; I have no recollection. I do not remember his bursting into tears. There was nothing of this sort to be observed in his conduct. He did not ask my advice as to what he should do to get the will back. I thought he came to me to swear an affidavit because I was a Justice of the Peace. I gave him the advice to get the affidavit. Then he came to me because I was a J. P. to have it sworn to. He did not later come and tell me that he was able to find the will. He did not see me until a few days after the last trial date. 30

There was no discussion about advertising for this will. I did not ask him to advertise for the will.

Cross-examined by Mr. Wickremenayake.

I know Sinhalese well. (Shown document A). (The witness is asked to read the document to himself). This is couched in fairly good Sinhalese. I do not know whether there is any legal language in it. It seems to have been written by somebody who knew something of the phraseology of wills. In the course of my practice I came across a fair number of wills written in Sinhalese. Sometimes the language is not so good as this. I mean that wills written by notaries are better. 40

Re-examined.

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Evidence.
N. de Alwis.
Re-exam-
ination.

My licence is to practice in English. I have never written a will in Sinhalese. In cross-examination it was put to me regarding the affidavit that I said that the contents of the will were essential. I do not remember to have said this. Even now I think that the contents of the will are not essential for the affidavit. It is not essential for the purpose of the affidavit. That was my view then and it is my view even now.

Sgd. N. SINNATHAMBY,

A. D. J.

10

WILSON DE SILVA, Affirmed.

Wilson de
Silva.
Examina-
tion.

I am a Proctor and Notary of Kalutara. I know the deceased well. I have served him in my professional capacity as Proctor in about five cases. I remember serving him in my professional capacity in a case in which he and Karthelis were co-accused in a criminal case.

20

In October 1942 the deceased consulted me in a land case in the Kalutara Court. It was a case where he had transferred a property subject to a condition and the period had expired. He tried to get the property back. I found that the case was not good for him and I advised him to get counsel's opinion. We came to Mr. Nadarajah. I spoke to Mr. Nadarajah regarding this matter and left the papers with him. He undertook to send him written opinion. I cannot remember the exact date he said he would send his opinion, but he said it would be within a week.

30

(Shown) P 8c is the opinion Mr. Nadarajah sent me. He sent this to me by post. Deceased did not come and inquire about this opinion, he sent a man. (Witness Thomas is sent for, shown to the witness and sent back to the witness shed). This is the man who was sent by the deceased. I handed the letter sent by Mr. Nadarajah with all papers to him. My recollection is that this man brought some money. I did not return the money. I think it was some balance due to me.

40

A few days later deceased was on his way to Colombo. He stopped his car about 100 feet away from my office and sent word to me. I went up to the car and spoke to him. He was there with some other people. He appeared to be very ill at the time. He told me he was going to Colombo apparently to hospital. He was going for treatment to Colombo. He was very ill; he was going to Colombo to the hospital for treatment. I cannot recollect if he told me whether he was going to hospital. He was very ill. He could hardly talk. He spoke to me about the case. Mr. Nadarajah's opinion was similar to mine. He asked me not to leave it at that but to consult Mr. H. V. Perera. That case was fixed for trial at that time. I told him not to

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Petitioner's
Evidence.
Wilson de
Silva.
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tion.
—continued

worry about the case but to get well soon. I asked him to send a medical certificate to avoid payment of costs. The medical certificate was sent to me. I cannot say exactly whether the medical certificate was brought to me by Karthelis. It was brought to me either by Karthelis or Thomas, the two men who always accompanied him.

Deceased saw me on many occasions. Generally he comes with one or the other of the men, sometimes both. Deceased was a well known litigant. He had a fair idea of litigation.

Wilson de
Silva.
Cross-
Examina-
tion.

Cross-examined by Mr. Gratiaen.

I do not think my name and address on P 8 are in the handwriting of Mr. Nadarajah. It is quite different. I only recall that I sent the papers in the same envelope in which it was received by me. They were all together and I sent them. 10

Deceased was a confirmed litigant. From time to time he employed a number of well known proctors in Kalutara. He was well known to change his proctors. He had gone to practically every proctor. I was the last of his proctors. I enjoyed his confidence for the last 2 years of his life. During that time he had occasion to consult me on a number of different matters. Even on this last occasion it was I who practically begged of him not to bother about the case but to send a medical certificate because he appeared to me to be very ill. He appeared to be interested in his case. 20

He was possessed of much property. During the two years I enjoyed his professional confidence he never discussed with me the question of making any testamentary dispositions.

On the last date he was so feeble that he could hardly speak. He appeared to be in such a condition as not to be able to come to my office, even with assistance. He was in the back seat of the car reclining on somebody else. I would not expect him to carry a suit case with him unless he took it in the car. If somebody gave him a suit case and he tried to carry it unaided his condition was such that I would have expected somebody else to carry it. 30

On this occasion when I spoke to him outside my office when he was on his way to Colombo he did not produce Mr. Nadarajah's letter and discuss it. Nothing of that arose at that time.

Cross-examined by Mr. Wickremenayake. Nil.

Wilson de
Silva.
Re-exam-
ination.

Re-examined.

(Shown P 8) There are certain figures on the flap at the back. The figures in pencil appear to be in my clerk's handwriting.

Sgd. N. SINNATHAMBY, 40
A. D. J.

A. D. KARTHELIS APPUHAMY. Recalled. Affirmed.

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thelis
Appuhamy.
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Examina-
tion.

Cross-examined by Mr. Gratiaen.

I managed all the affairs of the deceased. I do not know all the property which he inherited from his father. I know some of the property he inherited. He inherited the Mahagedera and the land on which it stands. I do not know the extent of that land. I have been to that land. I did not do any business in connexion with that property.

10 I know that there are other properties which he inherited from his father and which are excluded from this will; but I do not know their value. At the time I looked after his business I also looked after all the property, but there were others also who looked after his properties. His inherited properties were looked after by Welun Siriwardene and them. Welun Siriwardene possessed the inherited property. I do not know what income, if any, deceased got from these properties. From some properties very little income was given to the deceased, but the cultivators of the fields brought his share. I do not know the particulars of the shares. I was not asked to keep an account of monies which were
20 were brought to the deceased, nor had the deceased asked me to keep an account of those monies.

Deceased amassed a fair portion as a result of his own energies. That was far in excess of what he inherited from his father.

(Certified copy of the Inventory of the estate of the deceased's father sworn to by the deceased marked R 37).

80 Deceased's estate was valued by me at the date of his death. The amount is given in the papers filed. It is mentioned in the schedule attached to my own petition. I know nothing of the value of rubber lands. Deceased had rubber lands and paddy fields. I know that deceased never had a bank account. All his income was collected and kept in an almirah or in a writing table in his room in his own house. I was entrusted with the keys. I think I was trusted and treated as a member of the family.

40 If the deceased needed money, sometimes he asked me to get it for him, but if he happens to have the key with him he takes the money. There were times when the deceased also had the keys with him. Whenever the deceased had the keys and needed money he takes and whenever I had the keys I would take the money. Whenever I made use of the keys they were with me; whenever he used the keys they were with him. It is correct that I had the keys with me always for nearly 15 years.

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 Evidence.
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 tion.
 —continued

I cannot give the exact income from the rubber property in the last year of the deceased's lifetime. There was an output of about 2,500 to 3,000 pounds of rubber a month. I was in Court when Sammy Jayasinghe gave evidence. He told the court that the income from the rubber properties alone came to Rs. 3,000 or Rs. 4,000 a month. If the estate was well managed and the trees well tapped and the price good that figure would be correct. I know that there was an income of nearly Rs. 3,000 a month.

Deceased was not extravagant. He did not spend unnecessarily. If necessary he spent any amount. I was in charge of his income. I kept the money in the house. Some money was spent and the balance was kept either in the almirah or in the writing table. 10

The books of account were in the house when I left. I did not hand them over to anybody. When the headman took over the keys I wanted a list of the articles in the house but Welun Siriwardene objected saying that there was no time. I did not write out a list myself. I handed over only the keys.

(Shown R 15) Cecilia and Lily may be supporting me in this application. I cannot say. One of them gave evidence in my support. I have no reason to think that Lily will not support me. I do not know whether the second and third signatures to this inventory are those of Cecilia and Lily. I cannot say whose signatures they are. I do not identify these signatures. I cannot say that they are forgeries. 20

When I left the deceased's house with the deceased on the 7th October I took all the keys with me. At that time I did not know whether the deceased would be admitted to hospital or merely be given a prescription. I brought the bunch of keys. I cannot now remember what keys I brought. That is the bunch in which the keys of the almirah and the writing table were kept. I took care to see that the almirah and writing table were locked before I left. I looked to see whether both were open or not before I left. No one had stolen any money either from the almirah or the writing table. I know that because the keys were with me. The keys were with me and there was nothing to show that any monies were stolen before the 7th. The deceased was too ill and in bed. If he wanted any money he got me to get it. I was the person who attended to all the things. If he wanted anything from his drawer I got it for him. If the deceased wanted the keys of the almirah I would not take that key out of the bunch and give it to him. I would give him the whole bunch of keys. In fact all the keys were kept on the same ring. 30

I returned from Colombo on the 11th October to the deceased's house in order to get some of his belongings. Right up to the 11th October all the keys were with me. I only remember to have opened the almirah for his clothes. That is the almirah in which the money was kept. I cannot now remember how much money there was at that 40

time. There were times when there was Rs. 1,000/- or 2,000/-. There were months when as much as Rs. 3,000/- was brought from the sale of rubber but the entire sum was not put by. Some of it was spent.

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tion.

On the day of the cremation I gave Welun Siriwardene Rs. 500/- and I remember there was something more in the drawer, but I cannot say how much it was. When I filed papers in this court asking for probate I said there was Rs. 600/- left. That may not be exclusive of the Rs. 500/- I gave Welun Siriwardene for the cremation. I cannot remember whether the Rs. 500/- was shown in the inventory.

—continued

10 I cannot say what my income was at the end of 1942. I never had any personal income of my own and I never kept a separate account. I pooled everything with my master. I did not claim any income and separate it from my master's. There was no portion separated off as my own. There were some properties in my name. Even the income from those properties were not set apart. They were all together. I took whatever I wanted for my own requirements. There was no objection from the deceased. I took whatever I needed as expenses for the month. I cannot say how much my expenses came to a month. I cannot say how much I needed for a month, for my
20 own requirements. At that time I might have been able to give an idea of my expenses but I could not do so now because I never kept an account of what I spent. I am a bachelor. I do not think I spent even Rs. 10/- a month. My clothes were taken from the boutique which was run in partnership. I took about 2 sarongs for a year and I got my food in the house. I have had no personal transactions and I did not take any money.

30 On the 15th October, after handing over the keys to the headman, I left the deceased's house and never returned to it to live; I only went for the almsgiving. From that day I had no pool resources. I had to help myself. There was the boutique and it was in my hands. I helped myself from the boutique. Now I cannot say how much I earned on my own account. I lost on that business because of the controls and this litigation. Then I went to Gampaha and became a hawker. I cannot say when I started the hawker's business.

When I was giving evidence in 1942 I was in my boutique at Induruwa. When the first judgment was given I cannot remember where I was living. On the average, now, I make about Rs. 100/- in a good month from my hawker's business; sometimes more and sometimes less.

40 (Shown R 8). The deceased leased out some properties to me during his lifetime. That was a rubber land of 5 acres. I cannot remember whether I paid the consideration for that lease. I cannot remember the transactions between the deceased and me. If I paid the consideration it would have been out of the money of the deceased

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—continued

and the income would have been put back into the pool. I cannot understand the need for the lease. That was done by the deceased. I did not request him. He did it of his own accord.

(Shown R 9). In March 1942 I gave a lease of this property to somebody else. I have not inherited any property.

(Shown R 10). In May 1943 I leased another property to one Bandara. That was a transfer made to me by the deceased. I cannot say how it was done because it was so long ago. That property would have been worth about Rs. 500/- or Rs. 600/-. The income from that too was put into the pool.

10

In May 1943 I sold another property to Don Peter Siriwardene (R 11) for Rs. 750/-. I cannot remember how that property came to me; whether it was given to me by my master or whether I bought it. I only know that the property was in my favour. I cannot say whether the money was paid for it from the pool. It is very difficult for me to speak now of any transactions between the deceased and me. Those properties I might have got in my name with the knowledge of the deceased.

The keys were handed over to the headman by me late in the morning of the 13th October. There was a good deal of unpleasantness over the handing of the keys with Welun Siriwardene fighting for his rights. I did not hand over the keys and go to Induruwa. I slept in the deceased's house on the 13th and 14th. After the cremation I finished all work and after informing all parties I left for Induruwa. When I went away after the cremation I did not take any money from the pool.

20

The boutique had its stock in trade and some money. There must have been about Rs. 500/- or 600/- in the boutique. When this case started before Mr. James Joseph there were many days of trial. I employed two King's Counsel and two junior counsel. When the case went up in appeal I again employed two K. Cs and some juniors. For this trial I have retained another K. C. Cecilia and Lily are poor. I do not know how they are described in my master's will. I have not defrauded the Government or earned money in any fraudulent manner and therefore I am not prepared to answer the question: from where I got the money for the cases. I have not defrauded anybody. I have even asked Welun Siriwardene for a loan. I did not borrow or steal money from anybody. I earn a fair amount of money. I cannot say exactly how much I earn.

30

It is true that the deceased was very ill when he was admitted to hospital on the 7th October. He had been ill for about 5 days prior to that. He took ill on the 30th September and was getting worse so he was removed to hospital. I cannot say how he fared in hospital from the 7th to the 11th October. I know he was serious, but I cannot say what turn the deceased took. We decide to take him to a

40

ayurvedic physician because he was not getting better quicker. I asked Dr. Jayasuriya how the patient was faring.

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I left the deceased in Colombo on the 11th evening. I discovered that he had died when I came to Colombo the next day. I left Colombo on the 11th by the 7 p.m. train. I reached there at about 9 or 10. When I left Colombo I had the bunch of keys with me. I deny that knowing that the deceased was very ill I went to his house with the keys in order to rifle his almirah. I felt that the deceased appeared to be perfectly healthy.

—continued

10 Dr. Ratnayake was consulted after we got medicine from the
ayurvedic physician. Dr. Ratnayake had treated the deceased for
about 2 or 3 days before I brought him to Colombo. I cannot remem-
ber details now. I remembered details better when I first gave
evidence. He fell ill on the 29th September. The vedarala was
called in and he treated the deceased for about 2 days. I have given
evidence previously on this point. Then Dr. Ratnayake was taken to
the house to see the deceased. The deceased was not too ill to go to
see the doctor. It was impossible to get a car and it is customary for
the doctor to go and see a patient. On the day that Dr. Ratnayake
20 came to treat the deceased he came there in the morning. Every
morning we go and bring the doctor. There was no fixed time for
him to come. It was mostly before lunch. Every day I went and
reported the condition of the patient to the doctor and returned with
the doctor on every occasion except one, I think. The doctor brought
me back in his car. On the first occasion I went to the doctor's in
a car.

(Further hearing tomorrow).

Sgd. N. SINNATHAMBY,

D. J.

30 10-7-47.

Appearance as on previous date.

Errors in previous day's proceedings are corrected by consent.

A. D. KARTHELIS APPUHAMY. Affirmed.

Cross-examination continued.

Handy who is said to have signed the last will A died recently. I read in the papers that he had been murdered. At the previous trial he was alive and quite well; he was also present in court but did not give evidence. Parlis Goonetilleke is alive; he was not called to give evidence at the last trial; I have not summoned Parlis for this trial.

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 tion.
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I said the deceased Frederick was in the habit of taking his meals at Maliban Hotel when he came to Colombo which was twice or three times a month; on some occasions he stayed the night at Maliban Hotel; this went on until a short time before his death. I did not accompany him on all these occasions but only whenever it was necessary. I have never stayed at the Maliban Hotel any night. The occasions when the deceased stayed in the Maliban Hotel may be the occasions when I did not accompany him. I cannot say whether about a year before his death he stayed in the Maliban Hotel. I cannot remember having spoken to John Perera before he handed to me the envelope which contained the Will. I was under the impression that John Perera was the mudalali of the Maliban Hotel but I was not aware of his name; I thought he was the proprietor. I cannot say for how many years before 1942 I was under that impression, it might be for about a year or two.

10

I am now giving evidence about my knowledge of the matters connected with the Will, about four years after my previous evidence; when I gave my previous evidence these matters were clearer in my mind than now. If I say anything now which is different from what I said earlier, then what I said earlier ought to be correct.

20

In the room in the deceased's house which I have referred to there was only one writing table. I said the money used to be kept in the almirah or on the writing table. This was the writing table in which money was kept in different drawers. On the day in question I took the money from the almirah and locked the drawers of the almirah.

Q. Did you say yesterday that you took care to lock the almirah and the writing table in which money was kept?

A. When I gave that reply I meant that I locked the almirah from which I had taken the money; at that time there was no money in the drawers of the writing table.

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Q. You also said you looked to see whether both were open or not before you left; did you say that?

A. The almirah had two doors; I understood that what was meant was the almirah from which I had taken the money.

It was not necessary for me to find out at that time whether any money had been stolen; I was in a hurry to get to Colombo to see the patient, the deceased.

Q. Did you say at the previous trial that the deceased's money was kept in the almirah and the drawers of the writing desk?

A. I accept that I said that; there have been occasions when there were large sums of money in the almirah and in the drawers of the writing table but not always. Whenever I had the keys I opened them.

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Q. Is it true that the keys were more often with you than with the deceased ?

A. Mostly the keys were with me, but they were also with the deceased.

Q. How did you know that there were no monies in the drawers of the writing table before you left home on the 7th October ?

A. During that period there was no money kept in the writing table drawers and it was only in the almirah that money was kept.

10 Q. How long before October did money cease to be kept in the writing table drawers ?

A. I cannot say that.

Q. How can you say that at this particular time there was no money in the writing table drawers ?

A. Because all the money was in the almirah.

Q. Were there no occasions when there were monies in both the almirah and the writing table ?

A. There might have been such occasions; there were such occasions.

20 The deceased used to suffer from the stomach complaint before September 1942. Although he was old he was quite strong, like a young man. It was not necessary for him to be helped into the bath room. It is true that on the 7th October he was very ill; he had been so for the previous 4 or 5 days. On the 7th October in the car the deceased was not reclining on another person; he was leaning on the pillow.

Q. Even that morning he was well enough to go to the latrine without the assistance of anyone else ?

A. It was possible for him to go and answer a call of nature without anyone's help.

30 Q. Was there no member of the household who was attending on the sick man during the last weeks he spent in the house ?

A. There were; I attended on him; there were also Lewis Baddevitane (or Appuhamy), his wife. There was a closet prepared for him close by, some person or other used to go behind him but no one really physically helped him. It was not always, but very frequently he had to answer a call of nature during those days, and there was someone ready at hand always. Besides those mentioned there were two or three other servant boys; one of them was Charles, I cannot remember the names of the others; they were not permanent

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employees, but whenever they were necessary they were called in to help to procure medicines, there were boys who worked in the garden; whoever was available at a particular movement we called up; they were not always the same persons; the deceased's relatives and friends also used to visit him during his illness. One of the persons who was asked to accompany Frederick to Colombo on the 7th October was Thomas.

Q. Thomas in his evidence said that on the 7th October when they left they intended to return to Colombo on the same day? Is that correct?

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A. We had not made any definite decision; if the deceased was advised to stay in hospital he was to stay; otherwise he wanted to return on the same day.

Q. Did the deceased ever in conversation with you tell you that he was so angry with Velin and others of that family that he intended to make a Will and cut them out?

A. I cannot remember the deceased having told me any such thing. He never in fact told me that he intended to execute a Will, during the period I was with him. Before the 5th October I was not aware that the deceased had told anyone about executing a Will. I myself had no expectations in connection with a Will. I did not expect the deceased to give me any properties although in fact he did so. I thought the deceased was very generous and kind towards me; he also gave me a boutique and set me up in life.

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The first person who mentioned anything to me about the Will was Sammy Jayasinghe; that was a little while before I handed over the keys to the headman on the 13th October; that was when Sammy brought a message from Velin that Velin wanted the keys. I cannot remember whether Sammy told me then that I had been made the executor of the Will.

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Q. Is this correct previous evidence "At the time Sammy Jayasinghe told me about the Will I did not know that I would be a beneficiary under the Will. On the first occasion when Sammy Jayasinghe informed me about the Will I was not aware whether I was a beneficiary under the Will or not"?

A. I cannot remember; on the 13th I did not know whether I was the executor or a beneficiary. I accept as correct what I have stated at the previous trial.

Q. Do you accept as correct this statement which you made previous evidence "Till the 13th October Sammy did not tell that the will had been executed; on that day he told me the fact that a will had been made; on

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that occasion he did not tell me that I had been bequeathed a third of the estate; he did not tell me the details of the will, nor did I ask him for it”?

A. I accept that as correct.

Q. Is it correct that it was on the 15th that you asked Sammy who the attesting witnesses were?

A. Yes that is correct.

10 Q. “The cremation took place at 4 o'clock; on that occasion Sammy told me that all the witnesses attended the cremation; he gave me the names of the witnesses; he did not tell me who the executor was”?

A. I accept today what I have stated before; I accept that statement although I cannot remember now what happened.

Q. Is this correct, what Thomas said at page 77 of the brief, that you asked Thomas also after the cremation about the will?

A. Yes, on the day of the cremation.

Q. That was the first discussion you had with him about this will?

A. Yes, on the day of the cremation.

20 Q. That was the first discussion you had with him about the Will?

A. Yes.

Q. He told you that the will had been written. Is this correct, that Thomas did not tell you what the terms of the will were or that you had been appointed executor?

A. I cannot now say what Thomas told me at that time. I cannot remember what Thomas said or what I said at that time. When Thomas gave evidence I was present in court; so far as I can say what Thomas said at that time was correct. It never struck me at that time that he was giving false evidence.

30 Q. When did you first have information that you were the executor under the will?

A. On the 15th I came to know that; that was the day on which I left the house. I cannot remember from whom I got the information; I got the information from witnesses to the will but I cannot remember from whom.

Q. Was it Thomas who said he saw the deceased putting the will into the suitcase?

A. Yes.

Q. Was it on the same day, after the cremation, or was it later?

A. Yes, on the 15th.

40 Q. You did not in fact search the house for the will immediately after that?

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A. My recollection is that I did not search the house at that time.

Q. Because you believed Thomas' story that he saw the deceased putting the will into the suit case?

A. Yes.

Q. You did not search it in the suitcase again after that?

A. No.

(To Court: On the 7th itself when the car returned to the village after leaving the deceased in hospital I sent the suitcase back by car to the village with some dirty linen.

On the 11th I saw the suitcase. I cannot remember whether there was a document inside the suitcase on the 7th. On the 11th I did not take a suitcase to the village; on the 12th I came back to Colombo from the village with the suitcase; on that occasion I took out the clothes which were in the suitcase, put in fresh clothes and brought it to Colombo, but then I did not see any document in the suitcase). 10

Q. Who took the suitcase back to the village on the 7th?

A. Lewis Appuhamy and Thomas Appuhamy went back to the village by car with the clothes in the suitcase.

On the 12th I emptied the contents of the suitcase and put new clothes into it; the soiled clothes brought on the 7th were still in it. 20

Q. Did you not question Thomas again a second time to make sure that he was right when he said he saw the will in the suitcase on the 7th?

A. It was not necessary for me to ask Thomas Appuhamy that; I cannot remember whether I did ask him that. Thomas gave me the information on the 15th; by that time I knew there was nothing in the suitcase.

Q. Did you not say there would have been a mistake on his part because on the 12th it was not in the suitcase?

A. I cannot remember what I told Thomas on that day. 30

Q. You naturally realised that if you found the will you would be a rich man?

A. Thoughts of becoming a rich man did not occur to me at that time; I was neither surprised nor excited; I was not expecting this.

Q. Were you not frantic that this will had been lost?

A. I was only considering how I could trace it.

Q. You heard of the will on the 15th October; you put in an advertisement on the 14th November, weeks later?

A. May be so.

Q. During those weeks what efforts did you make to look for this will?

10 A. I conveyed to Mr. Alwis the information I got about the will. I had told the witnesses who informed me to search for the will and told them that I would also make a search; I cannot remember how I searched or whether I made any effort at all solely for the purpose of searching the will, or whether I asked anyone to assist me in searching the will; nor did I consult any astrologers nor reported to the Police or the headman.

Sgd. N. SINNATHAMBY,

A. D. J.

10-7-47.

(After lunch).

A. D. KARTHELIS APPUHAMY, recalled. Affirmed.

Cross-examination continued.

20 (Mr. Hayley applies that certain documents, a list of which his proctor will supply, be handed over to his proctor so that the handwriting experts may have access to them with a view to giving evidence. Mr. Gratiaen and Mr. Wickremenayake have no objection.

Let the documents be initialled by me before they are handed over).

30 (Evidence continuing)—As I stated previously I went about the 16th October to see Mr. Alwis I cannot remember whether I asked his advice how to find the will. I remember not to have told Mr. Alwis that I was the executor or the chief beneficiary in the last will. There was no place for me to search because I was chased from the house and on the 13th Welun Siriwardene threatened to kick me out of the house. If he had not threatened me I could have searched the house. I cannot remember whether I searched anywhere else. I informed some people to look for it. I told the witnesses to the will to look for it. I cannot remember whether I informed any others to search for the will. Mr. Alwis prepared the affidavit for me. That is all I did in connection with this will. All I did was talk with the witnesses, Mr. Alwis and the Proctor. I cannot remember whether I spoke to anybody else. I informed the headman of Induruwa and some of my customers about the will. The will could not have been anywhere
40 near Induruwa. I thought that the will must have been lost on the way to Colombo. I do not know who owned the hiring car. That was not the car that was hired regularly. It was one obtained casually.

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I could have traced that car driver if necessary. There was no need for me to trace the driver. I did not look for him. It did not occur to me to go and ask him whether this document had fallen out of the suit case into the car. I do not know who packed the suit case; it was I who brought it to the car. I did not try to find out who packed the suit case. I thought the will was lost on the 7th itself, because on the 7th when I sent the suit case back in the car to the village I packed it up at the hospital. Therefore I conclude that it was lost on the 7th itself. It was I who opened the suit case at the hospital on the 7th. I did not take anything out of the suit case. Clothes were brought to the hospital in the suit case. There were about 2 white clothes a coat and 2 or 3 old bed sheets. I cannot remember whether there was anything else in the suit case. Before leaving the deceased's house I did not put anything else in the suit case. Thomas said he saw the deceased putting the will into the suit case. I made no attempt to find out who it was in the house actually put in the deceased's clothes. It was not necessary for me to do so. Deceased was not wearing a coat when he was taken to hospital in the car; he was wearing a banian. The coat, 2 clothes and bed sheets were not taken out of the suit case. The sheet with which the deceased covered himself from home and the banian were put back into the suit case at the hospital. I cannot remember whether if the will was in the suit case at that time I should have seen it or not. I took the suit case from the house to the car. I brought it because it was I who should have brought it at that time. The clothes were brought in the suit case in case he stopped in hospital and also if they were necessary on the way. I cannot say why the bed sheets were put into the suit case. The person who packed the suit case should know. They were sent back because they were not necessary at the hospital. I cannot say whether the deceased was provided with clothes at hospital or whether he wore the cloth he had on. The suit case was about 15 x 12 x 10 inches. There was no key for it.

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When approaching Colombo we came along the Galle Road intending to go to Dr. Jayasuriya's house. I do not know that the shortest route to Dr. Jayasuriya's house is through Turret Road to Ward Place. Even now I do not know where Dr. Jayasuriya lived. On leaving home we told the driver that we were going to Colombo. We must have informed that we were going to Dr. Jayasuriya's. I agreed on a certain sum to be paid for the journey; I cannot remember how much. It was not arranged on a mileage basis. We know what is usually charged to go to Colombo. When we want to go to Colombo the price is agreed. I remember to have told the driver at Colpetty that we wanted to go to Dr. Jayasuriya's. I know Colpetty. At Colpetty junction we told the driver to go to the doctor's. I remember the deceased having told the driver to go to Dr. Jayasuriya's via Colombo. The deceased spoke something to the driver. I cannot say what he spoke about. I remember he told the driver to go via Colombo. I did not tell the driver to take us to Maliban Hotel. I heard the

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conversation between the deceased and the driver, but I do not know what they spoke about. I cannot remember hearing anybody ask the driver to go to the Maliban Hotel. I was seated in the rear of the car with the deceased. I told the court yesterday that the deceased wanted to go to Maliban Hotel because he wanted to answer a call of nature. That was after we came to Colombo. It was only after we came up to the Maliban Hotel that the deceased said that he wanted to go there to answer a call of nature. It did not strike me as strange that we should go to the Maliban Hotel instead of going straight to the doctor's. The deceased said that he was thirsty and wanted to go to the Maliban. He said this too while we approached the hotel. I cannot say where we were at the time. I cannot say who gave instructions to the driver as to the direction he should take, whether it was deceased or I. I cannot say whether the deceased gave instructions directly or through me to the driver. I remember that we stopped at Colpetty because the deceased wanted to answer a call of nature. That was close to a lavatory, in Colpetty; I do not know exactly where. We stopped at a public lavatory. I know the Colpetty junction. I do not know the light signals. I know the Colpetty bazaar area because of the name boards at the various business places. I do not know where the market is. The car was stopped on the Galle Road itself near a lavatory; the car did not turn off. The lavatory was on the side of the road. The car was stopped on the Galle Road; it did not turn off, but I cannot say how far the deceased walked to the lavatory. The lavatory was on the sea side of the Galle Road; I cannot point it out. At that time I did not know Colombo. Even now I cannot remember where that place would be. I had been to Colombo with deceased on several occasions. I cannot remember whether the lavatory was on the Galle side of the Colpetty junction or on the Fort side of it. The deceased did not need assistance to walk to the lavatory. I only walked behind him. At the time he alighted from the car I assisted him, but he walked alone to the lavatory. I accompanied him to the lavatory. I left the suit case with the others in the car. When the deceased had answered his call of nature he walked back to the car and I followed him. When he got into the car I assisted him. He got into the car and asked the driver to go along Pettah. The driver said he needed petrol. I cannot say whether the petrol was bought on coupons or not. I cannot remember whether the petrol shed was next door to the lavatory. I do not know where Walker's petrol shed in Colpetty is. I have been to Colombo on several occasions in connection with this case but I do not know where Walker's petrol shed is at Colpetty. Mr. R. L. Pereira lives far away from this junction near a huge tree. I have been going to his bungalow by many roads, but somehow I got there near the large tree.

I have experience in the working of rubber estates.

At the place where he got down at Colpetty the suit case was opened. When deceased was in the lavatory he wanted a piece of

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cloth, and I returned to the car, opened the suit case and took it to him. I took a sheet from the suit case. The suit case was inside the car. From outside the car, I kept the suit case inside the car and opened it. When I opened the suit case at this time I did not see the will. I saw the clothes inside it. There was no will on top to be seen. The sheet was on top. I cannot say that if the will fell out then that it should have fallen on the floor of the car, because I pulled the sheet out of the suit case and ran away. I think that the will must have then fallen out of the car. It could have fallen on the footboard of the car, but it could not have been inside the car. The other two occupants of the car had been breaking rest as a result of the deceased's illness and they were dozing off. I cannot remember whether I asked them whether they saw anything in the car. I cannot remember to have seen anything fallen off the car at the time the deceased returned from the lavatory. The other two occupants of the car were seated, not dozing.

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When we arrived at the Maliban I assisted deceased over the steps at the entrance to the hotel. I cannot remember whether the deceased requested the car to be stopped before reaching Colpetty to answer a call of nature. We stopped at the Proctor's. We stopped at Colpetty at his request. After leaving Proctor Wilson Silva's office at Kalutara, I cannot remember whether Colpetty was the next stop. As soon as we reached the Maliban the deceased said he again wanted to answer a call of nature. I remember he wanted to urinate; I cannot say whether he answered any other call of nature. We went to the Maliban because the deceased was also thirsty. I did not tell the deceased that we could go to Dr. Jayasuriya's where he could get water. We always did what the deceased said. If I wanted I could have got him a glass of soda or water at a boutique. At Colpetty I could have done so. Before the car was halted at Maliban hotel he said he was also thirsty. I cannot say why the deceased went to Pettah. I cannot even suggest a reason. I did not tell the deceased that we should go to the doctor's to see what was wrong with him. The deceased wanted to go to the General Hospital. I do not know why he should want to go to Pettah. I cannot say whether I understood anything from Dr. Ratnayake's conversation.

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I stayed with deceased at the Maliban for about 5 or 6 minutes; at the most for about 10 minutes. I was not seated; he was seated. Before he sat he went to the lavatory. Here too I followed him to the lavatory. I think he urinated. There was no occasion here for him to be washed or wiped. The suit case was taken into the hotel. I remember the suit case was kept on a tea poy or a table. The lavatory was a little distance from the room. The suit case is not locked with a key. It has a separate lock which can be opened by anybody. We occupied the main hall in the hotel in which there were several G. O. H. type chairs. I remember that there was a place downstairs where one could

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urinate. I did not take him upstairs. We went behind the place where people were seated. I cannot say whether it is used as a lavatory or urinal. I cannot remember whether it was a room. I cannot remember how the receptacle was constructed at that time. I cannot say whether the place the deceased used was a lavatory or an urinal. I cannot say whether the kitchen is next to the hall. There is a kitchen behind this hall. I cannot now remember where this place was exactly, whether it was behind the kitchen or not. I remember the place where he urinated was neither the kitchen nor the hall. Now I cannot remember whether it was between the hall and the kitchen or outside the kitchen. I saw him urinate. I am sure I saw him urinate. I said earlier that I was not sure whether the deceased urinated or answered any other call of nature. I said that he only urinated because there was no reason to wipe or wash. I cannot remember whether I saw him urinate or not. In the previous trial I spoke of the car being stopped at Colpetty to enable the deceased to answer a call of nature. I did not at any stage in my previous evidence mention that he wanted to answer a call of nature at the Maliban. I was not questioned on that point. But I did not deny it. I cannot remember that strong comment was made of the fact that the car should have gone to Maliban hotel without going straight to Dr. Jayasuriya's. That is not the reason why I say that the deceased wanted to answer a call of nature at the Maliban and have a glass of water.

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When I followed the deceased into the room where he wanted to urinate he did not object to my keeping the suit case on the tea poy in the hall. It was kept near where he was seated. He did not appear to be anxious that anything in the suit case may be stolen. I brought Rs. 500/- with me that day. I did not make a note in any book of how much I took. The deceased told me to have sufficient money for my expenses and to deposit the balance with the rubber dealer. I took Rs. 100/-. When I returned to the village on the 11th I had Rs. 100/-. I cannot remember how much I spent out of the Rs. 100/-; I may have spent some of it for my travelling and on doctor's fees. I took the Rs. 400/- and some more from the rubber dealer for the funeral.

When we arrived at Dr. Jayasuriya's the doctor was there. On his advice we took the patient to hospital. We were given a letter by him to admit the patient. The patient must have been tired at this time. I gave all information about him for the purpose of admission; I cannot remember what questions were put to me at the hospital, but I answered all. The patient had no rice ration book. None of the people in the house had ration books at that time. We had paddy. He had informed the G. A. that he did not want rice ration books for any of his household. We did not bring his token card. I cannot remember whether there were any token cards at home. We have sugar and chillies in my boutique. I cannot remember whether there were ration books at this time. I loved my master and desired that

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he should get the best attention at hospital. I did not care how much it cost to cure him. He was a sick man and money expense was no objection. I cannot remember whether I or the deceased was asked what his income was. I do not remember this question being put. I said earlier that all questions were answered by me. Deceased and I both answered the questions. I cannot now remember what transacted before the deceased was admitted to hospital. I remember his being taken to a ward on a stretcher. I cannot be definite. (Bed Head ticket of the deceased marked R 38. Mr. Gratiaen says that he will be calling the doctor who recorded the particulars). I am described in this as the person who entered the deceased into hospital. I did not tell them that I was a relation. This information was given by deceased. The stretcher was brought after all questions were answered. I was questioned about the place of residence; I said Galmatte Estate when deceased said drop estate and say Galmatta. I wanted to give Lewis Appuhamy's name as the person who admitted the patient when deceased wanted my name to be inserted. I think it was the patient who said he was a cultivator. If I was questioned I would have replied after consulting the deceased. Deceased may have been asked what his income was. I cannot remember whether I was asked what was deceased's income. I would not have told the hospital that deceased was a cultivator with an income of Rs. 25/- a month. The deceased himself would have given this reply. I did not correct him and say that we have enough money to put him into the best ward. When he was admitted into hospital he was dressed in a banian and sarong. He was admitted into the non-paying ward. That was done when a bed was not available in the paying wards. Deceased was given a bed in the non-paying section. I did not deposit any of the money I had with me. I informed the gentleman in the rubber stores to do this. I cannot remember whether the patient had any special attendant on the 7th, 8th and 9th. I saw him on the 10th. I do not know how he behaved at night. I cannot say whether the patient was drowsy by day. I could not see anything wrong or even an improvement in him. It may be that later a special attendant was obtained for him on the 10th. It may be that he became worse on the 11th. It was at the request of this person that I went back to the village to get his clothes in order to take him to a vedarala.

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On the 7th John Perera was there. He spoke to the deceased. I cannot remember whether it was a casual conversation or not. There was not much time for me to stay there and I cannot say.

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(Further hearing 22nd to 26th September).

Sgd. N. SINNATHAMBY,
A. D. J.

22-9-47.

ADVOCATE E. A. P. WIJERATNE with ADVOCATE WIJE-TILLEKE for petitioner.

ADVOCATE GRATIAEN with ADVOCATE H. W. JAYAWAR-DENE for 1st respondent.

ADVOCATE E. G. WICKREMENAYAKE with ADVOCATE MALALGODA for the intervenient-respondent.

Errors in previous day's proceedings corrected by consent.

A. D. KARTHELIS APPUHAMY. Affirmed.

10 (*Cross-examination continued*).

I told Court on the last date that when I was bringing the deceased to Colombo I stopped at a latrine in Colpetty, on the sea side for the deceased to answer a call of nature. I was asked at what spot the latrine was. It is by the side of the approach road to the Wellawatte Railway Station, on the sea side. When I come by train I can name the stations in proper order but not when I come by bus. I have since gone to see the latrine where the deceased got down; from Colpetty junction I went south along the Galle Road looking for this latrine; there was no latrine till I came to the one at Wellawatte where the deceased got down to answer the call of nature; it is on the sea side.

20 Q. Why did you say on two occasions that the latrine was at Colpetty?

30 A. Till I was asked to go and verify, I was under the impression that the latrine was at Colpetty. After my evidence at the last trial other witnesses also gave evidence. I do not remember what place they mentioned in this connection. I know Colpetty junction from where a road leads inland; I do not know whether there is a latrine on that road; nor do I know whether the shortest route to Dr. Jayasuriya's bungalow is through that road. I have not got down from the bus at Colpetty junction to see my counsel; I always come to Pettah from where I come to Fort to see my Proctor and then go to see my counsel.

Since the last date I have visited the Maliban Hotel but I did not verify what I said about the latrine. I did not look for the latrine in question since the last date; I remember the deceased went to that latrine when he was in the Maliban Hotel just before his death. On the last date I gave evidence as far as I could remember and I did not verify whether the latrine is on the ground floor.

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I know John Perera of Maliban Hotel by name since this case started but not when the deceased was taken there. I did not know what exactly he was doing there at that time. I think the deceased always stayed at the Maliban Hotel whenever he came to Colombo before his death; I remember he told me on certain occasions that he had spent the night at the Maliban Hotel.

I can sign my name in English and also read and write an address; there are some addresses which I cannot read. I know Thomas Appuhamy. I do not think he knows English. I received information from Thomas Appuhamy on the day of the cremation that the will had been taken to Colombo by the deceased in an envelope. He told me the deceased put inside an envelope addressed to Mr. Wilson de Silva. I did not ask Thomas how he knew what was written on the envelope but simply took heed of what he said. I cannot now remember what exactly he told me and how; I do not know whether Thomas understands English or not, but he did tell me that he saw the testament being put into an envelope by the deceased and the envelope bore the name of Wilson de Silva. I do not remember whether he told me anything about the address on the envelope. After this information I remember I asked Mr. Wilson de Silva one day—may be before I advertised in the papers—whether Thomas Appuhamy took a letter to him. I have not mentioned to Mr. Wilson de Silva anything about the Last Will; I did not consider it necessary to inform him, nor did it strike me at the time. I do not remember asking about the envelope itself from Mr. de Silva. I put in the advertisement only on the information of Thomas Appuhamy. Before the advertisement, on the cremation day I discussed about the Will with the witnesses to the Will.

My impression is that the Will was lost at some place between the Wellawatte latrine and the General Hospital; I cannot think of a particular spot in between as the most likely place. In searching the Will I did not go to the public latrine; I did not go anywhere to search it. It was I who drafted the terms of the advertisement P 4, where I say it was lost between Colpetty and the General Hospital. In the Sinhalese advertisement I mentioned that it was lost between Colpetty and the General Hospital, along the Fort. At that time my impression was that the latrine was at Colpetty. I have no recollection of having visited the Maliban Hotel to verify before the advertisement. I went to the Maliban, but I cannot say whether it was before or after the advertisement. Once when I came to Colombo to buy goods I thought I might enquire at Maliban and I did so casually from those who were there at the time, but I got no information. At that time I did not mention the name of the deceased. I did not meet John Perera then. I cannot remember the dates but I only remember that I sent the notice to the papers and later got a letter from the place where the writing was found. John Perera's letter was received through

the Daily News. I don't remember how I gave evidence on the previous day. Now I remember that the Daily News letter was received on the 18th November. I went to see John Perera on the 20th; I was not quite well about this time and that may be the reason why I delayed to go and see John Perera. It is true that I was somewhat excited but in spite of it if I was ill I could not have gone earlier. I did not think far about it. I was ill those days as far as I remember, and I can think of no other reason for the delay.

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10 I had no special friendship with Sammy Jayasinghe. After I left the deceased's residence Velin came into residence and Samy worked under Velin for 2 or 3 months; I saw Sammy there. I cannot remember being informed that any order was received from Court by anyone on the 19th November; no one told me that.

20 After I received John Perera's letter I did not think of getting a letter of authority from Mr. Wilson de Silva to take charge of the document. I saw John Perera with the letter he sent me and explained to him that I had connections with the deceased. Till then I did not know John Perera nor did he know me. I cannot remember all my conversation with John Perera. If I had a letter addressed to Wilson de Silva and if anyone claimed it with sufficient reasons I would give it over to him, that is if I thought there was sufficient grounds. In my advertisement I have stated that the document was a valuable document. A receipt from me was of no use to John Perera as I had explained to him that my master had died. John Perera did not even mention a receipt. I do not remember telling John Perera that the document was a Last Will. I cannot now remember just what I told John Perera but I remember speaking to him in such a way as to induce him to hand over the document because otherwise he would not give it to me.

30 I do not think there was any harm in my describing myself as a relative of the deceased because I was more than a relative to him; but I have no recollection of having described myself as a relative. If John Perera says I did, then I may have done it. It is true that I am not a relative of the deceased. I admit that to call one a relative when he is not, is improper, but to meet the occasion it may be harmless.

Sgd. N. SINNATHAMBY,
A. D. J.

40 Mr. Wijeratne submits a pedigree showing the relationship between the deceased and the respondents. It is agreed that this is a correct pedigree.

Adjourned for Lunch.

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After Lunch.

A. D. KARTHELIS APPUHAMY. Affirmed.

Cross-examined (continued).

John Perera did not ask for a receipt for the valuable document which he handed over to me, but I asked him for a receipt for the Rs. 50/- which I gave him. It was John Perera who got the receipt for the Rs. 50/- typed by a clerk working in that hotel. I was there myself when the receipt was being typed.

When John Perera gave me the envelope which contained the last will I opened the envelope and went through the will. I was satisfied that it was the very will signed by the deceased. I read the will. I then left the place with the will. I went to my shop. After a few days I went and handed the will to my Proctor. 10

Q: The will came to your hand on the 20th of November and you handed it over to your Proctor only on the 30th of November. Why did you wait for 10 days to go and see your Proctor with the will?

A. Because I was waiting for a suitable opportunity to go to the Proctor. 20

I did not go and see any other Proctor within that period. The deed was with me during that period. I remember that it was in the month of November that I handed the will to the Proctor, but I cannot remember the exact date on which I did so; nor can I remember how long I kept the will with me before handing it over to my Proctor.

Q. At the last trial you stated that you received the will from John Perera on the 20th of November and you handed it over to your Proctor on the 30th of November. Is that correct?

A. Yes, that is correct.

Q. Can you give us the reason why you kept the will for ten days before you handed it over to your Proctor? 30

A. I cannot remember, because this happened long ago.

About that time I was ill, which may have been the reason why I kept it for ten days. I cannot remember the dates between which I was ill. I knew Proctor Parnavitarne of Colombo at that time and I handed the will to him.

Q. Why didn't you go from the Maliban Hotel straight to your Proctor on that day?

A. I acted according to how I felt at that time. I cannot now explain why I did not go straight to the Proctor on that day.

I did not think it improper for me to keep the will with me for that period. Even now I do not consider it improper to have kept it with me for ten days.

10 It is correct to say that Rs. 500/- of the deceased's money was given to Velin to meet the funeral expenses. I did not ask for a receipt for that amount from Velin. I have not recorded this Rs. 500/- anywhere; Velin must have recorded it. It was Sammy Jayasinghe whom Velin and I entrusted to do the job of spending on the funeral, and this Rs. 500/- was handed over to this Sammy, who was asked to keep a record of the items of expenditure. Whether he kept a book for that purpose or not I do not know. It was Velin who asked Sammy to keep a record of the items of expenditure, out of that Rs. 500/-. I did not ask Velin to tell Sammy to record the payment of Rs. 500/-.

I do not know the date on which I applied for the probate. But I remember that I told my Proctor to apply for the rebate. If it is recorded that it was on 8th of December 1942 that I applied for probate, then it is correct.

20 Q. I suppose you entrusted your Proctor to consult the handwriting expert?

A. It was the proctor who told me that such a thing was required.

I cannot remember how many days after I applied for the probate that my proctor told me that. But I only remember about my proctor telling me that. Whether it was before or after the objections were filed, I cannot say. The dates might correctly appear on the records. I cannot say from memory. My proctor told me that they had filed objections.

30 My proctor told me that for the guidance of the experts documents bearing the signature of the deceased would be required. He told me that some writings with the deceased's signature would be required. He might have said that solemn deeds would be required, but I cannot definitely remember that.

Q. At that time you had in your possession certain deeds by which the deceased had leased properties and conveyed properties.

A. All such documents were with Velin; not with me.

Q. But those deeds of transfer which were in your favour; they were not in Velin's possession?

40 A. They were all in the house of the deceased. They were not with me. I did not have them even for a single day with me.

I went to the offices where those deeds had been executed and obtained certified copies of them. One was Proctor Wijemanne's

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office at Kalutara. I cannot remember the other offices. From Wijemanne I only asked for a certified copy of the lease bond which had been executed in my favour. The deceased might have executed a large number of deeds prior to his death. Two lease bonds were executed in my favour. Deceased had executed a transfer deed long long ago. Out of the two lease bonds he had executed in my favour, one had been executed six years prior to his death, and one three prior to his death.

The documents which I made available to the handwriting expert were some rubber assessment forms and some "C" forms. The latter forms were in the shop. The rubber assessed forms were in a rubber depot belonging to one D. L. Baddevitarne. How the "C" forms happened to be in the shop was one day I brought them to Colombo to buy acid. After buying the acid I took them back to the shop and they were lying there. I brought those forms to Colombo to buy acid during the time when those forms were valid. That is prior to the death of the deceased. They were lying in the deceased's shop. I cannot remember the date on which I used those forms for the last time on behalf of the deceased.

10

I think I did not tell my proctor that certain deeds in my favour were with Velin. I did not ask from Velin for those deeds. I obtained certified copies of those deeds.

20

I know the driver who drove the car on the occasion on which the deceased went to the Maliban Hotel; but I do not know his name. I have not summoned that man. I do not know whether the other side has summoned him. That driver is not a man from the village of the deceased. I cannot remember whether I met this driver after the death of the deceased. After the death of the deceased I did not ascertain the whereabouts of this driver.

Q. At the last trial, there was a suggestion from the other side that there was no trip made to the Maliban Hotel?

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A. I do not know that. Such a suggestion may have been made.

That driver is a man living near about Alutgama. It was I who arranged for this car through a boy who knew the driver. I did not know that driver prior to this trip. I asked for advice from my proctor whether we might summon this driver, and the proctor told me that it was not necessary. If the proctor had told me that it was necessary, then I would have got at him. I did not search for him because I took the legal advice.

At the first trial I called only three of the five witnesses to this will. It was on the legal advice that I did not call the other two witnesses. If they were summoned they would have given evidence.

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in this case. Yes, my proctor told me that the will had been challenged as being a forged one. In this instance also I have summoned only three witnesses who attested the will. Of the other two witnesses one is dead. I summoned only the witnesses whom my counsel asked me to summon.

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Q. The will is supposed to have been signed on the 5th of October, 1942?

A. Yes.

10 Early in the morning of the 5th of October I went to fetch the doctor. I cannot remember the time. I returned with the doctor, in the latter's car. I was present when the doctor examined the patient (deceased). It was in the forenoon that the doctor examined him. I cannot remember the exact time. Doctor did not remain there for a long time. He examined the patient and went away. It was before lunch that he went away. I went back with the doctor in his car to his dispensary to bring the medicine. The distance from the deceased's house to the dispensary is about 8 miles. Going by car it would take about half an hour. I returned from the dispensary to the deceased's house in the evening, at about 5 or 6 o'clock.

20 Q. The doctor wanted you to accompany him to the dispensary because the patient was seriously ill?

A. Yes.

Q. And having got this important medicine in the morning you did not bother to take it to the deceased's house till 5 or 6 o'clock in the evening? Why did you take such a long time?

30 A. On my way back from the dispensary I went to my boutique at Induruwa to see how things were going on there, because I had not been there for some days. The medicine that was with me at the time was to be given to the patient only on the following day. The previous medicine was there in the house to be given to the patient meantime.

40 The distance from the dispensary to my boutique may be a little more than five miles. The "eight miles" that I referred to is the distance from the dispensary to the house of the deceased. The distance from my boutique to the deceased's house is about ten miles. I have already said that the medicine that was with me was to be given only on the following day and there was the previous medicine available to be given meantime. Why I left early morning to fetch the doctor on the 5th was because it would not be possible to get at him otherwise. I remember the doctor saying that he could not diagnose what the complaint was and that therefore it would be better to take the patient to Colombo; but I cannot definitely say when the doctor said that, whether it was on that occasion or previously. On this particular day I distinctly remember the doctor telling that the previous

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medicine that was available was to be given on that day and that the medicine that was prescribed that day was to be given from the following day. This happened on the 5th of October. I remember that the doctor came there on the 6th also. I cannot say whether the doctor came on being summoned or of his own accord. The evidence that I gave last time may be more correct because my memory was fresh then. The doctor did tell me that the medicine that was prescribed that day, namely on the 5th, was to be given only after the previous medicine was over. I cannot remember whether the doctor said that he would call again on the following day. I cannot remember now what happened long ago. Last time when I gave evidence my memory was fresh and therefore the evidence that I gave then may be more accurate. I deny that I am now giving evidence to get over a difficulty that I encountered at the last cross-examination.

10

Q. Do you now admit that it was in your absence that this will had been written ?

A. Yes.

After the deceased's death there was some disagreement between myself and Velin Mudalali as to who should have the keys of the deceased. What happened was after the deceased died Velin asked for the keys. I refused, saying that I would keep them till the cremation was over and then thereafter I would hand over the keys to him in the presence of all the relatives; that is soon after the cremation was over. I further said that I was not anxious to have the keys for myself. No Police Inspector came and spoke to me about this matter, but the headman came. Velin said he did not want to wait till I handed over the keys to him. He wanted them immediately. I did not tell Velin or the headman at any time that I was the executor of the will.

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(To Mr. Wickremenayake—It was Sammy Jayasinghe who brought the message from Velin Mudalali asking for the keys. When Sammy brought this message Sammy knew about this last will. He may have known at that time that I was the executor to that will. Sammy told me when he brought that message that a will had been written by the deceased. He first said that Velin wanted the keys to be brought to him. I cannot remember whether Sammy told me then that I was the executor and that therefore I should keep the keys with me. But I do remember that he mentioned to me about the last will. I cannot remember whether he mentioned any details of the will.

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(Mr. Wickremenayake refers to Sammy's evidence of the last trial).

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On the 13th Sammy only mentioned to me about the last will. He did not give me any of its details. Sammy may have said so in his evidence at the last trial, which I say is wrong. On the 13th Sammy did not ask me whether I was having the will with me. He

made some reference to the last will on that day, but I cannot remember what and what he said about the will. Sammy mentioned to me about Velin asking for the keys and at the same time referred to the last will. Why I refused to hand over the keys at that time was firstly I was worried until the funeral ceremonies were over; and secondly he was not the only heir. I took Velin separately to a room and appealed to him to wait until the cremation was over. Velin then said he was the brother of the deceased and he should have the keys. I told him that I would keep the keys only till the cremation was over and that immediately after the cremation I would definitely hand over the keys to him. The deceased had trust in me.

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Q. Was it because Velin was not as trustworthy to the deceased as you were that you refused to hand over the keys to him?

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A. No such idea occurred to me at that time. Why I took Velin separately to a room was because I did not want to discuss the matter in the presence of others. I thought that it was a humiliation to me to discuss it in the presence of others. I told him that the keys should be with me till the cremation was over and that after the cremation I would hand them over to him in the presence of the others. I did not particularly say in the presence of the other heirs.

Q. Sammy had said in his evidence at the last trial that he had told you when he came with the message from Velin about the keys that the last will had been written in your favour?

A. I do not remember that.

Q. Owing to this tussle the headman was called for?

A. Yes.

30

The headman came and asked me to hand the keys to Velin Mudalali. I refused. The headman only asked for the keys, but did not take them from me. The headman further said not to have a quarrel over this matter. I told the headman that I would give the keys only if he (headman) wrote a list of everything, including the smallest item, in that house and gave that list to me. Yes, all this took place when the body of the deceased was in the house. I then put the keys that were with me in a drawer and locked it up. The headman took away the key of that drawer which was locked up. I do not know whether on the following day the headman came with a Police Inspector to that house and handed the keys to Velin.

Q. Is it before or after the headman came that Sammy told you that there was a will written in your favour?

40

A. I cannot say that.

Nor can I say whether it was immediately after he conveyed the message from Velin about the keys that he said that. I cannot remember these things now.

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Q. Sammy had said that in his evidence last time ?

A. I do not know. I cannot remember.

Q. Will you contradict Sammy's statement ?

A. I cannot say that.

Q. Sammy had said in his evidence that he told you on that very day itself that you were the executor of the last will ?

A. He did not tell me that.

I did not pay much attention to any of these talks at that time because I was worried about the funeral ceremonies. Yes, I did feel that it was a humiliation to me when he asked for the keys at that time. 10

Q. If you knew that you were the executor of the will would you have thought that you had the right to keep the keys with you ?

A. All those things did not strike me at that time. I was only worried about the funeral.

Q. When you were asked for the keys you felt humiliated for the distrust shown to you ?

A. I did not think so at that time.

Q. Didn't you tell the court a minute ago that you considered it a humiliation when you were asked for the keys ? 20

A. Yes.

Q. And you did everything possible to prevent giving over the keys ?

A. Yes.

Q. So much so that the headman had to be called there with the body of the deceased still in the house ?

A. It was Velin who summoned the headman.

I gave the keys after I obtained a document from the headman. I have said that I was so worried at that time about the funeral ceremonies that I could not remember exactly what Sammy Jayasinghe told me about the last will. I remember that I had a discussion with Sammy about the last will on the occasion on which he came with the message from Velin about the keys. But cannot say whether that discussion was on the day on which the headman was summoned. I am definite that the discussion was on the 13th, but I cannot remember the time. 30

Q. Sammy had told the court on the previous trial that on the occasion on which he brought the message to you from Velin he had told you that there was a last will executed, attested by five witnesses, and that you were the executor?

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A. Sammy did not give me all those details. I can only remember that he mentioned to me about the last will.

Q. If Sammy had told you on that day that you were the executor, would you have not thought that you had a good reason to give Velin in refusing the keys to him?

10 A. I cannot say that.

I did not say in my evidence today "in the presence of other heirs". What I said was "in the presence of other relatives". I cannot remember whether I used the word "urumakkaraya" in my evidence today. I said "I would give the keys in the presence of the other relatives". The relatives I had in my mind when I said that were the relatives who would be present for the cremation. It is those relatives that I referred to. The deceased died unmarried. There are several heirs of the deceased. It was not these heirs that were in my mind when I said that. I just spoke what occurred to my mind at that time. It is not because any particular idea entered my mind at that time that I said "I will give over the keys when the other relatives and heirs are present". I cannot say now what occurred to me at that time for me to say that.

20

Q. If you were told that you were the executor of the last will of the deceased, was not that a good reason for you to refuse giving over the keys?

A. I could not act on a mere statement of somebody. If I was satisfied that that was a true statement then I think it would have been a good reason for me to give at that time to refuse giving over the keys.

30

Q. When the headman came and asked for the keys, did it not strike you to say that a last will had been written, that you were the executor, and that therefore you would not give over the keys?

A. Such things did not occur to me at that time.

(To Court: I did not give that reason to the headman because it did not strike me then. I gave different other reasons to him).

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It was on the 15th that Sammy Jayasinghe told me that he was a witness to the will. Among the five witnesses to the will, Thomas, Peter and Sammy Jayasinghe were there when the headman came to the house. I cannot remember whether Vel Vidane was there at that time. I did not know about the loss of the last will when the headman

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came to the house. I am not aware whether Sammy Jayasinghe knew about it. When the headman came the fact about the last will did not occur to me. I wanted to keep the keys with me only till the cremation was over. I had no other ideas in my mind at that time. When the keys got in to the hands of Velin and others they were in a position to get hold of the documents there in the house. On the 15th Sammy Jayasinghe only mentioned about the last will, but did not give me any details of it.

This last will executed by the deceased was not deposited in my custody by the deceased. I cannot remember whether I mentioned that fact to my proctor or not. When I handed the last will to proctor Paranavitarane I told him to apply for probate. I went to him and handed it over. I said that this was the will of the deceased. I also said that the witnesses who attested the will are all there. I did not mention to the proctor the circumstances under which the will was written because all those details are mentioned in the will. I cannot remember whether I mentioned to him the circumstances under which the will came to my hand, or not.

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Sgd. N. SINNATHAMBY,

A. D. J.

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Further hearing tomorrow, the 23rd.

23-9-47.

Appearances as on previous date.

A. D. KARTHELIS APPUHAMY, Affirmed.

(To Mr. Wickramanayake—(Contd)—The deceased fell ill towards the end of September. He was first treated by an Ayurvedic physician. In order to obtain a quick cure he got Dr. Ratnayake to treat him.

I said yesterday that my memory was not as fresh as at the time I gave evidence at the previous trial and if there was any difference between the evidence that I give now and the evidence I gave at the last trial, the latter evidence would be more accurate.

30

(Mr. Wickremanayake refers to the evidence in chief of the witness)

The letter which Dr. Ratnayake gave for the deceased to be taken to the General Hospital, addressed to Dr. Jayasuriya, was not given on the day on which Dr. Ratnayake advised that the patient be taken to Colombo for treatment. What the doctor said was that he was unable to diagnose the case without an X-ray examination. He said this on a previous occasion when he came to see the patient in the latter's home. He gave the letter on the day on which the patient was taken to the General Hospital. I cannot remember now whether

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it was on the 5th or the 6th that the doctor advised that the patient be taken to the General Hospital. But I know that the letter was obtained from him on the 7th. It was on the 7th that we made arrangements to take the patient to the General Hospital. I cannot remember whether it was on the 6th that the doctor advised that the patient be taken to the General Hospital.

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I have said in my evidence on the last occasion that the deceased knew quite a number of proctors. He was well known to a number of proctors and notaries. He was known to proctor Wilson Silva. He was known to proctors Wijesekera and W. H. D. Perera also. He had other proctors who appeared for him, such as Messrs E. F. A. Goonetilleke, H. O. W. Obeysekera, D. J. K. Goonetilleke, and so on. I have said that the deceased knew all these people. I cannot say whether the deceased knew all the proctors in Kalutara. (To Court: If I have said in this Court that because he was not satisfied with one proctor he went to another and thereby he had gone practically to all the proctors, then it may be so.)

He had also got deeds attested by notaries in Alutgama.

It is only later that I learnt that the deceased desired that this will be kept a secret. That is what I said in my evidence last time. Sammy Jaysinghe and Thomas did not tell me that the deceased desired that this will be kept a secret, but they gave evidence in court to that effect and that is how I learnt about it.

Proctor Wijesekera lives within a mile of the deceased's house. W. F. P. Perera lives about 2 miles away from the deceased's house. The headman lives within sight of the deceased's house. I cannot say why the headman was not called to sign as a witness to this last will. I know that the deceased had spent a fairly large sum of money to put up the school that is near about his house. But I do not know what that amount is. The school master lives in that school. At the time of the signing of the will the deceased was not in very good terms with the school master. The deceased was not visiting that school. He stopped visiting because of a dispute which arose over the dismissal of a certain teacher. The school master was not taking meals in the deceased's house at the time of the signing of the will. It was about two or three months prior to that that he took meals there. The deceased was not visiting the school, but he was in speaking terms with the school master. I cannot say why that school master was not called to sign as a witness to the will. There is no Registrar of Marriages living close by to the deceased's house; not even half a mile or so away. The Registrar of Marriages is one Gunasekera and he lives in Meegama; that is about 2½ or 3 miles away from the deceased's house.

(Mr. Wickramanayake refers to the evidence of the proceedings of the previous trial—evidence given by witness).

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Q. With regard to the car that was engaged to take the patient to the General Hospital, you have said in your evidence on the previous trial: "I know the driver as well as the owner of the car."

A. At that time I thought that the driver himself was the owner of the car, but later I learnt that the owner was not the driver but a mudalali in Alutgama. I do not know the name of that mudalali.

Q. But you have said in your last evidence "I know the driver as well as the owner of the car"?

A. I thought they were one and the same person, and that is what I meant when I gave my evidence last time. 10

I do not know the name of the driver. Even then I did not know his name.

Q. The name of that driver is Edmund Silva?

A. I do not know that.

At that time I knew the man, but I did not know his name. I will be able to recognize the man if he is shown to me.

(Shown P 19) I know the two persons on the extreme left of this photograph. One on the extreme left is Gomes and the next man is Amarasinghe. This photograph shows the coffin containing the body of the deceased and those in the photograph are the persons who were present when the photograph was taken. It was taken in Colombo just before the body was removed to the house of the deceased. 20

I told the court yesterday that Sammy Jayasinghe spoke to me about the last will on the 15th. Sammy spoke to me about it on the 15th as well as on the 13th. If Sammy had said that he did not have a conversation with me on the 15th about the last will, that statement is not correct.

There are drawers in the writing table kept in the deceased's room. I used to open and close the drawers frequently. There was no necessity for me to handle those drawers more frequently when the deceased was ill than previously. I used to open those drawers when there was a necessity and the deceased knew about it. This document that was to be kept in secrecy was in one of those drawers. It may have been kept in that drawer by the deceased perhaps for the sake of safety. 30

I produced the "C" forms to show the signature of the deceased. All these forms had to be entered up in the rubber register. An Inspector from the Rubber Commissioner's Department used to come once a month to inspect that register. That register is not with me now. It was with Lewis Beddevidane. I did not make an attempt to get at that book. Lewis is the husband of Cecilia, sister of the legatee Lily. This book was not produced even at the last trial. Although Lewis Baddevitarne was summoned to produce that book he did not produce it. 40

Re-examined.

Davith Siriwardene, one of the objectors, and the deceased had litigations. Davith was a half brother of the deceased.

(At this stage Mr. Wijeratne moves to produce certified copies of the plaint and answer in Case No. 14318 D. C. Kalutara to show that there was a litigation between the deceased and Davith, half brother of the deceased, the object being to show that he was not in terms with the objector as was Davith and therefore to show that the will was not unnatural.

10 Mr. Gratiaen objects to the production of these documents and states that where the only question at issue is whether the will was a forgery the question as to whether the dispositions in the will are natural or not does not arise. Even if they were natural it does not affect the question. It is only when such questions as undue influence or the capacity of the testator to understand what he signed is in issue that such evidence becomes relevant.

Mr. Wijeratne refers to the judgment of the Supreme Court in this case.

20 Mr. Gratiaen refers to 48 N.L.R, pages 134 (bottom) and 135. He further argues that it is not his case that if due execution of the will is established incompetency on the part of the testator renders the will invalid. He does not raise any such objection. If the fact that the signature is genuine is established the will must be held proved. The only question is whether the will was signed or not by the testator, and therefore he submits that the question as to whether it was a natural or unnatural will does not arise. He also refers to 46 N.L.R. and states that no question was put to the witness in the cross-examination on this point.

30 Mr. Wijeratne draws attention to the cross-examination in the proceedings of the previous trial.

Mr. Gratiaen further says that this very question was recently argued in appeal in D. C. Colombo 10322 and that the Supreme Court has reserved its judgment.

40 In view of the fact that this matter has been fully argued before the Supreme Court and in view of the fact that Mr. Gratiaen informs me that the Supreme Court has reserved its judgment I propose to defer the question of the admissibility of this evidence till judgment is delivered by the Supreme Court. I shall give Mr. Wijeratne an opportunity of recalling this witness if I hold that this evidence is admissible. This case I understand is likely to go on beyond this week so that before the petitioner's case is closed, the Supreme Court decision on this question of law would be made known.

Sgd. N. SINNATHAMBY,
A. D. J.)

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Petitioner's
Evidence.
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I produce document marked P 54 A showing a definite reference to the route that was taken via Colpetty. We went along Galle Road to Fort before we went to the Hospital.

(Mr. Wijeratne moves to mark separately as follows the rubber control cards which have been bundled and marked as (P 15) :—

2158 — as P 15A

20 — as P 15B

68 — as P 15C

7939 — as P 15D

5799 — as P 15E

2516 — as P 15F

12 — as P 15G

798 — as P 15H

140 — as P 15 I

2153 — as P 15 J

9296 — as P 15K

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(Mr. Wijeratne proposes to ask the witness a question with regard to whether he would identify the signatures on those documents.

Mr. Gratiaen objects to this as it does not arise from the cross-examination.

20

The documents are to be used for the purpose of comparing the handwriting of the deceased therein with the handwriting of the deceased in the disputed will.

I allow the witness to be questioned and also allow both Mr. Gratiaen and Mr. Wickramanayake to cross-examine the witness with regard to that question).

I have been in the service of the deceased for about 20 years. I have already said that I have been a trusted servant of the deceased. I know the signature of the deceased. (Shown P 15A to P 15K). The signatures on these documents are the signatures of the deceased. All these cards have been issued in his name. For the purpose of getting these coupons I have gone with the deceased from time to time. These coupons are issued periodically, sometimes at Welipenne and sometimes at other places. The place and time are notified in advance, and an officer of the department comes and issues the coupons. I have seen the deceased signing on these documents. The person to whom coupons are issued has to sign before hand and after that only that the

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coupons are issued to him. These forms are signed before the issue of the coupons, in the presence of the departmental officer in charge of the place. I have seen the deceased signing these very documents. These are for small lots of rubber land and they were in my charge.

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10 I was questioned about the document P 19. (Shown P 19): I am here in this photograph. There is also a young lady there in the photograph. She is Lily Siriwardene. Thomas Appuhamy, who was a witness to the will, is also here in the photograph. He appears a little different from what he is now because he had a "konde" at that time. Velin, the brother of the deceased, is not in the photograph here. Davith, the other brother, was dead at that time.

I was asked about the income of the deceased. There was a suggestion made that on the 11th I went to the house of the deceased, that there was lot of money in the almira and the drawers, and that I had spent that money unnecessarily. I am aware that the deceased had a large number of cases in the Kalutara Court. I was aware that he had borrowed money. During that time there was about Rs. 1,500/- or Rs. 1,600/- in the deceased's house.

20 I am aware that the deceased had borrowed money from one Hinton Seneviratne. That money was not paid back to Hinton. I am personally aware of that litigation; that is between Hinton Seneviratne and the deceased. He borrowed that money from Hinton on the hypothecation of a rubber land. I know that land. That rubber land is yet in the name of Hinton Ralahamy. First the deceased mortgaged that land to Hinton; the interest came up to a big amount; the deceased could not pay the amount; then he wrote out a conditional transfer. I know personally about that matter. Deceased could not redeem that land. The litigation was in regard to that.

30 At on time the deceased was engaged in a plumbago mine. It was about a year prior to his death. He continued to do that till about the time of his death. He did not get any plumbago. As far as I know he spent a lot of money on that plumbago mine. There was no profit at all. He spent about Rs. 7,000/- or Rs. 8,000/- on that, but got nothing in return.

I know Amarasinghe. He was employed in this mine. He supplied labourers to this mine.

Q. You were shown certain assignments of leases and transfers (R 9, R 10 and R 11).

A. Yes.

40 Q. It was suggested that these were fictitious documents produced to show that certain gifts were made to you by the deceased?

A. Yes.

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 Evidence.
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I did get money on them. I got that money to spend on this case. The notary gave evidence on that. I retained King's Counsel. Why I did not retain King's Counsel today is because I have no money. I ran a boutique. I had to close down that boutique because I had to use that money also on this case.

I have said that I was in the house of the deceased for a large number of years. My younger brother was also in that house. An elder brother of mine also was there, and also a nephew of mine. My younger brother and my nephew happened to be there because the deceased took charge of them, put them in school and spent for their education. My nephew is now a teacher, living in the house of the deceased. 10

I was also questioned about an almirah that was in the deceased's house. There was money kept in that almirah. The money was usually kept in the drawer of a table that was inside the deceased's room. The almirah was in the hall adjoining that room. The almirah was kept near the entrance door and was visible from the place where the deceased's bed was.

When I handed the papers to proctor Parnavitarne I told him that Velin Siriwardene had taken possession of the properties, and told him to get the properties back. He took steps to get back those properties. I cannot say what steps he took. 20

I produce, marked P 46, a letter from the objector to my proctor, dated 5-1-43.

(It is admitted that this letter is wrongly dated and should bear the date 5-1-42).

My proctor wrote a letter to me. I do not have that letter with me. Proctor Parnavitarne wrote a letter, dated 8-1-42, in reply to P 46.

(Mr. Wijeratne marks the office copy of that reply as P 47, and reads out that document). Contents of P 47 are in order and were in accordance with my instructions to the proctor. 30

I was asked why I went to a proctor at Induruwa when there were proctors at Kalutara. My place of business is Induruwa. Proctor Alwis' house is about a mile away. The house of the deceased is about 18 miles away from the town of Kalutara.

I was also questioned about this public latrine, and why I referred to the place as Colpetty. I am not familiar with the towns in Colombo on the Galle Road. Yesterday when I was questioned by Court about the Turret Road I said that I did not know the Turret Road. But now I know that road. I know how to go to the house of Advocate R. L. Pereira from the Turret Road junction. The distance from that 40

junction to Mr. Pereira's house is, I think, not more than half a mile. In my evidence in the cross-examination I said that Mr. R. L. Pereira's house was far away from the place where the car halted, near the latrine. By "far away" I meant about 2½ or 3 miles. I have no doubts in my mind as to the place where the car halted. I had seen that latrine.

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(To Court: Up to that period I had been to Colombo about once or twice a month. When I come to Colombo I do not go to the Maliban Hotel. But my master used to go to the Maliban Hotel. I used to travel by train or by bus whenever I come to Colombo. I remember seeing the boards WELLAWATTE, BAMBALAPITIYA, COLPETTY and so on, but that is only when I come by train. From these boards I can identify the places. But when I travel by car or by bus I cannot identify these places because they go very fast. I cannot remember seeing these boards at Police Stations).

Lily Siriwardene had a house of her own and she got nothing from this house, according to the will. Cecilia had no house of her own and according to the will she got a share of this house.

I gave evidence with regard to the advertisement that I published through the "Dinamina" about the last will. In response to that advertisement I received two letters from John Perera. When I came down to Colombo and met John Perera I had not received both those letters. I had received only one letter, and it was on receipt of that letter that I came down to Colombo and saw John Perera. But when I returned home from Colombo the second letter from John Perera had arrived there. P 7 is that second letter.

I was also questioned about the school. It was the deceased who built that school. Why I said that the deceased had nothing to do with that school and was not visiting it is because his appointment as manager was cancelled and he was asked not to come to the school. This was due to the fact that he discontinued a certain teacher. It was a male teacher who was discontinued.

When I went to Proctor Paranavitane I took with me the affidavit and some other writings, apart from the last will. Those writings were found inside the envelope, marked P 8, with the last will. (Mr. Wijeratne marks the affidavit as P 18). Mr. Paranavitane took all those documents and read them.

I was asked about certain influential gentlemen living near about the house of the deceased in that village. I know all the five witnesses who attested the will. (Shown P 25). I can see some of those witnesses in this photograph. Thomas, Peter Jayasinghe and Handy Vel Vidane are there. The deceased is also there. The deceased was on very friendly terms with the three witnesses who are in the photograph. This photograph was taken in connection with the opening ceremony of the school. I know Peter Jayasinghe very

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well. To my knowledge he had been a good friend of the deceased. Peter Jayasinhe took an active part in connection with the funeral ceremony of the deceased. He got leaflets printed indicating an "expression of sorrow" and distributed them.

I was asked about this Baddevidane. With regard to the register that was with this man, somebody told me that it was lost. I do not personally know what happened about that register. I do not know whether there was any inquiry made in regard to the loss of that register.

Up to the time Velin came and demanded the keys from me, Velin did not come to the house of the deceased. I was about 11 or 12 years of age when I went to the house of the deceased, and from the time I went there I did not see Velin coming to that house. I had not seen even Davith coming to that house. Velin came for the first time to the deceased's house on the day he came and demanded the keys.

10

Q. Would you have given the keys to Lily Siriwardene or her sister if they came and asked for them?

A. I might have given.

The relationship between the deceased and the two sisters was very cordial. Velin and his brother were not in good terms with the deceased.

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(To Mr. Gratiaen: I have not studied to become a handwriting expert. I did not take up to such a course of study. I know that the signature on the will is the signature of the deceased. Why I say that is because I have seen his signature over and over again. I can swear that this is the deceased's signature, because I am so familiar with it).

(To Court: I was not present when the deceased signed the will. All that I can say is "This looks like the deceased's signature").

(To Mr. Wickremanayake; I cannot swear that that is the signature of the deceased because I did not see him signing).

30

Q. But you said just now that you are so familiar with his handwriting that you can swear that this is his signature?

A. I merely say that it is his signature. I have no doubt about it.

Q. In the same way as you say that the signatures on the coupon cards are his signatures?

A. Yes.

I cannot say on what occasions I was present when the deceased signed those coupon cards. But I can say that I was present on certain occasions when he signed those forms.

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(To Court : I was present when the deceased signed some of those coupon cards, not all).

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I cannot say which of those forms were signed when I was present. It is because I am familiar with the deceased's signature that I say that all those signatures are his signatures.

This conditional transfer to Hinton Seneviratne, I cannot say which year it was.

(To Court : According to my recollection it was about four or five years before the death of the deceased).

10 I remember the deceased bringing up an action to get a retransfer, but I cannot say whether it was after the price of rubber went up. It may have been in 1941 or 1942. I cannot remember. I do not know what happened about that action, nor can I give any details about it. I do not know even the amount involved in that transaction.

Q. Can you mention a single transaction where he borrowed money after 1939 ?

A. I am not aware.

Sgd. N. SINNATHAMBY,
A. D. J.

20 (Mr. Wijeratne marks in evidence, with consent of Counsel on the other side, the following documents :—

(1) Evidence of witness N. R. Perera of the Associated Newspapers, together with all documents produced by him, namely, P 22, P 23, P 24 and P 24A, appearing in the proceedings of the previous trial.

(2) Proxies P 32—P 37 from records 22817 D.C., 21976, 21764 22300, 21707 and 22451 referred to in the previous proceedings.,

30 (3) Mr. Wijeratne also marks in evidence the evidence already recorded in the previous proceedings of Sirisena, Record Keeper of the District Court of Kalutara.

(4) Also P 39—Marriage Certificate of Siriwardene).

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DON PETER JAYASINGHE, Affirmed, 50 years, Trader and Cultivator, Walagedera.

I was a member of the Village Committee for nine years, and the deceased was also a member of that Village Committee, I representing one section of the village and he representing another section of the same village. The deceased was a friend as well as a distant relation of mine. We had been friends for a long time. Our relationship is through Velin Mudalali. Velin's wife is related to me. I had business dealings with the deceased. He gave me money and I took leases of coconut and rubber lands from others. He and I divided the profits among ourselves. Right up to his death I was very friendly with him. I took an active part in the funeral. I published handbills expressing sympathy and caused them to be distributed. On the occasion of the cremation also I took an active part; that is, I made a speech on that occasion. I was present at the ceremony in connection with the opening of the school. (Shown P 25). I am there in that photograph. Two other witnesses to this will are also there in that photograph. Those in the photograph are the people who were present on the occasion of that opening ceremony. There were several other people who were present on that occasion, and who are not in this photograph. I do not know why only these few people were chosen for the photograph.

The deceased was not a man of that village. He was a man from Hiriweddala where Velin and Davith live. The deceased came to this village, bought land and lived there. The house in which he lived was his own. It was put up by him. Apart from the deceased, two of his sisters and his step-mother lived in that house. I remember the marriage of the younger sister of the deceased; that is not the wife of Vedda Mahatmaya, but the other sister. Her husband died and thereafter she came back to this house and lived there. Then she married again. Now she is not living in that house; she is living in another house. The second husband also died. The other sister of the deceased was living in the latter's house right up to his death. During this time Velin and his brother did not come to the deceased's house. I know personally about it.

I know Karthelis, the petitioner, for about twenty years. He was originally employed under the deceased as a domestic servant, but later he was looking after his business. He was attending to all the deceased's business for about ten years prior to the latter's death. He was doing business in partnership with the deceased. I know personally about that.

I remember the last illness of the deceased. I did go to see him. Before the will was signed I went to see him. I visited that house about two days prior to the signing of the will. I saw the condition of the deceased.

I remember the day on which the will was signed. The distance from my house to the deceased's house is a little less than a mile. How I happened to go there is, I received a message from the deceased and I went there. It was about 1 or 2 p.m. I went and inquired from him why he sent for me. Then he said "I have had no improvement since I started to take treatment under Dr. Ratnayake, and I am going to Colombo to get treatment; therefore I have written a last will in favour of my younger sisters" and Karthelis". He then asked me whether I was willing to sign as a witness to that will. I said I was willing. He then asked me to wait for some time. Then I went to the hall and sat down. After some time I got out and went to the school, from where I returned to the deceased's house at about 4 or 4-30 p.m. When I went to that house Handy Vel Vidane and Parlisi Goonetilleke were there. Thomas was not there when I went, but as I just entered the house he also came in. A little while later the clerk, Sammy Jayasinghe, came and said that the master was calling us. So we went into the deceased's room. As we entered the room the deceased asked Sammy Jayasinghe to close the door. Then the door was closed. All the five witnesses who attested the will were in the room. Nobody else was in the room. After the door was closed the deceased asked Sammy Jayasinghe to take the writing and read it out. Sammy then read out the writing. Then the deceased asked Sammy to write our full names, including ge names, on the last will paper and Sammy did so. After our names had been written Sammy handed that writing to the deceased. The deceased after taking it read it through, and then signed it. The deceased was seated on the bed on which he was lying as he signed. A tea-poy was brought there on which the deceased kept the writing and signed it. After that we signed it. All the five signed it.

(Shown document "A"). My signature is the third signature. After we signed it we went away. The deceased asked us to keep this will a secret and not to speak with others about it. We made up our minds to do that.

This happened on the 5th. It was about 5 p.m. that we signed it. On the 5th the deceased was not in an unfit condition. He was able to move about. There was no apparent weakness in him. He was a fairly well built man. Physically he was fairly strong. I am generally known as "katu mahatthaya" in that village. Deceased had a better body than myself. At the first glance nobody would say that he would die soon. Later I learned that he left for Colombo for treatment. It was about the time that the will was signed that he told me that he had intended to go to Colombo for treatment. Why he said that was because he was not satisfied with the progress he had had under Dr. Ratnayake's treatment. I went to Colombo to see him; that is about two days prior to his death. I went only to see him as a friend. I did speak to him. Velin was not there at the time. After that I came back. I came back on that day itself; that was on the 10th. On the 12th night I heard about his death.

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tion.
—continued

I have said that on the 5th he signed the will seated on the bed and keeping the document on a tea-poy. I personally saw him signing. All the five witnesses were present when he signed the will. After that we signed. We signed in the presence of each other and in the presence of the testator. We all signed seated keeping the will on the same tea-poy.

(To Court: Prior to the signing we were all standing closeby).

Sgd. N. SINNATHAMBY,
A. D. J.

23-9-47.

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After Lunch.

DON PETER JAYASINGHE, Recalled, Affirmed.

(Examination in chief continued).

I said the contents of the will were read out. There were special legacies to Ananda College, a temple in the village, and a pirivena at Bentara. The incumbent of the temple in the village was M. Jinaratne Thero who is now dead; he was a brother of Velin's wife. Deceased was angry with him because of a petition written by that priest as a result of which deceased lost his job as Headman; that priest later left robes and went away from the temple; he was succeeded by Rev. Uparatne, the Nayake Thero of the District who was in good terms with the deceased. I know the pirivena at Bentara. (Shown P 25). The head of that pirivena was Rev. Saranankara who appears in this photograph (witness points to the priest). On this occasion when the photograph was taken there was a school function. The deceased used to go annually to that pirivena and have a big pinkama; he was closely associated with this priest.

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It was to Karthelis that I told first about the will on the day of the cremation when he questioned me that is on the 15th. Later on the 20th I went to Mr. Alwis' office where I was questioned in the presence of the other witnesses and after that I signed an affidavit. (Shown P 18). The Third signature on this is mine. At this time I know the will was missing.

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Don Peter
Jayasinghe,
Cross-
Examina-
tion.

Cross-examined by Mr. Gratiaen.

I am looking after my own lands and living on it; I am not working under anyone. I was once indebted to my sister and now I have settled the debt. At the time the will was executed there was no judgment against me; I had a land case before that. I had not mortgaged my property with anyone at any time. I remember giving evidence on the last occasion. I did not go through a copy of that evidence before I came here today, but I spoke to my counsel yesterday

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about it. When I gave evidence in August 1943 I did not say that my only land was mortgaged to one Britto. I had 20 pelas of paddy land and 3½ acres of rubber; in 1942 the price of rubber was good. The rubber land and some of the paddy land had not been mortgaged to Britto.

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—continued

Q. Did you say on the last occasion "Altogether 11 acres were mortgaged to Britto"?

10 A. I did not say I had mortgaged but I said it was transferred, with the right to take it back, for Rs. 1,000/-. About 2 years after the execution of the original transfer I got the land released, that is before the last will was executed. I had not mortgaged anything to my sister and I did not say that on the last occasion. Judgment was entered against me in Case No. 13198, Kalutara; I did not say that besides this there were two other cases against me. I had only No. 13198 against me and I paid the costs in that case only.

Q. Did you say that the only debt you had was a sum of Rs. 300/- to your sister?

A. I said that it was a casual loan from my sister.

20 (Mr. Gratiaen marks in evidence D 39, certified copy of the evidence given by this witness at the previous hearing on these points).

30 I ceased to be in the Village Committee 8 years ago. Both deceased and I worked for Mr. Seneviratne in the contest for the V. C. chairmanship with Mr. Wijesekera and we did not take opposite sides. I was a close friend of the deceased. It is true that I went to see the deceased on business matters. I did not go there to borrow money but whenever the deceased sent for me I went; I had not borrowed money from the deceased, but he gave me Rs. 1,000/- on an agreement about 8 years before his death and never since then. Deceased may have been rich even 8 years prior to his death and he was considered a rich man in that area. When he died he left a good estate according to the standards of the village. Deceased was not very rich in his last years because he had litigation, about 7 or 8 cases to my knowledge; he had 4 or 5 Proctors at Kalutara; I do not know details of those cases. At the consultation with Counsel in this case there was no conversation about deceased's income of Rs. 3,000/- a month and Karthelis being in charge of it. I went towards the close of Karthelis' consultation, independently of Karthelis. Deceased was indebted to Mr. Hinton Alwis Seneviratne. I do not know whether Karthelis mentioned that in re-examination. Deceased transferred some land to Mr. Seneviratne for this debt. Deceased also lost money on plumbago. I do not know whether Karthelis gave evidence to that effect. Besides Hinton Seneviratne deceased had other creditors; he owed money to Bentara Mudalali but I have no knowledge of a case

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 —continued

in that connection. Deceased did not tell me about these debts but we have heard of it. He was indebted also to Peter Siriwardene a cousin of his. During the 2 or 3 years before his death he was indebted to Hinton Seneviratne; he could not pay the debt and he transferred 11 acres of land to him 2 or 3 years before his death. Deceased also told me this. I do not know when deceased borrowed money from Hinton Seneviratne. I mentioned 2 years before his death from my recollection. I never discussed with Karthelis about these debts.

(Mr. Wijeratne objects to questions being put to the witness relating to matters contained in P 8 b. Mr. Gratiaen states he is putting certain questions to the witness based on a certified copy of the plaint which he proposes to produce at the appropriate time. In these circumstances I allow the questions to be put).

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It is not correct that deceased was in poor circumstances during his last years. Karthelis was in charge of the deceased's affairs; it was known in the village; there was no difference between them. I cannot say whether Karthelis' money and the deceased's money were pooled as one. Karthelis used to sell the rubber, bring the proceeds and give the deceased. Karthelis will know how he disposed of the money. Karthelis had two small lands. In 1943 deceased transferred one land worth Rs. 600/- to Karthelis and later another piece of land worth Rs. 200/-; I heard of it. I have no knowledge of any other such transfers to Karthelis.

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On the 5th October about 12 noon a message came to me from the deceased to come and see him. No particular time was mentioned to me, nor the purpose. Parlis Goonetilleke lives 7 or 8 miles away from the deceased's house; I do not know who went to fetch him. The Vel Vidane lives about 5 miles away by a short cut and 10 miles on the cart road from deceased's house. Vel Vidane lives in one direction and Parlis in another from deceased's house. I don't know who went to fetch them. Thomas lives about 6 miles away in still another direction. I don't know who went to fetch him either. Thomas married from our village; he lives in our village Welagedera as well as in his. He had lands at Welagedera near the deceased's house, but lived 6 miles away; he did not live near the deceased's house. In response to the message I went about 1.30 or 2 p.m. to see the deceased. Deceased had been ill for some time before that with a stomach complaint and he was getting weaker. It is correct that his two sisters Cecilia and Lily were attending on the deceased in his last days. It was Lily's husband who was attending on the deceased, that is the Vedamahatmaya, Lewis Appuhamy. His wife is Cecilia, not Lily. I am not sure of the names. When I went at 1.30 p.m. or so Lewis Appuhamy was in the house, not in the sick man's room but in the front portion, and his wife Cecilia was in the other room. When I went there there was no one near the patient. I did not see anybody in the deceased's room but those who were there were within

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call. Even when Dr. Ratnayake was treating the deceased he was very sick. I know he frequently had to answer calls of nature. When I was there I saw once the vedamahatmaya carrying a bed-pan out of the deceased's room, on the day the will was signed, about 2.30 p.m. After I had spoken to the deceased I was seated and it was then I saw the vedamahatmaya doing this. That was the only occasion I saw anyone attending on him. On a previous occasion also I saw the vedamahatmaya in the house but not actually attending on the sick man. I was there for about 15 minutes after I went and during this time there was no one of the family with the patient. Before I went to the school I stayed there for not more than $\frac{1}{2}$ an hour; all that time I was not in the room. Deceased asked me to wait for some time, I had no idea how long I had to wait; he did not tell me who else were expected to come; nor did he tell me that it was a non-notarial document. I myself did not give much thought to it. At that time deceased did not ask me to keep the matter secret. When I went to the house for the first time I saw the vedamahatmaya carrying out the bed pan, and also Parlis Goonetilleke. When I was getting out of the house to go to the school I saw the vedamahatmaya and Parlis Goonetilleke talking. I did not tell vedamahatmaya to inform the deceased that I was going out to the school and would be back soon. It did strike me to say that. When I came back from the school there were Parlis Goonetilleke, Handy Vel Vidane who had arrived before I returned, and we three of us were talking together; Sammy was in the room. I did not know they had come as witnesses to the will; if I knew that I might have talked to them about the will. I was also in a hurry to go back. I was proceeding to Siriwardene's house later to tell him and go if the will was not ready by that time, but when I came back the others were talking about the deceased's illness and I sat with them. In the meantime the deceased called us to him. The others did not tell me they had come as witnesses to the will. I had no reasons to think they were witnesses as I did not know who and who were called for this. I did not ask the deceased who and who were to be the witnesses. Some of these persons had come from 10 miles away. I did not enquire what had brought them there. I did not ask the deceased why the will was not ready even then; I came back to speak to the deceased about it but when I saw the others seated I also sat down and talked to them. When we were talking Thomas also came from the other end of the house; almost as he came, Sammy came and told us that the master wanted us; we all went in; I did not see anyone else in the sick man's room. The deceased wanted us not to disclose the will to anyone. The persons who were to benefit from the will were his sisters and Karthelis. Those who were excluded from the will never came that way for a long time. Deceased did not mention anyone's name in particular when he asked us to keep the matter secret. I do not know why he should have kept it a secret from Karthelis or Cecilia or Lewis Vedamahatmaya. When I left the house the will was on the teapoy. Prior to

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tion.
—continued

the 5th October the deceased never discussed with me about a will. I visited him once in hospital before he died, then also he did not discuss with me about the will. I do not come to Colombo often, only once in four or five years, sometimes by bus and sometimes by train. When I come on the Galle Road I pass Mt. Lavinia, Dehiwala, Wellawatte, Bambalapitiya, Colpetty and then come to Peṭṭah. I know these place names when I come by train.

On the 13th, the day after he died, I was present in the deceased's house. I had never been a witness to will before this. Velin was not there on the 13th. I met Karthelis after the death but did not discuss with him about the will, or with anyone. On the 14th I went there again and heard that on the 13th there was a quarrel about the keys. I did not meet Karthelis on the 14th but only the Vedamahatmaya, his wife, her mother and the Vedamahatmaya's wife's sister; Velin's son was also there. But I did not tell them that there was a will nor ask them why there should be a quarrel when there was a will. According to the writing I was aware that Velin had no right to the keys, but I did not tell that to those present on the 14th; of those who were there on the 14th I was the only person who knew about the will; the beneficiaries of the will were also present, but it did not strike me to disclose it. It did not strike me that a complete outsider was claiming the keys; in fact it did not strike me in any way. There was no talk there of Velin having a right to the keys by his relationship to the deceased. I only heard that there was a row about Velin's demanding the keys and the headman being brought; I heard it from outsiders; the members of the family did not tell me that, nor did I ask them anything about it.

I was a close friend of the deceased. I knew Karthelis was the executor of the will and he had a large share of the estate. Till the 14th I did not know that the will was lost; it did not strike me to tell anything about the will on the 14th. On the 15th I was present at the cremation; after the cremation Karthelis asked me about the will and I told him what I knew; till then I made no statement on my own to anyone. On the 15th Velin took charge of the place. It was Karthelis who attended to the funeral rites; Velin was only present. Karthelis did not tell me that Velin asked money for funeral expenses. As far as I know it was Karthelis who spent for the funeral; I did not see him doing it. I know that deceased had no relations with Velin for many years. I made no attempt to make matters clear about the will to anyone. On the 15th I came to know of the loss of the will when Karthelis told me it was not with him and asked me whether I knew of it. Karthelis did not go to the other witnesses in this connection in my company but I do not know whether he went himself. I realised that no one present that day, viz. Vel Vidane, Parlis, Sammy, Thomas, none of them knew the whereabouts of the will. I said I did not know where it was and

the others said the same. Thomas said on the 15th that the deceased took it to Colombo; the Headman was not there at the time. I knew the Headman well; I did not discuss the matter with the headman. Karthelis was sad about the loss of the will. I was not asked for any opinion about it. I could not help it and I did not worry about it. To my recollection it was on the cremation day that Thomas said the will was taken to Colombo. My evidence on the last occasion should be more correct than my present evidence.

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---continued

10 Q. Did you say: "He said the will was taken to Colombo; that statement was made about 3 days after the cremation....." ?

A. I do not remember now the time Thomas made that statement; it is true that my recollection then was better.

20 Thereafter I took no further part in the search for the will. Karthelis asked me on the 19th, I think, to come to Mr. Alwis' office on the 20th. I agreed. I told Mr. Alwis the terms of the Will; he asked all five of us and we told him. Mr. Alwis was the first important person to whom I mentioned the terms of the Will; I cannot now remember what and what I told him; we gave details to Mr. Alwis but now I cannot remember exactly what. I cannot remember whether
30 all five of us said who was the executor of the will; either I or someone else among us told Mr. Alwis who the executor was. I cannot remember anyone in particular telling that the greater part of the estate was to Karthelis. We mentioned that the last will was written and we attested as witnesses. I cannot remember whether anyone in particular told that Karthelis was appointed executor, but someone did say that. Someone mentioned also that Lily and Cecilia were beneficiaries. We knew that Velin was wrongfully taking over the deceased's property but we did not take any interest in it. I cannot remember whether there was any talk about it in the village. But
there was nothing that I could do about it. In fact we did not think of it in any way. As the last will was missing there was nothing that I could do although we all signed as witnesses. I do not know whether Mr. Alwis has said that the witnesses did not mention the terms of the will. So far as I remember I think someone of us did tell him. I cannot say whether what Mr. Alwis says is incorrect. After the 20th till the case started I took no action in the matter.

Sgd. N. SINNATHAMBY,
A. D. J.

Adjourned till tomorrow.

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 tion.
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Appearances as before.

DON PETER JAYASINGHE, Recalled. Affirmed.

Cross-examination continued.

The school I visited on the 5th October, is not more than 50 fathoms from Siriwardene's house, and I was away there for over 1½ hours chatting with the school master; five of my children attend that school; the school was closed at the time; the schoolmaster and I were not special friends but I used to visit him. I returned to the deceased's house at about 4 or 4.30 p.m., much later than 2.30 p.m. I left for the school at about 2.30 p.m. When I left for the school there was in deceased's house Parlis Goonetilleke but I cannot remember whether the Vel Vidane was there also at the time. I can well remember Parlis being there, but I am not sure about Handy Vel Vidane when I left for the school. If Sammy Jayasinghe has said that at about 2.30 p.m. he enquired whether all the witnesses had come and he saw them all, I cannot say anything about it. It is not correct that all of us except Thomas were at the house before I left for the school; I went to the school prior to their arrival. I am now aware that a non-notarial Will should be witnessed by five. It did not strike me that the others who were in the verandah had come as witnesses. I was not very friendly with Karthelis.

After Velin came into deceased's residence he charged me for theft of a bull; at the trial I produced a cattle voucher signed by Karthelis which I had obtained long prior to that and the case was thereupon withdrawn; Karthelis had a bull and I bought it; I don't know whether he had more. The deceased had cattle. I have not been prosecuted by others and convicted. I only had a fight with my brother and was fined about 20 years ago. My wife had no brothers or nephews, only cousins; I don't know U. Don Peiris nor heard of him. I know the two lands given to Karthelis by deceased in his lifetime; I don't know who is in possession of them now. I heard Karthelis had sold them. I am not aware that one land was transferred to one U. Don Peiris. I was slightly related to the deceased through Velin Mudalali. Velin Mudalali was angry with deceased and I was a friend of the deceased. I have no ill feeling towards Velin nor do I associate with him. I do not know whether people thought that deceased died intestate. I do not know whether Karthelis or the deceased's sisters were displeased when Velin claimed the deceased's property.

Q. I put it to you that you signed the will long after the deceased died?

A. No, I signed it before he died.

Cross-examined by Mr. Wickramanayake.

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tion.
—continued

It was suggested to me by previous Counsel that except Thomas all the other witnesses were present before I left for the school, and I denied it. What Sammy Jayasinghe said was read to me but I do not know anything about it; I said I had no recollection of Handy Vel Vidane being present there before I left; I cannot remember whether he was there or not when I went there first but I remember Parlis was there and I spoke to him. Sammy Jayasinghe was there before I left. Deceased told me the Will had already been written out, that he wanted me to sign as a witness to the Will which had already been written out. I did not ask when the Notary would come. I wanted to get back about 4.30, but after I returned from the school when I saw the others there I also remained. I had no particular hurry to get back from Siriwardene's house that day; even if he asked me to wait till night I would have waited. At first I waited for about $\frac{1}{2}$ an hour; for some time I was talking to Siriwardene and later I was seated outside but talking to no particular person; during that time I did not find out from anyone how long I had to wait; I was feeling lonely and I went to the school; I did not tell anyone that I was going to the school nor enquire at what time I should be back. I have executed deeds before this and I knew that a deed should be witnessed by two persons. I have never written a Last Will nor knew how a Last Will should be executed. I have not inherited anything from a Last Will. I did not know that a notary was not necessary to execute a Last Will. I did not think it necessary to enquire how things should be done because the deceased knew these things better. I first spoke to him in the room and went to the hall and from there to the school. Both in the room and in the hall I did not wait for more than $\frac{1}{2}$ an hour. I did not know how Wills were attested or that 5 witnesses were necessary without a Notary. We were prepared to sign as the deceased directed us; there were five of us in the room later on. I went and asked him why he wanted me and he told me that I was required to sign as a witness. I did not tell any one that I was going to the school because I could see Siriwardene's house from the school which is across the road; it has a garden of about 2 acres; the school is at the back of the garden. From the verandah of deceased's house one could see who was in the school. I did not watch for Thomas from the school nor did Siriwardene tell me I had to wait for Thomas.

Parlis is not a person who is often in deceased's house. He had to come from about 7 miles away. I came on a special message; I did not strike me to ask whether Parlis had come on a special message too; he was a contractor of Siriwardene's.

Deceased told me that Dr. Ratnayake's treatment was not effective and he was going to hospital; I don't know whether the doctor had seen him that morning. I did not see Karthelis there that day nor enquire about him; now I know where he was that day. I don't know

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whether Karthelis has stated that deceased was advised to go to hospital the following day. When I went to Siriwardene's house he told me that as Dr. Ratnayake's treatment was not effective he was going to take treatment at Colombo. I thought because he had been advised in that way he had decided to make a Last Will; that is what I gathered from his conversation. I do not know whether Karthelis stated that deceased was advised on the 5th to go to hospital and I cannot say when arrangements were made to write the Last Will. I got the message about 12 noon. Even today I do not know whether messages had been sent to Handy Vel Vidane, Thomas etc.

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I know Gomes, but I did not see him in the house that day. It was not he who attended on the deceased. (Shown P 19) (Witness points to Gomes on the extreme left). Gomes was an employee of the deceased; he was a tapper but I do not know in which garden of Siriwardene's he was working; I have not seen him working in the garden in question; I used to pass that way and I have seen Gomes operating the Diamond Roller in that garden near Siriwardene's bungalow, and I have seen others also doing that work. I cannot say how many times I saw him. I am not aware that Gomes was the deceased's personal attendant at the time of his illness. I only saw the vedamahatmaya taking out the bed pan but I did not see anyone else attending on the sick man. When I went to the school, the school was closed; I just thought of going there; the schoolmaster was there; I may have been there about 1½ hours; the schoolmaster was aware of the deceased's illness; it was the deceased who got down that schoolmaster but I don't know of any special friendship between him and deceased. He had been there since one year after the school was founded about 7 or 8 years ago; he was known as Issac Mahatmaya. He was a responsible person in the village and was treated as such by the deceased, to my knowledge; there was no ill-feeling between him and deceased; he was a neighbour of the deceased and there was no other neighbour living closer to the deceased. I only know that these two were not angry with each other, nothing else. The schoolmaster would not have kept away from the funeral; he asked me that day why I came; I said Siriwardene sent for me, that he told me he was not well and that he was going to Colombo to get treatment. At that time Siriwardene had not told me to keep the Will a secret; it did not strike me to tell the school master about the will. I did not think it necessary to tell him about it.

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I know now that 5 witnesses are necessary to execute a Will. When I left the house to go to the school Sammy was there in the room; there was Parlis; Handy may or may not have been there. I was there. That makes four if Handy was there. I don't know why the school master was not sent for to make the five. The roof of the Headman's house is visible from the deceased's house; it is in the adjoining garden.

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(To Court: Q. Do you know if he sent for the Headman ?

A. No, I don't know).

If the Headman had no other work outside he should have been at home; I don't know whether he informs the inmates of his house before he goes out.

I know the Registrar of Marriages Mr. Gunasekera whose house is not less than 3 miles from the deceased's house. If Karthelis says it is only one mile it is not correct (vide evidence). He is closer to the deceased than Handy or Parlis.

10 I referred to Hinton Seneviratne's case and stated what I had heard. In that case I don't know whether Gunasekera was a witness for the deceased; I do not know whether Gunasekera was a good friend of the deceased, he is a cousin of the deceased. I do not know why he was not sent for.

20 I may have gone to the deceased's house on the 13th. I remembered yesterday that Velin was not there on the 13th. When I am asked complicated questions I may make a mistake. I went there on the day after Siriwardene died, and that must be the 13th. Yesterday after the case I went to Kelaniya; I do not know where Karthelis stayed nor do I know where he lives now; I spoke to him after the case yesterday; I did not speak to him about the complicated questions; I only told him I was going to Kelaniya and would be coming today. Velin was not there on the day after the body was brought, the 13th. I enquired from Karthelis when the cremation would take place and then went away, I did not stay there long; I cannot say what time I left, may be about 8 or 9 a.m. I got some information that evening that Velin had come there and demanded the keys, that there was a quarrel over it and the Headman had been sent for. Deceased asked me to keep the will a secret, I don't know why. May be, he wanted to
30 keep it secret during his life time; it must be so. I knew the will would come into effect the moment Siriwardene died. I knew that the beneficiaries should know of it lest others who had no rights should take the property away. I realised that one who had no authority under the will had asked for the keys; I knew Velin was there trying to create trouble. I went there on the 14th but did not meet Velin; I met Lily, Cecilia who I knew were some of the other beneficiaries. I did not tell them there was a last will nor ask them not to give the keys to Velin. If I had said that there would have been murder.

40 I did not know where the last will was. I did not know where deceased kept his valuable documents. I myself have deeds and they are in my almirah under lock and key. Normally such documents would be kept in an almirah under lock and key, but I did not know where the deceased kept them nor imagine where he would keep them. He could have given the deeds to someone or kept them with himself,

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whether under lock and key or not I don't know. I admit the normal way to keep such things is under lock and key. It did not strike me that if Velin got hold of the keys he would come across the documents; it did not occur to me that if Velin got hold of the last will he would destroy it. I told no one about the last will on that day. Siriwardene called me as a good friend and asked me to keep the will a secret. It did not strike me that if I did not disclose the truth at that stage the will might get lost.

Up to the 15th I did not tell anyone about it till I was asked. At the time of the cremation there were about 200 people. I was questioned about it on my way back after the cremation, but I cannot remember exactly where. After the cremation I was proceeding home, near Siriwardene's house. Some people go back to the funeral house after the funeral and some don't. Siriwardene died and I had no other friend in that house to see; I went away. Karthelis had more work to do at the cremation; I don't know whether he stayed there; he should have been there; I don't know where he would have gone from there. We all were there till the fire was ablaze. From the place of cremation Karthelis would have to go to Siriwardene's house. When I was returning after the cremation, near about Siriwardene's house I think, Karthelis came from behind and spoke to me and asked me what I knew about the will. 10 20

Q. Did you say earlier that Karthelis told you a last will had been executed and asked whether you had got it?

A. I told that. I said I knew a last will was written but I did not know where it was.

Q. Why did Karthelis ask 'Have you got the last will'?

A. May be he thought it was with me.

Q. Did you ask him 'how do you know that a last will was written'?

A. I did not ask that. He told me he heard that I was a witness to the last will and I said Yes. I did not ask Karthelis how he knew about it. I did not know then whether Karthelis had spoken to anyone else about this. At the cremation Sammy Jayasinghe and Karthelis were both present. 30

Q. Did you say this at the last hearing: "I attended the cremation on the 15th; then there was no talk about the will; I kept the will a secret; on the 20th I went to see Mr. Alwis"?

A. I have no recollection of any talk about the last will in the presence of Sammy Jayasinghe or other witness. After the cremation Karthelis asked me; I told him a will was written but I did not know where it was. I did not tell him anything further. Deceased did not 40

tell me to keep the will a secret and after his death see that the terms of the will were fulfilled. I was aware that when the will was brought out I should give evidence about it.

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tion.
—continued

I visited the deceased during his last illness for the first time about two days before the will was written when I heard he was ill. I knew he started with Ayurvedic Medicine and went on for some time. I did not meet any of his doctors whenever I visited him; I do not know he went from one treatment to another or that Dr. Ratnayake saw the deceased for the first time on the 5th.

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Re-examined.

Don Peter
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Re-exam-
ination.

I gave evidence yesterday; that is all correct. I said when I was going out to the school I saw Parlis Goonetilleke and Vedamahatmaya talking; when I came back from the school there was Parlis and the Vel Vidana who had arrived before I returned. I was asked why I did not speak to Parlis as to why he had come there. Parlis had never come to my house. I went to see the sick man. I did not think it proper to ask a man why he had come to another man's house; that is never done by us.

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With regard to the liabilities I was questioned earlier in the proceedings and yesterday.

Q. Have you at any time borrowed money on a mortgage bond ?

A. Never.

Q. Have you at any time been sued in a Court on a mortgage bond ?

A. Never.

Q. You referred to one Brito ?

A. That is my brother-in-law.

Q. Did you borrow any money from him ?

A. I did not borrow from him.

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I executed a transfer deed and got money Rs. 1,000/- from him, on a conditional transfer; I paid the money and got it back, prior to Siriwardene's death and prior to the Will also. I borrowed money from my sister; it was not on a mortgage, and there was no action. At the time I gave evidence last I had not paid her the money; now I have. I was questioned about 3 cases; they were land cases; I had to pay costs in those cases; it was to pay costs that I borrowed money from my sister; I paid those costs and I am not indebted.

Q. What about the Rs. 1,000/- taken from the deceased ?

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A. Deceased gave me Rs. 1,000/- on an agreement to lease out land. Out of the lease profits I took $\frac{2}{3}$ and gave him $\frac{1}{3}$. I also paid

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Evidence.
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ination.
—continued

the Rs. 1,000/- to Mr. Siriwardene; I borrowed that sum to take these leases, later I paid him that sum and in lieu of interest I paid him a part of the profits.

I know Thomas. The place he was actually residing in is 7 or 8 miles away; he has married in Siriwardene's village; his wife's father's house is in Siriwardene's village; his wife is a girl from Welagedera, Siriwardene's village and her parental home is there. Apart from his wife's parental home being there Thomas had other lands there. I have seen him coming to the village and staying in that village, in his wife's father's house. Adjoining deceased's house is a big rubber estate and Thomas had taken a contract to uproot the rubber trees.

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The school was in front of deceased's house, the road separating the two compounds. My going to the school could have been seen by anyone in Siriwardene's house. After Siriwardene was discontinued from the post of local manager of that school he did not visit the school; it was he who built this school but he stopped going there altogether.

I was asked about a criminal case against me, about the theft of an animal. I remember coming to Colombo to Mr. Paranavitane's house and swearing an affidavit as a witness to the will, with the other witnesses. That was the day before the alleged theft of the bull. I had a voucher from Karthelis; it was a bull which Karthelis had bought on a receipt, a cattle voucher, about 5 or 6 years prior to my purchase. I produced both receipts in the criminal case; the case was withdrawn when I produced the vouchers.

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I was asked about the Registrar Gunasekera; he was the elder brother of the priest who wrote a petition against the deceased.

On the 13th evening I heard of the row between Velin and Karthelis and the Headman being sent for. Later on the 14th I came to know that the keys were handed over to the Headman by Karthelis, whether all the keys or some I don't know.

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Sgd. N. SINNATHAMBY.

A. D. J.

Adjourned for Lunch.

D. H. Jaya-
netti.
Examina-
tion.

D. H. JAYANETTI. Affirmed, 43, Registrar of Marriages, Welagedera.

I have been Headman of this division for 17 years and now Registrar. I knew the deceased who was also Headman for a number of years in the same division before my time. I knew him very intimately; he was an educated man and was a member of the Village Committee for 10 or 12 years; he built a school. Deceased was not

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related to me. I live about 150 fathoms away from his house. Deceased was unmarried. There were living with him the petitioner, Lily; Lewis Baddevidane and his wife whose name I do not know. Deceased had several brothers. Velin, Kalu Mahatmaya etc., but I had not seen them visiting the deceased on a single occasion. I know deceased died on the 12th and his body was brought to the house; before that he was in the Colombo Hospital; there was a rumour that he was ill at home before he went to Colombo but I did not see him during his illness at home. I know the last will has been produced, said to be signed by deceased. I heard that Sammy had gone to see me one day, I don't know when or why. I knew Sammy well. On the 13th about 8 a.m. Velin Siriwardene sent word to me and I went to the deceased's house. Karthelis had the keys and Velin Mudalali asked for the keys; Karthelis refused to give them; there was a dispute between the two; Karthelis said he would give the keys after the funeral; he said he was a trusted man of Siriwardene's and he could keep it, and he would give the keys after the funeral, that he had been trusted all these years and he would keep the keys at least till the funeral was over. I told Karthelis to give the keys. Then he said he would put the keys in a drawer having locked up everything and hand over the drawer key to me. I was the Headman then. Velin Siriwardene consented and I took the key.

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20

Q. Did Karthelis ask for a receipt ?

A. Yes, and I gave it.

I took the key away. When I went home, Thomas dropped in there and said there was a last will making Karthelis the Executor. I told him that I went to the house only to settle the dispute about the keys, and neither Karthelis nor Velin told me anything about a will and I could not act on his statement. I reported the death. I attended the cremation; the key was with me. On the 17th Velin Siriwardene came and asked me for the key; I said I would hand over the key in the presence of the relatives to a responsible person, and Velin went away.

30

Q. Did you mention to him anything about the will ?

A. I asked him about the will; Velin only asked for the keys, he did not ask about the will. I told him what I heard from Thomas, that there was a rumour of a will. Velin said No, there is no such thing.

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On the 18th the Inspector of Police came there and the key was handed to him. Thereafter I filled up certain forms and sent to Government. I was intimate with the deceased. I also appear on the photograph P 25. (Witness points to the deceased and himself on his side). I know Karthelis was in Siriwardene's house looking after and supervising all the work in connection with deceased's properties on the directions of the deceased.

No. 25.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Examina-
tion.
—continued

No. 25.
Petitioner's
Evidence.
D H. Jaya-
netti.
Cross-
Examina-
tion.

Cross-examined.

I cannot say anything about the handling of the income. Karthelis supervised the tapping of trees, picking nuts etc. The produce was all brought home. I do not know who actually sold it; I know nothing of whether Karthelis kept the money or not. It was Karthelis who was getting all the work done for Siriwardene and was nearest to him. I do not know how exactly the money was handled or who handled. I remember Counsel telling me that Karthelis stated that he handled the cash. If I said that I knew that Karthelis was handling the money it is not correct. I do not know out of those two who exactly was handling the money. I am not aware that Karthelis took the money after deceased died. I am not taking any side in this case.

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After the cremation I went home and I don't know what happened after that. After the keys were handed over to Velin I cannot remember whether Velin was in the village. I remember it was about $\frac{1}{2}$ an hour after I went from the deceased's house that Thomas told me about the will. When Karthelis was asked to give the keys to Velin Karthelis was not quite pleased. Velin took charge of everything immediately after the cremation and he is still there; from that moment Karthelis went away. After that I have seen him on occasions at Welagedera, on the road; I did not speak to him. It did not concern me where he was staying. Thereafter from time to time I saw Karthelis but did not meet him for any other purpose till I was summoned for this case. When I was summoned I knew it was in connection with the Testamentary case. I did not ask Karthelis why because I had given evidence in the earlier case, and knew why. Before the previous hearing too no one spoke to me till I got summons and came to court. I cannot remember whether Karthelis spoke to me before I was summoned for the earlier hearing five years ago.

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Q. Before summons was served for the first hearing did Karthelis or any other person speak to you about any evidence you would give?

A. I cannot remember; that is the truth. Neither Cecilia nor her husband spoke to me, nor Lily, nor Sammy Jayasinghe nor any other witnesses, before I was summoned. When I received the summons I knew I was going to be asked questions about the case. As to what details I would be asked I did not know. Before I received the summons I was not told by Karthelis or by any of the witnesses to the will that Karthelis had searched for the will and failed to find it, and ultimately found it. Till I was summoned I did not know that the will had been lost. I assumed that if Thomas' story was true the will should be in existence. No one told me that Karthelis had taken the witnesses to Proctor Alwis to get an affidavit signed.

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Q. When did you first hear that the Will was lost ?

A. Only Thomas informed me that there was a Will after the key was handed over to me; he told me that a Will had been written, not that it was lost.

No. 25.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Cross-
Examina-
tion.
—continued

I did not accept Thomas' statement then. There was nothing in Thomas to make me think he was lying. I did not know of Thomas' relationship with deceased, nor whether he was doing any work for the deceased; I did not see Thomas visiting deceased's house in his lifetime. I live in the garden adjoining deceased's. I did not believe Thomas as he was from an outside village. If Velin Siriwardene stated it I would have accepted his statement. I thought of Thomas as an outsider; he was married from that village; he was not living there; he occasionally used to visit that place, once a week or so; he did not stay there.

I have official duties to perform when a person dies in my area; to make an official report. It is my duty to see that no damage is done to the deceased's property till it is administered by Court. I send my report to the D. R. O. who forwards it to the Government Agent. If the estate is over Rs. 2,500/- the G. A. sends a notice to appoint an administrator. I only report that a person has died leaving such and such an estate. To give the value of the estate I am sent an assessment form from the Kachcheri; I fill it up and return giving the value of the estate in my opinion; I do not question anyone for this purpose; I should know what and what property is left by the deceased in my division; if he leaves any property outside my division it is the D.R.O. who makes inquiries. I enquired only about the properties in my village; I know the lands owned by him in my village. I also enquired from Velin, not from Karthelis.

Sgd. N. SINNATHAMBY,
A. D. J.

Adjourned for lunch.

24-9-47.

After lunch.

D. H. JAYANETTI. Affirmed.

Cross-examination continued.

I obtained the particulars about the estate of the deceased from Velin Siriwardene, because at that time when I made inquiries I regarded Velin as the chief heir. That was about four days after my conversation with Thomas. In fact, it was after the cremation. I wrote to the D. R. O. and informed him that the deceased had died intestate. I know that in consequence of my report the District Court sent document (notice marked R 16) dated the 26th of October, 1942, to Velin ordering him to apply for letters of administration on the footing that the deceased had died intestate. I cannot remember the date of

No. 25
Petitioner's
Evidence.
D. H. Jaya-
netti.
Cross-
Examina-
tion.
—continued

my report. In fact, I sent two reports. I sent my first report on the 14th. That report was to the effect that D. F. Siriwardene died at the Colombo Hospital and that he left properties to the value of over Rs. 1,500/-. According to what I remember I mentioned the figure Rs. 1,500/- in my report, not Rs. 2500/-. Then I sent my second report giving further details. I cannot remember what figure I mentioned in that report as being the value of the whole properties of the deceased. According to my assessment the value of the whole property might be about a lakh. I know that one of my duties is to inform the Court about the heirs; and that before I submit such a report I should make the necessary inquiries. I did make such inquiries. I made inquiries from Velin Siriwardene, he being the eldest of the surviving brothers of the deceased.

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Q. I take it that it was a part of your duty to inquire as to whether the dead man left a Will or not, and to report accordingly?

A. There is no cage in that form for such information.

Q. You never made any inquiry whether the deceased died leaving a will or not?

A. No, I did not make such inquiry.

Q. Is it not a proper thing for you to find out whether the man died intestate or not and report to the higher authorities accordingly?

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A. If there was no such thing to my knowledge I cannot report.

Q. Is it, or is it not, your duty to report to Court that the man died leaving a will, if to your knowelge, he had left a will; or if you do not know, to find out that information definitely and then report accordingly?

A. If there was a last will the brothers should have told me about it. They never told me such a thing.

Q. Is it or is it not a part of your duty to make such inquiry?

A. Yes, it is.

30

I know that Velin Siriwardene is a brother of the deceased. I have not seen Velin going to the house of the deceased prior to the death. I had said in my previous evidence that up the time of the death the only inmates of that house were the sisters of the deceased, their step-mother and Karthelis and that those were the only persons who treated the deceased. I say that even now. Whether Velin had, or had not, an intimate knowledge of what was going on in the deceased's house before his death and about the deceased's properties, I cannot say. I know that the person who was in closest touch with the deceased and his affairs was Karthelis. I did not make any inquiries from Karthelis or from any other inmates of that house about this matter. I inquired from Velin.

40

Q. Do you not admit that it was more proper for you to have made inquiries from the inmates of the house who would possibly have a better knowledge of the affairs of the deceased, instead of from Velin or anybody else?

No. 25.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Cross-
Examina-
tion.
—continued

A. I inquired from Velin because I thought it was my duty to ask from him being the eldest of the surviving brothers of the deceased.

Q. Even though he did not associate with the deceased?

A. Yes.

I should have inquired from the people who were associating with the deceased and who were the inmates of the house. I did inquire from Lewis Baddevidane; may be on the cremation day. It is not on the day following the cremation. I met him on the cremation day, and it is then that I inquired from him. I told Lewis Beddevidane that I learnt from Thomas that there was a last will and asked him whether that was true. Lewis said that he had no knowledge of such a thing. I did not ask from Karthelis. It was Karthelis' duty, when he handed the key to me, to have informed me about the will if there was such a will. He did not tell me such a thing. I did not ask from Karthelis whether there was a will. When I met Karthelis, Thomas had told me about the will. I did not mention to Karthelis what Thomas told me about the will. What I felt was that if there was a will it was Karthelis' duty to have informed me about it. It is usual that if there is a will the headman should be informed about it by the relatives. If I was informed of such a will I would have reported to my higher authorities. If Karthelis told me about a will then I would have obtained more details from him regarding it and made my report accordingly, saying that that information had been given to me by Karthelis. The first report that I make is to the effect that so and so has died. I have a form to fill up. If a man dies leaving a will there is a column for that information in the second report. There is also a column for the name of the executor. It is in the second report that I mention that the man had died intestate or not. If Karthelis mentioned to me about a will then I would have obtained more details from him in order to make a proper report to the D. R. O. The information that I would have got from Karthelis, if he mentioned to me about a will, was who is the executor? Who wrote the last will? When was it written? That is all that I would have asked him. By "Who wrote the Will"? I mean the name of the notary. I have never reported on this kind of notarial deeds before; never in my 18 years service as headman. During this period nobody in my area died leaving a will. If there was a last will, before the Court was informed, I should have known who the executor was and if I found who the executor was I would have appointed him and given the keys to him. If Karthelis told me about a will then I would have asked for all those details. When Thomas mentioned to me

No. 25.
Petitioner's
Evidence
D. H. Jaya-
netti.
Cross-
Examina-
tion.
—continued

about a will why I did not ask him for those details was because he is not a man of that village. He is from a different village.

Q. Then when Thomas mentioned to you about a will, why didn't you ask him "Look here, you are a man from a different village; how do you know about this"?

A. Because he mentioned it to me immediately after the row about the keys. Moreover, I did not pay much attention to what he said as I thought it was not a true statement.

Q. Then why did you ask from Lewis Beddevidane on the day of the cremation if you did not accept Thomas' statement as a true statement? 10

A. I casually asked from Lewis Baddevidane. I told him that Thomas mentioned to me about a will. Thomas might have been present at the cremation, but I did not see him. Lewis did not ask from Thomas. Karthelis was there at the cremation. I did not ask from Karthelis about Thomas' statement. When I went to the house to inquire about the dispute over the keys Velin and Karthelis were there. If there was a last will Karthelis should have informed me about it then. Because Karthelis did not tell me about a will I did not want to ask him about it. Velin came to my house on the 17th, and it is on that day that I asked Velin about the will. 20

Q. Who was the rightful person among these two, Velin and Karthelis, if there was a will and if you knew that Karthelis was the executor?

A. At that time I was only concerned with settling the dispute about the keys.

(To Court: If there was a will and if anybody was the executor he should have come forward and claimed it. Because nobody came forward I took the key into my custody).

Sammy Jayasinghe was there when I went to inquire about the dispute over the keys. Thomas might have been there, but I did not see him, I am not aware that it was Sammy Jayasinghe who wrote the will; nor did I even hear about it. 30

This is the second time that I am giving evidence in this case. I know that this is a case about a last will. It is between Karthelis and Velin. I did not hear that this will had been challenged as being a forgery. From that time till today I have not heard anybody saying that this will had been challenged as a forgery. Today I did not take lunch together with Karthelis, Peter Jayasinghe and others at the boutique at No. 118 Hultsdorp. I had my meals there alone. They had their meals in another boutique. What I heard after the last trial was that Karthelis had appealed. 40

(To Court: The Respondents say that the will is a forgery; the petitioner says that it is a genuine one).

I knew about it from the time of the last trial. There is a rumour that it was Sammy Jayasinghe who wrote this last will. Sammy has not told me about it to this day. When I went to the house to inquire about the dispute regarding the keys I did not ask from Sammy about the will; nor did I ask from Karthelis about it after the day of the cremation.

No. 25.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Cross-
Examina-
tion.
—continued

10 I asked Velin to come with a Police Inspector and an Inspector came. It was on the 18th of October that the Inspector came. Velin, the Police Inspector and I all three went to the house of the deceased. Sammy might have been there in the house when we went, but I cannot remember. Lewis Baddevidane was there. The Inspector came to decide as to whom the key should be given. Even if I knew that there was a will and that Velin was not the executor I would yet have given the key to Velin being the brother of the deceased, until the Court decided who the executor was. Even if I was told that there was a will I would have given the key to the heir and not to the executor and would have at the same time submitted the necessary report to the higher authorities. When the inspector came to inquire about the dispute over the keys I did not tell him that a man by name Thomas had told me that there was a will. Why I did not record Thomas' statement is because I did not take his statement seriously.

Q. Why did you not tell Thomas when he told that to you "I cannot believe your statement"?

A. I told Thomas "You need not tell me about these things; you had better tell them to the owner". By "owner" I meant Velin.

Q. Did you tell Thomas not to mention anything about the will but to keep it a secret because otherwise he might be in trouble?

30 A. I told him there had already been a quarrel between them, one demanding the keys and the other refusing them and I went and settled that dispute by taking the charge of the keys; now if you tell them about this there would be a further quarrel. On the other hand I did not believe the statement of Thomas. I did not ask Thomas to keep the will a secret.

(Counsel refers to the previous proceedings).

Q. Did you not tell Thomas "Please keep the will a secret"?

A. I cannot remember what I told Thomas. But I did not ask him to keep it a secret.

(To Court: What I told Thomas was not to mention about the will immediately lest there would be a further quarrel).

40 (Shown R 15) On the instructions of the Police Inspector I made this list in the presence of all of them. It was signed by Velin, Cecilia, Lily, Lewis and certain others. There is no date written on this list.

No. 25. I think it was written about the 18th. When Lewis signed this list he
 Petitioner's did not tell me about a last will, even though I mentioned to him about
 Evidence. it on the day of the cremation.
 D. H. Jaya-
 netti.

Cross- I do not know whether Lewis is come to Court today. He is now
 Examina- living in Bentara; not in this village. I have had no information
 tion. that he is ill.
 —continued

I have said that on the 5th of October, before the deceased went
 to the hospital, Sammy had come to my house in my absence. But
 I did not meet him. It was on the following day that I learned from
 my home about it. I think on the 5th night I was out on some mission. 10
 I might have gone about one or one and half miles away from home.
 I think it was about 10 or 11 o'clock in the morning that I left the
 house that day. I think I went to my uncle's house at Pannala, which
 is about one or 1½ miles away from my house and decided to stay
 there for the night and returned on the following day. Why I
 remained for the night there was, I think, it rained. If I am away
 from home and if any official message were to reach my house that
 message would be brought to me from home wherever I may be.
 That is the procedure. I usually leave my address behind before I
 leave the house. What I heard from home the following day was that 20
 Sammy came to see me. I was not told why he came because he had
 not mentioned it. I think if Sammy had a real necessity he would
 have come again to see me. He is not a friend of mine, nor a relation.
 The deceased was not a good friend of mine. We just knew each other.
 I used to go to his house once in a way to see for any purpose of mine.
 If the deceased wants me he sends a message and I go there. When he
 was ill in the hospital in Colombo I did not go to see him. I do not
 remember seeing the deceased being taken to the hospital in Colombo.
 But a day or two later I heard that he had been taken to the hospital. 30
 A car going down to Colombo from the deceased's house should pass
 my house, and if I was in the verandah I should see it. When a man
 of some standing is removed to the Colombo Hospital people of the
 place would speak about it and everybody might come to know about
 it. On the day he was taken to the hospital I may have been occupied
 with some official duties and therefore did not come to know about
 it on the day.

To Mr. Wickramanayake :

I attended the Alutgama English school for about 5 or 6 years
 but I could not pick up any studies.

At the last trial I produced my diary containing Velin's statement. 40
 I have that diary with me now, but it is old and it is difficult to read
 the writing therein. There are no entries under date 5th of October
 in my diary.

(Counsel takes the diary, refers to 5th October, and says there
 is an entry written in English under date 5th).

(That entry is shown to witness) This is not in my handwriting. It might be the handwriting of some Police officer.

No. 25.
Petitioner's
Evidence.
D. H. Jaya-
netti.
Cross-
Examina-
tion.
—continued

When Thomas gave me the information about a last will I did not believe his statement. What I said in my evidence last time was that I told Thomas not to tell them at that moment.

10 Q. From that is it not clear that you had accepted Thomas' statement? If you did not accept Thomas' statement you would have straightaway told him that you don't accept his statement, instead of which you had said "Don't speak about the last will now in the deceased's house; there would be a quarrel"? It is recorded here.

A. It is because that I did not believe Thomas' statement that I told him that if he mentioned that there would be trouble.

20 I do not know whether Thomas is a relative of the deceased. He may be a relative. There was no necessity for me to find out whether it was so. Why I went there that day was to settle the dispute about the keys. Velin was demanding the keys from Karthelis and the latter was trying to keep them till the funeral was over. Karthelis told me "These people are demanding the keys because they don't trust me". All the furniture in that house belonged to the deceased and should go to the lawful heirs, if there was no will. I realise that. I did not make any inquiries whether there was a will or not. It was when I was returning from the deceased's house that Thomas came and told me that there was a will. I did not ask Thomas "How do you know about it". On the cremation day I asked Lewis Beddevidane about the will. I asked him casually. Thomas was not there when I asked Lewis. Nor was Sammy Jayasinghe there. It was at the deceased's house that I asked Lewis on the cremation day. I just asked him for fun. Still I did not take the information seriously.

30 Five or six days after the cremation I reported to the D.R.O., suggesting the name of Velin as the administrator, the ground being that he was the eldest surviving brother of the deceased. I did not make any investigation on Thomas' statement, because it was a verbal statement, and I was not shown a will by him; and because he was a man from a different village I did not pay attention to what he said. When I went to that house that day Thomas was there. I do not know when he went there. Thomas did not tell me "Why are you taking the keys from Karthelis; there is a will and Karthelis is the executor and he should have the keys". Even if he told me so I would have not made inquiries unless I received information from the heirs. If Karthelis had shown me a will then I would have made inquiries.

40 Q. If Karthelis had not shown you a will?

A. I would have as usual filled up the names of the brothers as the heirs and submitted my report.

No. 25.
Petitioner's
Evidence
D. H. Jaya-
netti.
Cross-
Examina-
tion.
—continued

At the last inquiry I said that I informed the D.R.O. that the deceased had died intestate. If anybody showed me a last will then I would have made inquiries; that is if he was a relative. But if he was a man from a different village I would not have acted on it. Thomas may have said in his evidence that the deceased was his uncle. But I do not know that.

Q. If Velin had made a statement and if you knew that he was not a brother of the deceased, would you have believed it and acted on it?

A. No.

Thomas was not working in the adjoining garden. He was working about quarter of a mile away from the deceased's house. I do not know whether Thomas went to the hospital with the deceased.

Velin came on the 17th and asked me for the keys. I did not mention a last will as being the ground to refuse the key to Velin. What I told him was I would give the key only if he comes with his relations. By "relations" I mean the other heirs. When I refused to give the key to Velin on that occasion I did not take into consideration the statement of Thomas. (Mr. Wickremenayake refers to previous proceedings—evidence of the witness). On the 17th there was no opposition to the key being given to Velin, as Karthelis wanted to keep the key only till the cremation. It may be that Karthelis had left that village on the 17th. I did not see him on that day. After the 15th the ground on which Karthelis refused to give the key was over. On the 17th why I refused to hand the key to Velin is because as there were other heirs also I thought that there might be trouble if I gave the key to Velin in their absence, and that I could be free from the responsibility if the key was handed in the presence of those other heirs and also in the presence of a police officer; not because of a last will. Why I wanted a police officer was because I wanted to have a discharge of this responsibility. On the 17th nobody objected to the giving of the key to Velin. It is only Velin who came to my house for the key.

Sgd. N. SINNATHAMBY,

A. D. J.

Further hearing on Friday, the 26th.

26-9-47.

Appearances as on previous date.

D. H. JAYANETTI, Affirmed.

Cross-examination (continued).

To Mr. Wickremanayeke :

In my evidence at the last inquiry I have repeated what I said in my report:— "A man possessed of considerable property has died in

the General Hospital, Colombo, and Velin Siriwardene has come forward claiming to be the brother of the deceased". (Vide previous proceedings). I said this in my report; and I did say this in my evidence last time. In the last trial I have also said in my evidence:— "I did not report at any time to the Divisional Revenue Officer that Thomas had told me that the deceased had left a last will". This is correct. I have also said: "In consequence of my report Velin was asked to administer the estate". That is correct.

No. 25.
Petitioner's
Evidence.
D. H. Jaya-
netti,
Cross-
Examina-
tion.
—continued

10 I deny that, in regard to the story of Thomas, I have given evidence at this trial different to the evidence which I gave last time. I also deny that I accepted a bribe of Rs. 1,000/- to give false evidence in this case:

Re-examined :

I am a man of means. I have served in the capacity of headman for 14 years. I was later appointed Registrar of Births, Marriages and Deaths, and at present I serve as such. The allegation that I received a bribe to give false evidence in this case is not at all true. I have, in fact, never at any time in my life obtained any sort of bribe.

D. H. Jaya-
netti.
Re-exam-
ination.

20 I have spoken about two reports in regard to the death of the deceased. In the first report I only mentioned that a man of property died and my assessment of the property as stated therein was Rs. 1,500/- not Rs. 2,500/-. It is a form that was sent to me and which I filled up and returned to the Kachcheri. I mentioned that "Velin Siriwardene is coming and claiming to be the administrator" in the second report. I have said that on the 13th Velin came to my house about the key. I have also said that Thomas spoke to me about a last will, but that I did not believe his statement. On the 15th I questioned Lewis Baddevidane about the last will. Why I asked from Lewis Baddevidane, though I did not believe Thomas' statement, is because I had some doubts in my mind about it. It is after that that I asked the Police Inspector to be summoned.

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Sgd. N. SINNATHAMBY,

A. D. J.

K. D. A. THOMAS APPUHAMY, Affirmed, 40 years, Contractor, Buhamugoda.

K. D. A.
Thomas.
Examina-
tion.

40 The distance from my house to the deceased's house is about eight miles. I know the village in which the deceased lived and died. I am married from that village. The house of my wife's father is there. My wife's property is also there, as well as the lands which I had bought subsequently. Apart from the lands which I have bought in that village, I had other interests there. I had a contract there; that is in Pallegodawatte, near that village. That contract is for

No. 25
 Petitioner's
 Evidence.
 K. D. A.
 Thomas.
 Examination.
 —continued

rooting out old rubber trees for the purpose of planting rubber anew. I have done this contract work for the last 15 years. I have also got rubber lands and fields of my own apart from other property. Recently I bought a one-fourth share of a land in extent 25 acres. The money with which I bought this land is my own money. I am a member of the Village Committee in my division. I finished my service in this capacity for a three year period and have recently been re-appointed to serve for a second three year period. My father was formerly the headman and later the Vel Vidane. He is still the Vel Vidane. He has been serving in this capacity for 27 years. My mother's father was the Vidane Aratchi of the area.

10

The deceased is an uncle of mine, being a first cousin of my mother. I was on very friendly terms with the deceased. I was aware that about the time of his death he had certain litigations with one Hinton Seneviratne. It was in respect of a land, and I had taken a lease of that particular land from Hinton. That land originally belonged to the deceased. The deceased was trying to get back that land from Hinton, and the litigation was in regard to that. I gave evidence in that case.

(Shown P 25). This photograph was taken in connection with the laying of the foundation stone for a section of the school built by the deceased. A number of priests, the A. G. A. and intimate friends of the deceased are there in the photograph. I am also there in that photograph. (Witness points to his figure in the photo—third of the blue marks) This school is situated in front of the deceased's house in that village. One immediately to my left in the photograph is Peter Jayasinghe and the other is Handy Vel Vidane. The person marked in red is the present Registrar.

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(Shown P 19). This is a photograph taken after the death of the deceased, with the coffin.

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I knew the deceased very well. Similarly I knew the other members of his family. I knew Velin Siriwardene as well as his other brother Kalu Mahatmaya who is dead now. Kalu Mahatmaya is also called Davith. I knew the two sisters also; that is the Veda Mahatmaya's wife and the other. The two sisters, Lily and Cecilia, were in good terms with the deceased, but the two brothers Velin and the other were not in good terms with the deceased. I know Karthelis. I have known him for about 15 or 18 years, that is from the time he was a young boy. At the time of the death of the deceased Karthelis was in charge of all the transactions of the deceased. I was in the village of the deceased shortly before he died and I was there even at the time of the death. When my business demands my presence in that village I go there and stay for short periods. Before the death of the deceased I went to his house. I went on the 1st to see him. I went again to see him on the 3rd; and again on the 4th; and again on

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the 5th. On that occasion I was in that village for about 12 days. When I went to see the deceased on the 5th he asked me to go up to Kalutara and see Proctor Wilson Silva, and I went and met Mr. Wilson Silva in Kalutara. Proctor Wilson Silva then gave me a letter to be handed over to the deceased. I paid Wilson Silva Rs. 10/-, money given to me by the deceased. The letter which Proctor Wilson Silva gave me was a long letter. (Shown P 8). It was something similar to this. I then went back to the deceased and handed P 8 to him. P 8 was pasted and there was something inside that envelope. It was about 4 or 4-30 p.m. when I returned to the house of the deceased.

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After I went to the deceased's house I signed a last will as a witness. (Shown Last Will "A"). (Witness identifies his signature on the last will). It was signed in the house of the deceased; that is in his room. The other four witnesses were present when it was signed. They were Sammy, Peter Jayasinghe, Handy Vel Vidane and Parlis Goonetilleke, and also myself. The will was read out by Sammy before it was signed. I personally saw the deceased signing. He signed in my presence and in the presence of the other four witnesses. After that all the five witnesses signed in the presence of each other and in the presence of the testator. I did not know about this will till I entered the room. When I and the other four witnesses entered the room the deceased told us that he had prepared his last will and asked us to sign as witnesses to it. I did not get surprised when it was read out by Sammy and when I heard the name of Karthelis mentioned in that document, because Karthelis had been brought up by the deceased like a son for a long time and the deceased was very affectionate towards him. The last will included the properties which the deceased had bought, not his other properties which he had. I knew that he had other properties. I did notice that his two brothers were not included in the will. I knew that his two brothers were not in good terms with the deceased. Before we, the five witnesses, left after signing the deceased told us to keep the last will a secret and not to speak with others about it. I stayed behind for some time while the other four left the house; that is to speak about my mission to Kalutara. I handed the letter which Proctor Wilson Silva gave and the deceased took it, opened it and read it. Deceased asked me if Wilson Silva did not give me any other letter addressed to him (deceased). I said no. Deceased then said: Wilson Silva appears to have sent a letter addressed to him without even opening it. After the will was signed the deceased asked Sammy to put it in the table drawer. After everything was over I left the house.

I did have an occasion to go to the deceased's house after the 5th. I went there on the 7th morning. I came down to Colombo with him in a car that morning. Before the deceased got into the car he took his bag into it. That bag was lying on the table in his room

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—continued

before it was taken to the car. He put that letter into the bag before it was taken to the car. Before he left the house I saw him putting the last will in the bag. He took the last will from the table drawer. Why I know that it was the last will that he took from the table drawer and put inside the bag is because he opened it before putting it inside the bag and read it, and at that time I noticed it. Then the bag was put into the car and was brought to Colombo with the deceased.

The car halted on the way. First it halted at Beruwala at the doctor's place. Then at Wilson Silva's office at Kalutara. Deceased did not get down from the car. Apart from the deceased and myself, Karthelis and Lewis Baddevidane were in the car when the deceased came to Colombo. For the third time the car halted near a latrine to enable the deceased to go and answer a call of nature. Deceased answered the call of nature. From there we went to Fort. We stopped near the Maliban Hotel. The deceased and Karthelis got down. Beddevidane and I remained in the car. We went and bought petrol. Then they came back to the car. We then went to the hospital, where the deceased was admitted. After that we went back to the village in the same car. The bag which the deceased brought was also taken back in the car. It was taken to the house of the deceased.

When the deceased was in the hospital I did go and see him. I went on the 10th and returned to the village on the same day. I did not see Velin Siriwardene coming to the deceased's house before the latter was removed to the hospital. On the 10th when I went to the hospital I did not see Velin in the hospital. On the 12th I went to see the deceased in the hospital for the second time. When I came to hospital on the 12th the deceased had died. Velin was not there in the hospital before the body was removed to the village. One of the sisters came to Colombo on that day, and also Baddevidane. Cremation took place on the 15th. On the 13th there was a dispute over the keys. Velin demanded the keys from Karthelis and the latter refused to give them. The headman came there and settled the dispute by taking the keys into his charge.

After the headman left the place I went to him and told him that although he (headman) took charge of the key there was a last will written by the deceased and that Karthelis (who is also known as Karolis) was the executor. The headman then told me "Don't mention it now; they will kill each other". Then I kept quiet. I told Karthelis about this on the 15th. He asked me about the last will and I told him that I had signed as a witness to it. I also told him that the two sisters were mentioned in the last will and that he (Karthelis) was mentioned as the executor. It was, I think, after the

cremation that I said that to Karthelis. Karthelis asked me where the will was. I told him that the deceased took it to Colombo when he went and asked him whether he did not get it from him.

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On the 19th there was a "dana" (almsgiving). I met Karthelis on that day. He asked me to go to Bentara; that is to the house of Proctor Alwis. Then I went there on the 20th. I know Karthelis' house in which he has a boutique. The proctor's office is near that boutique. We met the proctor in his office.

—continued

10 (Shown affidavit P 18). My signature is there. Proctor Alwis read it and kept it with him.

Cross-examination. (To Mr. Gratiaen).

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tion.

All the details that I mentioned just now in the examination-in-chief are according to what I remember. Before the deceased went to the Maliban Hotel I knew that hotel, but I had not been there. I knew the roads there as well. Being a contractor I used to come to Colombo about twice or thrice a month. I knew only Fort and Pettah. Excepting these two places I do not know the other places in Colombo.

20 In order to buy petrol we went up to the Bo-tree junction and then turned off. I cannot say what the distance from the Maliban Hotel to the Petrol station is. I have no idea about that distance, nor can I say how long it took to go by car to the petrol station.

(To Court: The total time it took for us to go there, to put petrol, and to return was about half an hour).

30 I do not know if there is a petrol station within a distance of 200 yards from the Maliban Hotel. The whole trip to the petrol station, up and down, and to put petrol took about half an hour. This is according to my recollection, and I do not know what Karthelis said about this point. I know that we passed several petrol stations on our way to Fort by car with the deceased. The driver of the car did not say "We are running short of petrol; there is a petrol station; we must buy petrol". At the petrol station there were two or three cars come for petrol when we went there.

(To Court: At the petrol station we stopped for a longer time than it took to go to the station and come back).

To go to the petrol station from the Maliban Hotel it took more than five minutes. According to my recollection the trip up and down to the petrol station took about 15 minutes, so that we might have been at the petrol station for about 15 minutes. This is according to what I remember.

40 Q. What was the time taken to go from the Maliban Hotel to Colpetty?

A. I do not know where Colpetty is.

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Q. Have you not heard what Colpetty is ?

A. One day Karthelis mentioned the name of Colpetty in a conversation. He referred to Colpetty when he told me "The place we stopped that day was near about Colpetty".

I know Dehiwala because I have a firewood depot in Dehiwala. I think Colpetty is about three miles from Dehiwala, and Colpetty is on the Colombo side of Dehiwala. While passing I had seen Bambalapitiya and I had got down there.

Q. So you know only Dehiwala, Bambalapitiya. Fort and Pettah, and not the other places ?

10

A. I know the other places by name because when I travel by train I see the boards fixed up at stations, giving their names.

I am at present 40 years of age. I may have been about 35 in October 1942. I think it was on the 14th that Karthelis referred to Colpetty as being the place where we stopped the car. The occasion for him to refer to Colpetty was when he and I discussed the fact that the deceased took the last will in his bag in the car when he came down to Colombo, and he mentioned Colpetty as being one of the places where the car stopped. I cannot say the exact place in Colpetty where the car stopped.

20

(To Court : It is only two months ago from today that I started this firewood depot at Dehiwala and therefore I do not know much about the places).

In 1942 I had seen names such as Dehiwala, Bambalapitiya, and Colpetty on boards at Railway Stations. Why I knew Pettah and Fort is because these are the two places at which I get down when I come by bus or train. I had not got down at other places. I knew some of the petrol stations in Pettah.

I regard the deceased as an uncle of mine. Deceased used to call my mother "Loku Akka". They were children of two brothers. I was very friendly with the deceased. I know Jayanetti, the Headman, very well. I do not meet him frequently. Sometimes I meet him when I go to that village. I know this headman for a long time. I started to know him only after I got married from that village. I got married about 10 years ago. If this headman had said yesterday in his evidence that I was a stranger to the deceased, it is a false statement. I do not know whether he was aware of the relationship between myself and the deceased. On the 14th when I went to the headman I did not refer to the deceased as my "mama". I referred to the deceased as "Ralahamy". When I met the deceased and addressed him I called him "mama", but when I meet an outsider and refer to the deceased I sometimes call the latter "Ralahamy". I do not always refer to him as uncle. Sometimes I called him uncle and sometimes "Ralahamy".

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I regard Velin also as an uncle of mine. Members of my family were in good terms with Velin. Velin is a man of means, and is a respectable man. He is not a quarrelsome man. He has not had any litigations with members of my family. Velin and the other members of his family are somewhat influential in that village, and they are to a certain extent regarded with terror. They used to quarrel among themselves, but they do not come to quarrel with our family. I remember that the deceased had certain quarrels with the Walagedera people. There was a fight and some were injured, but I do not know whether they went to Court afterwards. Yes, it is because of this nature of that family that I was asked by the headman not to mention about the last will to them, lest they would kill each other. It is after the death of the deceased that Velin's son was taken to the hospital after a fight. I cannot remember in particular any quarrel that took place between the deceased and his brothers before the death. But I know that they used to quarrel each other, though they had not been to Court. They used to quarrel each other about lands, cattle, and so on. As we were people from a different village we had no quarrels with them. I am not aware of any action filed against Velin even in the Gansabawa Court. I cannot say whether he had been implicated in any case in a Court of Law or not. I had been to Velin's house for about 50 or 60 times. I do know the road to Velin's house. I know anything in that area. I had gone to Velin's house for weddings and other functions. Usually it is the elders such as our uncles who are invited to weddings but sometimes we the younger members of the family are also invited and we go.

It is on the 13th that Velin went to live in the house of the deceased. Velin's children are at present living in that house and Velin stays in his house but for the nights he goes to the deceased's house where his children are. After the "Dana" on the 20th I had not spoken to Velin and I did not go to the deceased's house. Why I did not go to that house is because Velin found fault with me for having told the Headman about the last will, and he was displeased with me. Why I know that he does not like me is because prior to that when he meets me he smiles with me, and talks to me, but now he evades me. I did not ask him why he adopts that attitude to me now. But the other members of my family go to his house and are in speaking terms with Velin.

The deceased died on the 12th. When I went to the hospital on that day the deceased had died. I did meet Karthelis at the hospital. Karthelis and I went together but when he went to Colombo he told me that he would first go to attend to some of his business and then come and meet me at the hospital. Later we met each at the hospital on that day. At that time I did not know about the loss of the last will. Up to that time I kept the will a secret. All my associations and transactions were with the deceased. I had not

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associated with Karthelis intimately. I know that Karthelis was being treated by the deceased as a child. I too regarded Karthelis not as a servant of the deceased but as his child. I regarded Karthelis as a cousin.

Q. So when the deceased died on the 12th at the hospital and when you met Karthelis there, why didn't you tell Karthelis "Look here, you are in charge of everything belonging to the deceased"?

A. We were struck with grief at the time and we did not think of talking about those things then. We were only worried about removing the body of the deceased to the village and making arrangements for the funeral. 10

On the 13th I did not tell Karthelis. It is on the day of the cremation that I first mentioned about the last will to Karthelis. It was on being questioned by him that I spoke about it. The cremation was on the 15th and I spoke to him about it after the cremation on that day. On the day of the death I had no occasion to tell him about the will. In fact, I had no opportunity to tell him.

Q. Was it on the footing that there was no last will that your uncle Velin went into residence there on the 13th?

A. Yes. 20

Velin was in charge of everything in that house. Lewis Beddevidane was also there. I did not mention to Lewis about the last will. Even up to date I have not spoken to him about the will. I may have spoken about the will with Cecilia, but I cannot remember the date; nor can I remember how many days after the cremation that I spoke to her about it. I cannot say whether it was before I swore the affidavit in Mr. Alwis' office that I spoke to her about it.

Q. You told the headman on the 13th morning about the last will because you realised that it was wrong that Velin should oust a lawful executor? 30

A. I told the headman about the last will, but I did not think like that.

I mentioned the name of Karthelis as the executor. I told him that he was the executor, but I did not speak to him about his share. I cannot remember what the headman told me. It struck me at that time to tell the headman, and that is why I went and told him. Why I did not tell Karthelis before I went and told the headman is because I thought that they would fight with each other.

(To Court: It did not strike me to tell Karthelis about it; not because I had any particular reason not to tell him). 40

I happened to be in the deceased's house at that time, and it is from that house that I left and told the headman. The three persons mentioned in the will, viz., Karthelis, Cecilia and Lily, were in that house at the time I left there to tell the headman.

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(To Court: After the dispute arose about the keys I thought it best to tell the headman about the will).

10 When the headman came to the deceased's house to inquire about the dispute I did not tell him about the will, though I was present then. It did not strike me to tell the headman at that time. It is only after the headman left the house that it struck me to tell him. I knew that the right man to get possession of the keys was Karthelis because he was the executor of the will. The headman and I were both present at the cremation. Lewis Beddevidane did not come and ask me "Look here, the headman told me that you had spoken to him about a will; is that true"? I did not search for the missing will because I was not concerned about it. When Karthelis told me that he did not get the last will then I told him that the deceased might have taken it out from the bag. I cannot say whether Karthelis told me "When I opened the bag I did not find the will; it may have been lost". I did not discuss with Karthelis the lines on which to go in finding the missing will. He did not tell me what efforts he had made to find the will. I only mentioned my trip to Bentara; and beyond that I did not discuss with him. I took no interest in the matter. I never spoke to Sammy Jayasinghe about the will. I did not suggest to Karthelis that the house might be searched for the missing will.

30 The deceased was about 70 years of age when he died. He was quite hale and hearty before he died. During the last ten days of his illness he was not getting weaker and weaker. That was not a very serious illness. It was just a slight indigestion that he was suffering from. It was not diarrhoea. On that trip to Colombo he did go to the latrine on the way, but I did not see him going to the lavatory frequently when he was at home during his illness. He was not using a bedpan. Till the day he left for the hospital he was quite capable of moving about. Occasionally he used to get up from the bed and go about. On the 5th I did not see him walking about, but he was fit enough to walk about. His condition on the 6th was the same as on the 5th. It was on the 7th that he went to the hospital. On the 7th he got up and dressed up himself without any assistance from anybody. He did not show any signs of exhaustion. It was he who packed up his bag before taking it away with him. I did not assist him; I was casually watching his movements. It did not strike me at that moment that I would be required later to give details of the happenings there. Nobody helped him to get into the car. He went alone. I cannot remember who carried his bag to the car; but he had the strength to carry the bag himself. Deceasad, Karthelis and Baddevidane occupied the back seat,

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(To Court: He was wearing a shirt, but he covered himself with a cloth).

I distinctly remember that he was not wearing a coat at that time. I had not seen him going about without a coat prior to that.

(To Court: He always used to wear a coat when he went out, but on this occasion he was not wearing a coat. He was wearing a shirt).

The deceased was seated in the rear, with a pillow kept behind him against which he was leaning. I do not know whether he did that for comfort. As he got down the car Karthelis assisted him a little, but after that he walked without anybody's assistance. 10

(To Court: When he went to the lavatory he walked without anybody's assistance, but Karthelis was following him).

The car stopped near the office of Proctor Wilson Silva, but the deceased did not get down; I do not know why he did not get down. The car stopped opposite the proctor's office. I have been going to that office, with the deceased, previously and on such occasions the deceased used to get down the car and walk to the office. While the deceased was in the car he sent a message to proctor Wilson Silva.

Q. Why is it that on this particular occasion Mr. Wilson Silva came up to the car? 20

A. I think it was because the deceased was in a hurry to go to Colombo.

Q. Was it not because he was ill and could not get down and walk, that Proctor Wilson Silva was asked to come up to the car?

A. I think it was because the deceased had to hurry up to Colombo, and Wilson Silva's coming up to the car and speaking to the deceased would not take more than a few minutes. He may have been unfit to get down and walk, which may also have been one of the reasons. 30

Q. What was the urgency to go to Colombo?

A. He came to Colombo with the intention of having himself examined by the doctor and returning to the village that same evening; not to remain in the hospital.

(To Court: What I thought was that he did not come to Colombo with the intention of staying in Colombo. Only after we came here that I learned that he had to stay).

Q. Did you say that it was because, after seeing the doctor, he required to return to the village the same day that he did not get down to go to Mr. Wilson Silva's office? 40

A. Yes, I said that. That was my knowledge. That was how I knew about it.

Q. Do you think that the deceased, if he was not in such a hurry, was fit enough to get down the car and go to Mr. Wilson Silva's office?

A. I do not know that.

Q. If he was fit enough to walk from his house and get into the car, was he not fit enough to get down from the car and go to Mr. Wilson Silva's office?

A. I think he did not get down from the car because he was covering himself with a cloth.

I don't say that it was because he was unable to go owing to ill-health that he did not get down from the car and go to Wilson Silva's office.

I know that on the 5th I brought a letter to the deceased from Mr. Wilson Silva. Wilson Silva gave an envelope with something inside it. The envelope was pasted. (Shown P 8 A). I cannot read the writing there. (Shown P 8). I cannot read that writing also. That writing conveys nothing to me. I cannot read a word of English. When I went to the deceased's house with that envelope I did not know what was written thereon. No one told me that. Till the deceased told me I did not know what was written on the envelope. It was after the will was signed that the deceased told me that. Before that I did not know. The deceased opened the envelope in my presence. I was not interested to know what was written on the envelope; nor did I think it necessary then to keep that in my mind. The deceased, after reading the letter, put it back inside the same envelope and kept it on a teapoy that was there in front of him. At that time he was seated on the bed. It was not a table, but a teapoy. The last place that I saw it lying on was the teapoy. I did not see him putting P 8 inside the drawer. There was nothing unusual in that envelope. I had seen many other envelopes like P 8. I can identify this particular envelope. Even if 25 envelopes like this (P 8) with stamps affixed thereon, are placed in front of me I can identify this one. I remember giving evidence about this at the last trial. I was asked whether there was any particular feature by which I could identify this envelope. Pointing to "P 8" written in blue I said that that mark was there on the envelope when it was given to me by Mr. Wilson Silva to be handed over to the deceased. (P 73 of the previous proceedings). That is a mistake on my part. The mistake is that I identified the envelope by the "P 8" marked in blue thereon.

(To Court: In point of fact, P 8 was not there when Proctor Wilson Silva handed me the envelope. Only the address, the stamps and the post mark were there).

What is written on the envelope was there. I remember the deceased telling me that it was an envelope addressed to Mr. Wilson Silva. I cannot read the writing on the envelope, but I can swear on

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anything that this is the very envelope that I took from Mr. Wilson Silva to the deceased. I remember it by the two stamps and the way the address is written on it.

(Witness's attention is drawn to the fact that there are three stamps affixed to the envelope).

(To Court: Yes, I remember it by the three stamps and not by two stamps).

On the 7th I saw the deceased packing his suit case himself. I saw him opening the drawer of the table, taking that letter from inside the drawer, folding it, putting it in the same envelope that was at the time lying on the teapoy, and then putting it inside the suit case. It was casually that I saw him doing these things. It is from these stamps and this writing that I recognised the envelope when he took it from the teapoy. I did not make a special note of these marks of identification on the envelope. I know it is this very envelope that he took it from the teapoy though it was two days earlier that I saw him keeping it there.

10

(To Court: It is only by my powers of recognition that I say that).

It was on the 15th that I told Karthelis about what was written on the envelope. He did not ask me for further details. He did not tell me "I am going to advertise in the press; please give me more details". What I told Karthelis on the 15th was "Wilson Silva's address was written on that envelope".

20

(To Court: Deceased told me that the address written on the envelope was Wilson Silva's address).

On the 7th our car was stopped just near the office of Proctor Wilson Silva; I cannot say the distance in yards or feet, but I can say that it is about the width of this courthouse. It may be about 15 to 20 yards.

30

When the deceased was admitted to the hospital I did not go inside, but was standing near the gate. Those who went in were Beddevidane, Karthelis, and the deceased. I did not go along with them into the ward, but I went in later.

The suit case contained the deceased's clothes. I do not know why the suit case, including the deceased's clothes, was taken back to the village. I cannot say whether anything of the contents of the suit case was taken out. It was taken to the house of the deceased and kept there. It was Beddevidane who took it with him to that house. I did not see the will being taken out of the suit case at any time during the journey. The fact that there was an important document inside the suit case was known only by the deceased and myself.

40

Q. Was there anything for you to assume that this document was not in the suit case on your return journey?

A. I did not think of such things when we were returning home.

I did not tell Beddevidane when we were returning home that there was an important document in the suit case.

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Sgd. N. SINNATHAMBY,
A. D. J.

Adjourned for Lunch.

26-9-47.

10 After Lunch.

K. D. A. THOMAS APPUHAMY, Recalled, Affirmed.

(Cross-examination continued).

I stand by the evidence I gave at the first trial. I said that the car stopped at a public latrine near Colpetty and that is correct; I still believe it is near about Colpetty.

20 In October 1942 my income from lands was about Rs. 150/- a month. My wife's rubber land is enjoyed by her parents; it yields about 5 lbs of rubber sheets a day and the net income a month is about Rs. 50/-. I was doing good business as a contractor and made Rs. 4,000 to Rs. 5,000 a year, sometimes less. I did not pay income tax. Once they called for particulars for Income Tax purposes and I sent them, but I have not heard since then. I got these particulars entered up by another person; I cannot remember now what particulars I furnished. The sum I disclosed may be below Rs. 2,000/-. I cannot say what my surplus is after deducting expenses. I keep a pocket book and keep no other accounts. In October I had no contracts; then my wife was in my own village. During the deceased's last illness I was at Galmatte because I had my work to do there, clearing land and cutting drains and getting other work done. Sometimes I was personally supervising the work. I used to stay in my father-in-law's house when necessary, sometimes in my house and sometimes in my lands. I had two lands at Galmatte. Whatever the deceased asked me to do for him I did. I used to take messages for him, to Mr. Wilson Silva in his office at Kalutara. I did not take anything from the deceased for this work. I also came to Colombo to see Mr. Foot to get a valuation report; I spoke to Mr. Foot in Sinhalese and his clerk translated it.

30 When I went to Mr. Wilson Silva's office on the 5th I had met the deceased that day about 7 a.m. I was not asked to come back by a particular time and deceased did not express any particular urgency.

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Cross-
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tion.
--continued

Before I left he did not express any intention on his part to execute a will. As soon as I arrived the deceased called me into the room to sign a document.

(Shown R 40). There is a portico to the house; as I enter there is a verandah and an office room. The verandah had two doors leading to a hall in the middle; from that hall there is a hall leading to another verandah, next to the office; there is another door from the hall which leads to a bed room where the sick man was. Sammy used to work in this office. When I came back with the letter from Mr. Wilson Silva the other witnesses to the Will were in the middle hall; I cannot remember where Sammy was. I cannot say who went into the room first; there is only one door to the deceased's bedroom and that is from the hall. When I saw the other witnesses I did not know that they had come as witnesses to the Will.

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Q. Is this correct : "I did not tell him what the terms of the will were" ?

A. Everything I told at the first hearing is true.

Q. "I did not want to give Karthelis a shock by telling him the terms of the Will" ?

A. I did not say that; I cannot remember.

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If I have said that it must be correct.

Q. Is that the reason why you did not tell him ?

A. I cannot remember; I cannot say.

Q. "I did not think of going to Velin and telling him that nothing had been left to Velin because deceased asked me not to disclose it to anyone" ?

A. That is correct. Why I did not disclose it even after his death was because of that.

Cross-examined by Mr. Wickremanayake.

I can swear to the fact that I went with Siriwardene in the car on the day in question. If it is suggested that I did not accompany him that day I deny it. I went to Wilson Silva's office at about 11 a.m. or 12 noon. I left my house at about 8 a.m. I took an oral message from the deceased; Mr. Silva gave me a letter which I brought back. When I went back to Siriwardene's house I did not discuss with him anything about what Wilson Silva said. As soon as I came into the room he told me and everyone else that he had written out a will and wanted us to sign; the others were in the hall waiting. Then he proceeded to execute the will. Sammy and I stayed back and the others went away. After that when I told Siriwardene about my mission I did not know whether Sammy was also present. I waited

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till the others went out to discuss with the deceased. I have no recollection at all whether Sammy was present or not when I gave the letter to Siriwardene. I gave the letter to the deceased, he read it and put it back in the envelope. Apart from asking me whether Wilson Silva gave me a letter the only statement to me by the deceased was that the envelope bore the name of Wilson Silva. Then he placed the envelope on the teapoy. At the moment he placed it on the teapoy, I think, Sammy Jayasinghe was not in the room. Sammy was there only for a short time earlier; I stayed back in the room a little longer. I was seated on his bed. That day he did not get off the bed in my presence.

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Evidence.
K. D. A.
Thomas.
Cross-
Examina-
tion.
—continued

On the 7th a car was sent for in the morning when Siriwardene got ready to come to Colombo. I was in the house then. An envelope was there on the teapoy. I cannot say whether I was in that room on the 6th or not. I said three of the witnesses went out of the room after the will was signed and Sammy Jayasinghe stayed behind after the others left, but I don't know whether he was inside the room; I have no recollection of Sammy's movements after the Will was signed. Sammy Jayasinghe went away after putting the document in the drawer. I said that before; I saw him doing that. He did that before I gave the letter to the deceased. Soon after he put the letter in I think he left the room. On the 7th morning when I went there the deceased was dressing and his suitcase was being packed by himself. There was no one else in the room; he took out the clothes from the almirah himself. Having packed he took out the will from the drawer. Then he picked up the envelope from the teapoy and put the will into the envelope, as it was, from the drawer. It was rolled up, not folded; he took it out and folded; that is how I observed the writing. I do not know how he put it inside the suitcase; the position was such that I could not see; the lid was raised. Some pieces of clothing were put into the bag; I cannot say whether the bag was full; when I saw the bag being opened inside the car, near the latrine, I cannot remember whether I saw the suitcase full. The bag was kept on the table; the lid of the bag was raised towards my side, so I could not see. I did not ask the deceased why he put the will into the bag. He had his almirahs there and the drawers. I was not informed by him that he was going to stay away, and I thought he was coming back. I cannot say whether he placed a sheet over the letter in the suitcase; the suitcase was closed by the deceased. I cannot remember whether he opened the bag near the latrine. I was on the front seat and the three others at the back. When we went to the Hospital I went into the ward. The patient was warded earlier by the others and I went in late. I went behind the stretcher alone, and the others had gone ahead to the ward. I was about 20 yards behind the stretcher. I cannot remember whether I got into the ward near the bed or watched from a distance. I stood by the entrance and watched. I could not see what was happening; the patient was taken to the end of the ward

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tion.
—continued

and I stood at the other end; someone prevented me from entering. Later on no one prevented me from going inside. Even if I had stood close by I would not have been at that time mindful of the will.

I said I was a nephew of the deceased. Lewis Vedamahatmaya was his brother-in-law. The three of us with Karthelis took the deceased alone; I don't know whose name was mentioned as the person admitting, but we went together.

I have given evidence in other cases, in my own cases. I have not been disbelieved. I was sued with 4 others for ejectment and damages in a case; I filed answer. Recently I bought a $\frac{1}{4}$ share of rubber land. The land in respect of which I was sued was a paddy land. In that particular case I have not given evidence. I have given evidence in a land case which I filed. I filed another case for damages in connection with some rubber property and got decree. My Proctor was Mr. P. F. A. Goonetilleke. In the case where I was sued my plea was that I bought that particular land for cash though I did not have possession.

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I left the hospital that day. I took the bag along with me; I did not find out whether the will was in the bag. When Karthelis told me that the will was missing I cannot remember whether I told Lewis to see it in the bag. The last place where anyone could have seen the will was in the bag. I cannot remember if I told Karthelis to find out from Lewis whether the will was in the bag. I did not ask Lewis whether any stranger had access to the bag. I don't know how many days the bag was in the house; it should have been there from the 7th to the 12th. I went to the hospital on the 12th and Karthelis took the bag there again; so the bag was in the house; several people visited that house. In the deceased's absence his room was kept closed; I don't know whether the bag was kept in his room or somewhere else. Before leaving the house the deceased took the will out of the drawer and put it into the bag. Then the car came. Karthelis came in that car; we did not go immediately after the car arrived. The three of us left almost together. I cannot say who carried the bag. Karthelis brought the car and came into Siriwardene's room. After the packing was over I was in the hall. I think Siriwardene was seated when the car came. I cannot say whether Karthelis came in, took the bag and went back to the car. After Karthelis came back with the car I did not see the deceased giving anything to Karthelis. If I see the driver of the car I should be able to identify him.

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K. D. A.
Thomas.
Re-exam-
ination.

Re-examined.

Mr. Siriwardene himself stepped into the car. On the way to Colombo the car was stopped for him to answer a call of nature; he himself went to the latrine and Karthelis followed him and supported him in spite of his protests. At the Maliban Hotel too both of them went out. At Dr. Jayasuriya's also it happened the same way. At the hospital he walked from the car a short distance into the hospital; he

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was not so feeble as to make it necessary for him to be carried. He was admitted into a non-paying ward. Before I left for the village I saw the patient. At the time I was allowed to see the patient I was more concerned with the patient himself than anything else. After seeing him I left for the village.

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Petitioner's
Evidence.
K. D. A.
Thomas
Re-exam-
ination.
—continued

I said about my being sent to Mr. Wilson Silva's and my coming back with an envelope. I was questioned about some blue markings on the envelope at the last trial.

10 Q. When you were re-examined did you explain how you came to make that statement ?

A. The letter I brought from Wilson Silva the deceased kept on the teapoy. On the 7th he put the last will into the envelope which was on the teapoy. When the patient was admitted into the ward I did not see the suitcase being opened. I cannot remember whether I saw him opening it near the car. I do not know whether anything was taken out of that suitcase.

20 It was mentioned to me that I was one of five defendants in a case. I was questioned as to whether I was disbelieved in that case. As a matter of fact I did not even get into the box, in that case. So I could not have been disbelieved.

Sgd. N. SINNATHAMBY,
A. D. J.

Further hearing adjourned for 27 and 28 November and 2, 3, 9 and 16 December, 1947.

27th Nov. 1947.

Trial resumed.

Appearances as on previous date.

30 Counsel on both sides wish it recorded that their Proctors went to Maliban Hotel and they found on the ground floor a room which might have been an abandoned closet, and that at the time of their visit the only closet for the use of customers was upstairs. The abandoned room still had its urinal, but it was not in use.

MR. WIJERATNE calls :—

DON SAMMY JAYASINGHE, Affirmed, 38, Trader, Wala-
gedera.

Don Sammy
Jayasinghe.
Examina-
tion.

I am running a hotel now in Colombo at the Custom's premises. I supply meals etc. to the officers working in the Customs office. I am their caterer. I knew the deceased Siriwardene. I am a man from

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Petitioner's
Evidence.
Don Sammy
Jayasinghe.
Examina-
tion.
—continued

the same village where Siriwardene lived and died. Before the beginning of 1942 I was in Colombo for a number of years. I was working at a printing press, and later I was the owner of a tailoring and shoe-making establishment, in Maliban Street. I know the Maliban Hotel. I know the Hotel where the deceased left his last will now. That Hotel is facing the tram line, on the Norris Road. There is no entrance from Maliban Street to that Maliban Hotel on Norris Road. On the Maliban Street there is an old hotel known as Maliban Hotel. That is not adjoining the Norris Road Maliban Hotel. Both places are still in existence and run under the same management. Perera is the Manager of the Maliban Hotel on Norris Road. That is the hotel where the will is said to have been left. I have not gone to Maliban Hotel on Norris Road. I might have gone once in a way to the Maliban Hotel on Maliban Street. Yes, I have been to that hotel. I was actually living in a hotel called Saraswathie on Maliban Street. I used to get all my meals and tea from there.

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Till the end of 1942 I had my tailoring establishment. I sold it because of the war troubles and went back to my village. When I went back to our village I resided in our mulgedera. My mother is alive. When I was there I did not come across the deceased. I knew him in Colombo. I knew him very well. I met him in the village. He sent me a message. Then I met him in the month of March, 1942. As a result of my meeting him he employed me under him as a clerk. I was his clerk and I had to keep accounts. I had to keep accounts, chiefly the check roll accounts of the people who were working there. The chief work being done there was rubber tapping, cultivation, and looking after the estates. I continued to work there and keep his accounts till he died. During all that time I was there in the deceased's house, Beddevidane Veda Mahatmaya and his hamine; that is the sister of the deceased, named Cecilia, were living in the house. There was no one else living in that house at that time. Velin was not living there. Davith was not living there. During the whole of the period I was there, neither Velin nor Davith ever came there. I have never seen Davith in my life. During the whole of the period I was there, I never saw him there. I have seen Velin. I have seen Velin outside during the life-time of Siriwardene. Velin never came to Siriwardene's house, during the whole period I was in that house.

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At that time I knew the petitioner Karthelis. He was attending to all the necessary details in the house. He was attending to the business of the deceased. Karthelis used to supervise my work also. He was a sort of Manager then.

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Q. With regard to matters connected with this Will, will you tell the Court how you first came to know that a will was to be written or had to be written?

A. It was in October, on the 5th of October, I remember the date, that the deceased got me to write the Last Will.

Q. How did he get you to write the Will. You must give the details?

A. He called me in the morning. He asked me to bring a pencil and paper and he asked me to write down what he was saying. Then I prepared a copy accordingly. That was the copy of a Will. I wrote it to his dictation. Then I read it out to him.

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Evidence.
Don Sammy
Jayasinghe.
Examina-
tion.
—continued

Q. How long did the dictation take?

A. He took about an hour or so to dictate the Will.

Q. Thereafter what happened, after you wrote to his dictation?

10 A. Then it was read out by me. He got me to read it out again and then he asked me to copy it down on a good piece of paper. Then I wrote it down on a good piece of paper.

(Shown document marked A). This is the document that I wrote out.

Q. Did you use your own language for this or is it the deceased's?

A. This is his own wording, not my wording. This is his own language.

Q. Was he a learned man or a man who could just read and write?

20 A. He knew Sinhalese very well and a little English. On the first occasion I wrote up to the end of the first paragraph in the will. (Witness marks the spot up to which he wrote with a cross in red pencil). Then once again he got me to read out what I had written a second time and then he asked me to keep it in the drawer. Then I put it in the drawer.

Q. What happened to your draft?

A. I gave it to the deceased. He did not give it back to me.

Q. Before you put it in the drawer did he see this document?

A. Yes, he saw it.

30 He gave the original to me but he did not give me the draft. I put the document in the drawer and attended to my work.

Q. What happened later?

A. Then later, about 1 p.m. he called me. He asked me to bring the Headman if he was available. Then I went to the Headman's house. The Headman was not at home. I came back and told that to the deceased. I left word with the Headman's wife and came back and told the deceased that the headman was not at home.

Q. Thereafter did you get a message from the deceased again and did he give you any instructions?

No. 25.
Petitioner's
Evidence.
Don Sammy
Jayasinghe.
Examina-
tion.
—continued

A. Yes. Then he called me some time later. Then he mentioned the names of these witnesses and asked me whether those people had come there. The names he mentioned to me were Peter Jayasinghe, Thomas Appuhamy, Andy Singho, Vel Vidane, and Parlis Goonetilleke. He asked me whether those people had come there.

I went out to see if those people had come. I found that three of them were present. Thomas Appuhamy was not there. I came back and told the deceased that Thomas Appuhamy was not there. Then he asked me to inform him after Thomas Appuhamy also had come.

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Later in the day Thomas Appuhamy also came and I went and told the deceased that Thomas Appuhamy had come. Then he asked me to call the four of them to the room. I called them and they came into the room. Then the deceased was in the room lying down.

Q. Why was he lying down?

A. He was leaning on the bed. He was lying on the bed. During the day he had been coming out and he was in the room also.

Q. What was the state of his health?

A. He was not very bad and he was not quite well also. He was taking treatment. At that time Dr. Ratnayake was treating him.

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Q. When these four witnesses came into the room were any precautions taken, what happened?

A. I also went into the room and he asked me to close the door, which I did. The four of them, myself and the deceased were then in the room.

Q. During the time you were taking down to dictation and wrote out a fair copy, did anyone come into the room?

A. No, no one came into the room at that time.

Q. Then during the time when you were in the room with the door closed with the four witnesses, did anyone else come into the room or knock at the door?

30

A. No. No one else came into the room or knock at the door.

Q. Then what happened?

A. Then the deceased told the others—"I am now lying ill not knowing what might happen to my estate. I have written my Last Will and I have summoned you now to attest that Last Will."

Q. Did they say anything in return?

A. They consented to sign as witnesses.

Q. What happened after that?

A. Then he asked me to take out the document which was in the drawer and to read it out. That is this document which is before me.

I took out the document and read it out clearly to be heard by the witnesses in their presence and in the presence of the deceased. Then the deceased asked me to inquire for the full names of the witnesses and to write them down. I did that. The three additional lines on this will, after the red cross mark, are the names of these four witnesses that I wrote down. Then I gave the document to the deceased after writing down those names. Then he signed the document. There was a teapoy near his bed ; keeping the document on the teapoy he signed it. There was pen and ink in the room.

Q. There is a table at which you sat and wrote this document ?

A. Yes, that writing table is always in that room, and it was always used by the deceased. That is the deceased's writing table in his bedroom.

He got up from his bed and signed this document. Then I signed this document and after that Thomas Appuhamy signed. The document was signed in the order in which the names appear on this document. All of us signed at the same spot, at the same teapoy. They all signed seated on a chair at the teapoy. I have signed ; Thomas Singho, Jayasinghe, Andy Singho and Goonetilleke have signed this document. Then the deceased told all of us—"Don't mention this to anybody ; this is a secret".

Then those four witnesses went away. Then he asked me to keep the document in the place where it was ; that is, in the drawer. I put the document in the drawer and I went away.

Thomas and I remained in the room and the rest went away. Of the two of us I went away first. Thomas was the last to be talking to the deceased. I identified this document in the presence of Mr. Alwis, Proctor, at Horana, at a later stage.

Q. Do you remember the time or the day the deceased left for Colombo, when he was sick ?

A. Yes, I remember that time. That was two days after the Last Will was signed that the deceased left for Colombo. I was present when he left. Carthelis Appuhamy, Baddevidane Veda Mahatmaya and Thomas Appuhamy went with the deceased.

After I put this Last Will in the drawer, after it had been signed, I do not know what happened to it. The death of the deceased was notified to his house. I came to know about his death. I came to know about it on the 12th of October. The body was brought to the house on the 12th night. I was continuing to work there.

Q. Did you remain the night also in the house of the deceased during the course of your employment ?

No. 25.
Petitioner's
Evidence
Don Sammy
Jayasinghe.
Examina-
tion.
—continued

A. No. I worked there only during the day.

My house was about a mile away from the deceased's house. I used to bring my noon meal to this house from my house.

Q. Did you meet Velun Siriwardene after that?

A. I met Velun Siriwardene the following day; that is on the 13th of October.

From March 1942 up to the 13th of October and there-after I used to go to the deceased's house regularly, working from morning till evening there.

Q. During that period did you meet Velun on a single day in that house? 10

A. No. He never came there. He came there only on the 13th of October.

He spoke to me when he came to the house. He also spoke to Carthelis.

Q. Can you tell us what was talked about; can you tell us, if you remember?

A. I do not remember about anything else; there was a talk only about the cremation.

Q. Were you entrusted with any part of the work in connection with the cremation? 20

A. Yes, I was asked to keep an account of the expenses.

Q. Who was to spend the money?

A. Carthelis gave the money to Velun Mudalali. I saw Carthelis giving the money to Velun.

Q. Why was the money given to Velun?

A. Velun had asked the petitioner whether there was money. He asked that in my presence. Then Carthelis gave Velun Rs. 500/-.

In the front hall, just outside this room there is an almirah, and there was money in that almirah. From that almirah he took the money and gave the money to Velun. At that time Carthelis Appuhamy had the keys and he opened the almirah and gave the money, and he asked me to keep the accounts of the expenses. 30

Thereafter Velun asked for the keys. Velun asked me to tell Carthelis to hand over the keys to him. I told that to Carthelis. I told Carthelis that Velun Mudalali was asking for the keys.

Q. Were you conscious at that time that the property had been devised in a particular way?

A. Yes, I remember it.

Then as I conveyed the message to Carthelis I told Carthelis that there has been a last will executed making him a beneficiary. I did not tell him where the Last Will was. Carthelis told me that this was not the time to consider those things; that we could see about those things at a later stage. He said that we had to look into the things in connection with the cremation and those matters could be looked into later. He had the keys with him. Then I again told Carthelis that Velun wanted the keys. I conveyed the message from Velun to Carthelis and I mentioned about the will. Carthelis said that we must think of the death and the burial and he said nothing about the keys. I told him twice; he did not give me the keys. Then Velun himself went and asked for the keys. Then there was a talk between them. It seemed an unpleasant talk. Carthelis Appuhamy said "I have been working under this deceased all this time; on the 15th when all these things are over, we can see about that and make some arrangement". He said that when the funeral arrangements were over they could see into those things.

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Evidence.
Don Sammy
Jayasinghe.
Examina-
tion.
—continued

Then Velun insisted on having the keys. He said "You have been working when my brother was here all the time, but now I am the chief person here, and all of you will have to listen to my instructions".

After that talk Carthelis said that he will not hand over the keys to Velun and that he should hand over the keys to the Headman. Then the Headman was summoned and he came there and the keys were handed over to the Headman. The Headman took all the keys, closed all the almirahs, put the bunch of keys in a drawer, and he locked that drawer, and took the key of that drawer and he went away. It was the Headman who closed all the doors of the almirahs and put all the key of the almirahs in one drawer and took the key of that drawer and went away. The cremation was over on the 15th of October.

After the cremation I went to meet Mr. Alwis, and I swore an affidavit with others. I remember the date on which I went to meet Mr. Alwis. (Shown P 18). This bears my signature. All the five witnesses who signed the last will were present, that is, myself, Thomas, Peter Jayasinghe, Andy Singho, and Gunatilleke. This affidavit was prepared by Mr. Alwis and it was read out to us.

Q. Did you know at that time what had happened to the will?

A. I learnt that it was not there. I knew that it had not reached the hands of the Petitioner.

(To Court:

Q. Did you know what had happened to it?

A. No, I did not know.)

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Petitioner's
Evidence
Don Sammy
Jayasinghe.
Examina-
tion.
—continued

I know John Perera of the Maliban Hotel now. I did not know him then.

I did not know Thomas, Andy Singho, Gunatilleke and Peter Jayasinghe before that. I had seen them but I did not know them well. They are people who had been associating with the deceased. I knew the fact that they were people who were associating with the deceased, and I had seen them frequently in the house of the deceased.

I continued to be in the house under the employment of the respondent till about December, that year. He discontinued me after that. 10

Q. Did he give you any reason why he discontinued your services?

A. Yes, he gave a reason. He said that there was some disturbance amongst the rest of the relatives that this Last Will had been executed; then he said that he would take me back later when this disturbance was over.

Don Sammy
Jayasinghe,
Cross-
Examina-
tion.

Cross-examined.

I am 38 years old now. I have followed several occupations up to date. I was first intending to become a Buddhist priest and I was in robes. I had a good training in a temple. I was fairly well versed in the Sinhalese language. I was in robes for about five years. 20

Q. As a full fledged priest?

A. I was an ordained priest. I was an ordained priest for not more than a year.

Then I became disgusted with the life of a priest and I left the temple and disrobed myself. It was not because somebody in the temple became disgusted with me that I left the temple. I did not run away. I told my tutor priest, and I told my home people and I left the temple. Then I was at home for about one year doing nothing. 30

Q. What made you get disgusted with this temple life?

A. I do not like to say anything ill of my tutor. My tutor priest was a bad man. I am telling it now because it is necessary to say it; I gave up my robes because my tutor was bad.

Q. Was it not possible for you to go to some other temple?

A. Because I got out from that place I thought that there may be troubles in other places also and I did not like to enter another temple. I do not know, but I thought that it might be the same in other temples also. 40

I said in the earlier proceedings that I was getting tired of being a priest. I do not know how that has been recorded in the proceedings.

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Evidence.
Don Sammy
Jayasinghe.
Cross-
Examina-
tion.
—continued

After one year's residence with my family, I had a shop owner friend of mine in Colombo, whom I went to see in Colombo. I met him and he employed me in his shop. I was in his Book Depot and it was there that I learnt printing work. Then I became a compositor. It was a Sinhalese Press. I was helped in my work as compositor because of the good knowledge of the Sinhalese language I had gained in my training as a priest. I was a compositor for about four years. I worked at the printing press of Ekanayake & Co. at 5th Cross Street. During the few years I was working there, there was no new special knowledge that I gained. I only had to connect up letters for printing. There were no facilities for improving my knowledge. I was only setting up types. I did not become disgusted of being a compositor.

Then I got an offer of a bigger pay. Then I went to the Dinamina Office. I became a compositor in the Dinamina Office. I got a bigger pay there. I worked there about eight years. During that period my salary increased from time to time. During about twelve years I did about the same kind of job. Then gradually there was a reduction in the wages I was getting at the Dinamina Press. The wages of all the employees went down gradually. I cannot give the exact year that that happened. I think it was in 1931 or 1932.

I do not remember the exact year I was born but I am about 38 years old now. If there is any need I can find out the exact date of my birth. There was no necessity for me to find that out up to date. I cannot remember the year I was born. I am married. I remember the year I was married. I married in 1939, latter portion. It was in the latter part of December. I cannot remember the exact date of my marriage. I was about thirty years old when I got married.

I was ordained when I was twenty years old. I was ordained when I had passed my 20th birthday. It may be that I was ordained in 1929 or 1930. Yes, I was ordained in 1929. I must have given up my robes in 1931 or so. I was in my house doing nothing till 1932. I cannot say exactly how long I was in the Ekanayake Press or how long I worked in the Dinamina Press. I said earlier that I was four years in the Ekanayake Press. It may be less than four years that I was there. It might be three years. It is three years, I must have worked with the Ekanayake Press till about 1935, but that cannot be because I said I was eight years in the Dinamina Press. I cannot say exactly for how many years I was in the Dinamina Press. I cannot say even roughly how long I was in the Dinamina Press. I know that I was with the Dinamina Press more than one or two years.

Q. Is it false that you were in the Dinamina Press for eight years?

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Petitioner's
Evidence.
Don Sammy
Jayasinghe.
Cross-
Examina-
tion.
—continued

A. By eight years it should mean that that is the full period I had been engaged in printing work. It may be less than eight years that I worked in the printing presses. It may be less by two or three years.

I did not leave the Dinamina Office. It may be that I left the office of the Dinamina in 1932..... No, it cannot be 1932. It should be more than 1932. It may be about 1934 or 1935 that I left the Dinamina Office.

Sgd. N. SINNATHAMBY,
A. D. J.
27-11-47.

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(Adjourned for Lunch).

27-11-47.

(After Lunch.)

DON SAMMY JAYASINGHE, Affirmed.

(Cross-examination continued).

During the time I was serving in the Dinamina I set up a tailoring establishment; that is not more than a year before I left the Dinamina. I first started it by engaging the services of another person while I was still at the Dinamina, and this had nothing to do with my other work. I was running this establishment when I got married in 1939; then I was not in the Dinamina. I sold the tailoring establishment in December 1941 and went to my village in January.

20

Q. Did you say at the previous trial "In January 1942 I sold what was a losing business" ?

A. It is not correct; not that I was losing but there was not much business because material did not arrive at that time such as leather, textiles. The establishment undertook shoemaking also. Because there was less business and expecting a loss I sold it. From this business I made a net profit of Rs. 200/- and sometimes Rs. 250/- a month.

30

Later I took up employment with the deceased for Rs. 25/- a month without food. I did not consider that this employment was so low although my income was lower than previously. I was doing nothing in the village and as I could do this work respectably I accepted it. I have children.

Ordinarily I write in two ways, in round characters and slanting characters. I use round characters when I write checkrolls, names, and use slanting characters when I write long passages and letters. Before October 1942 I had not signed a Sinhalese Will. I knew nothing about the number of witnesses necessary and other particulars. My tutor priest did not write a Will of this type.

40

Q. Have you seen any of the deceased's documents written in the same style as "A" ?

A. No, I have not.

I came to know that Karthelis would receive the bulk of the deceased's property and he would be the executor and his two sisters would be the other heirs. Deceased's acquired property did not go to any other member of his family. I knew that under the last will Velin would have no rights to his property. I did not keep a separate account for the deceased's inherited property. I only kept accounts for the deceased's income from paddy, coconut and rubber lands. Deceased used to receive 100 or 150 bags of paddy out of a harvest; there were two harvests a year. At that time paddy went up in price to Rs. 7 or Rs. 8 a bag; there were times when the price went up to as much as Rs. 40/-. Sometimes the deceased worked the fields by employing his own labour and sometimes allowed others to work and received a share. The 100 to 150 bags a harvest is what he received as his share. When he himself work the fields I cannot say how much he got. Sometimes deceased received a half share and sometimes $\frac{1}{3}$, because all the fields are not equally fertile, and it depends on the condition of the land. I cannot speak to the money value of the coconut crop; once in two or three months 1,000 to 2,000 used to be brought. Pluckers were paid then and there and the whole crop was brought. I did not keep account of the money but only the quantities.

(Shown account for December 1941 in R 13).

Q. Is this in your handwriting ?

A. It is my handwriting.

(Later) No, it is not. I cannot say. I don't remember. I don't write much now and I cannot say whether this is mine or not. (Shown account for January 1942). This is my handwriting. (Later). This is not in my handwriting. (Shown A). This is in the handwriting of the deceased. Several people have written round characters in some books; that is why I cannot speak to the writing. (Shown the next page for January in R 13). This too is not in my handwriting. The writing in February is also not mine. The next page for February too is not mine. (Shown page for March 1942 in R 13). This too is not mine. I joined the deceased's service in March 1942, after the 20th. I did not write anything in March. I started work in April 1942. A boy from Kalutara was there in March and left; I don't know his name.

(Shown account for April in R 13). This is in my handwriting. I think I kept two such books. I kept R 13 from April 1942 and all the subsequent pages are in my handwriting. The October entries are

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also mine up to the 17th item. I kept these books till December 1942, that is till three months after the deceased died.

(Shown R 14). The page for April 1942 is not in my handwriting. Nothing in R 14 is mine.

Q. Did you say at the last trial that the entries up to December in R 14 were in your handwriting?

(Witness refers to the entries of October 1942 and says 'This is in my handwriting'). Only these two books were written by me. I was asked to copy out the checkroll names from another book to this book R 14. There is another book for rubber which gives the stocks in the store and in the smoke room. (Shown R 6). This is not the one; this is some other account book. I did not keep this. (Later) My writing starts from page 37 of R 6, September 1942. I started work in April 1942. 10

Q. After you obtained employment were you the only clerk working on these books?

A. I was the only clerk. The accounts would not appear in anyone else name after that. I had only to note down the income.

What I told the previous Judge was that Rs. 3,000/- a month was the income from all sources. I remember that quite well. 20

Q. Did you say "Sales of rubber brought in about Rs. 3,000/- a month; he did not have much expenses"?

A. I did not say that the income from rubber alone was Rs. 3,000/-. What I said was that Rs. 3,000/- was the total income from all sources which was the approximate figure that occurred to me then.

Sgd. N. SINNATHAMBY,
A. D. J.

Adjourned till tomorrow.

28-11-47. 80

Appearances as before.

DON SAMMY JAYASINGHE, Affirmed, Recalled.

(Cross-examination continued).

I am recorded as having said at marginal 58 of the earlier trial that the sales of rubber brought in about Rs. 3,000/- a month.

Q. Do you state that your evidence was wrongfully recorded at the last trial?

A. It is possible.

I was referring to the income from all sources.

(Counsel on both sides are agreed that any statements of a witness at the previous trial which are specifically put to a witness be treated as having been read and admitted in evidence, without their being specifically marked).

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10 I admit that the deceased had a fairly large income. I referred to Rs. 3,000/- as the gross income from all lands. I cannot assess the net income from all sources. I have no idea of it. I did not keep accounts of the proceeds of sale of goods. I only kept accounts of stocks of commodities: number of sheets in stock and the number of sheets given for sale. I cannot state the number of pounds of rubber the deceased got a month from his estates. Now I cannot remember. The figures were in the books.

20 My functions as a clerk were not so heavy although I worked every morning from 6-30 a.m. to 5-30 p.m. I worked from 6-30 or 7 a.m. to about 5 or 5-30 p.m. There was no work. It was stipulated that I was to be there whetehr there was work to be done or not, and I was there. I waited in the office room for work to turn up. Karthelis supervised my work.

Deceased was a man of simple tastes. It did not appear to me that deceased spent much at home; and he was not at home very much. If he went out in the morning he returned in the evening. I do not know whether he carried notes with him, but I noticed that he always carried a suitcase. I am certain that he had no bank account, but I cannot say definitely where he kept the money. I do not know whether he made income tax returns.

30 When I worked for Welin after deceased's death, Welin might have received the income that deceased received previously. From the account of stocks I maintained for him, Welin appeared to receive a large income.

I know that if deceased died without leaving a will Welin would come in for a share of the property as a brother of the deceased. It was on that footing that he took charge. If the deceased had left a will I realised that Welin was a complete intruder.

40 Welin asked me whether deceased had left a will. I told him that whatever the deceased told me during his lifetime to do I did and now that I was employed under him whatever he told me to do I would do. I did not answer his question. I made this reply because deceased had asked me earlier not to mention anything about the will. From the answer I gave him it was not to be inferred that I was prepared to deny the existence of the will. If anything concerning the

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last will was mentioned I would not have said something. If I was questioned I would have mentioned about the execution of the will. After I gave my reply to his earlier question he did not question me further.

When he asked me whether the deceased had left a last will I knew that the true answer was yes, but I could not give that answer—I did not mention it because there had been trouble already regarding the keys.

Welin questioned me about the keys about 3 or 4 days later; about 3 or 4 days after the cremation. When Welin asked Karthelis for the keys twice there was no threat of killing. Welin is an old, quiet person.

10

Q. It is not the interest of secrecy that prevented you from mentioning the truth to Welin ?

A. That is one reason.

The property had not yet gone to the true owner. The testament had not yet reached the hands of the person to whom it should have gone. In the meantime if there was a disturbance it would not have gone to the person to whom it should have gone. That is the reason why I did not mention the will.

20.

If the will was never found I was willing to continue employment under Welin. I was concerned with my job. My salary was Rs. 25/- a month. The Rs. 25/- there was more valuable to me than Rs. 200/- in Colombo.

Q. This is correct isn't it that you gave Welin the impression that there was no will ever executed and that he assumed that he was the rightful administrator of the estate ?

A. I had no reason to oppose him.

Q. Did you intend to create the impression in Welin's mind that he was the rightful administrator of the deceased's estate ?

30

A. No. That was not my intention.

Q. What impression did you intend to create in his mind by your answer ?

A. That thought did not cross my mind at the time. If the executor was prepared to take steps in regard to that will I did not mind his doing so.

If Welin came forward and took steps in the matter I had no objection.

Karthelis left after that. Then Welin came there and asked me that I should look after matters and do work as he desired.

Q. Did you ever give the impression to Welin, at any stage of the three months when you worked under him, that, in point of fact, a will had been executed under which he had no right of any kind?

A. I did not give that impression to him.

I said at the last trial that when Welin asked me whether there was a will that I worked loyally under the deceased and that now I will work under him. That is correct.

10 Karthelis left the place on the 15th. I told him on the 13th that there was a will, but he said that he was not interested in discussing wills at that stage. Out of respect for his feelings I did not discuss the matter with him again on that day. I have no recollection of any conversation with him thereafter. I do not know where he went on the 15th. He was present at the cremation. Immediately after the cremation he left. I cannot say whether he left from the crematorium or whether he came to the house before leaving. I did not meet him at the house after the cremation.

20 I cannot say exactly when Welin asked me whether a will had been executed; whether it was before or after the 15th. Welin was the first person who asked me whether a will had been left. Neither the deceased's sisters nor Lewis asked me about a will at this time. They asked me a few days later.

Up to the time Welin asked me about the will I took no interest in the will or where it was to be found. Nobody, at the time Welin asked me about the will, had told me that it could not be found. I did not know whether Karthelis or anybody else had found the will.

30 On the 19th October Karthelis asked me to go and see Proctor Alwis of Balapitiya. I asked him why. I did not know that it was necessary that I should swear to an affidavit. When I asked him why I was wanted by Proctor Alwis he told me that the last will had been lost and that he may have wanted to know something about it. That is not the first intimation I had that the will was missing. Even earlier I had come to know about it from either Thomas Appuhamy or somebody of that party. I cannot remember when. It was after the cremation. Even if Thomas did not come to the house, I met him sometimes at the Bazaar. As far as I remember I heard that the will was missing after Welin questioned me about the will. I did not give Karthelis or any of his party assistance to search for the will.

40 (Shown R 40) The room marked B is my office room. Room marked A is that in which the deceased lived. C is the middle hall. B is where I used to stay from morning till evening.

In order to go from my office to the deceased's bedroom, I had to enter the front verandah, then go through the middle hall into the deceased's room. The front verandah is marked D.

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If deceased who was in room A wanted me to go up and speak to him, sometimes he sent a servant sometimes he shouted. On the 5th October he sent a small child; I cannot now remember the name of that child. The child was an outsider. He was a servant boy who did the marketing.

I knew that deceased took medicines every few hours. Baddevidane Veda (Lewis) gave the medicine. I did not see Lewis administering the medicine but I know that that was the arrangement.

Deceased suffered from stomach trouble. Deceased's illness was not so distressing. His mind was quite clear. Deceased got up from bed and visited the lavatory. Deceased used a specially constructed lavatory behind his room about 7 or 8 yards away from the room and away from the house. That would be somewhere about E on R 40. During the period of his sickness I have seen deceased regularly visiting the lavatory, unaided; nobody helped him or accompanied him. Deceased got out of his room into the middle hall, then into the side verandah F (which is an open verandah) and from there into the compound. There are two steps leading to the verandah F. There is no door leading from verandah F to my office B. I could not see from my office to the deceased's room.

I do not always stay inside my office room; sometimes I come out. When I came out I sometimes saw him. I also used to go to the rubber store and other places in the house.

During the deceased's illness I saw him go to the lavatory on about 4 or 5 occasions. I did not meet him several times a day. I could not say exactly how many times he went to the lavatory during his illness.

Before the 5th October deceased did not speak to me about his desire to execute a will. I was not on terms of intimacy with him. On the 5th October he sent for me after 9 a.m. He sent the servant boy whose name I do not remember. At this time it was not known that deceased would shortly be going to Colombo.

Nobody was in the deceased's room when I went in on that occasion. I was there on the first occasion for about 1½ hours. I did not take pencil and a piece of paper with me. The preparation of the draft and the preparation of the will took about 1½ hours. When I first went in he dictated and I took down a rough draft. The draft was completed by me in the deceased's presence. I wrote to his dictation. He read the draft and altered the words. All this took some time. May be over an hour. Deceased was lying in bed throughout that period.

On the previous occasion nobody else came into the room. On that occasion the door leading to his room was closed but it was not not locked.

Q. Either Lewis or his sisters could have entered the room?

A. The sisters would not come even to the hall unless they were called by the deceased.

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During this time the boy was employed for the purpose of sending for anybody. If he wanted to speak to one of his sisters, the deceased would send the child. Whilst the deceased was ill the child was in the hall all the time. The child may have been in the hall during this hour. The child was always within ear shot of the deceased. During this hour there was no necessity for the deceased to go to the lavatory.

10 Q. Did he tell you that he wanted to write a will because he was feeling ill?

A. No.

This is the first time I was asked to do anything like this. At this stage he had not sworn me to secrecy. After he made the last will and after he put it into the drawer he asked me not to speak about it to anybody. After the last will was attested and put in the drawer he swore me and the other witnesses to secrecy.

20 I did not take the rough draft and go back to my office to make a clean copy. I made the clean copy in the deceased's room. I did it with great care. I compared the draft with the original. The deceased himself read the final draft. Then I left the room. When I left the room I did not take either of the drafts with me. I did not leave both copies with the deceased. When I had made the fair copy deceased left the rough copy and asked me to put the fair copy in the drawer. The drawer was that of the writing table. The drawer was not locked. At that time the drawer was not locked, but there was a bunch of keys on the table.

I handed the rough copy to the deceased. I do not know what he did with it.

30 Up to the time I left the deceased's room the deceased never discussed the will, as to who was to attest it or sign as witnesses. I left the room at about 11 a.m. I was in that room altogether from about 9 a.m. to 11 a.m.

When I left the room I did not meet any of the deceased's sisters or Lewis. I met Lewis after that; but he is always in the house. He stays there. But I did not meet him when I left the room.

I may have met Lewis between the preparation of the 1st draft and the making of the clean copy, but I did not tell him anything. I did not mention the will to him because I was asked not to speak about it to anybody.

40 The will took one and a half hours to prepare. During this time I did not meet Lewis,

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I did not tell the court that I was not sworn to secrecy until the will was finally prepared and put into the drawer.

Until the will was signed I did not meet either of the sisters or Lewis. At this time only one sister was living in the house.

After the preparation of the draft I went back to my office. I put the fair copy of the will into the drawer and went to my room.

Karthelis arrived with the doctor before 12 noon, between 11 and 12 noon. I did not speak to Karthelis when he came. The doctor did not wait more than 10 or 15 minutes. Karthelis came with the doctor in the doctor's car and when the doctor left he accompanied the doctor. I did not pay much attention to this. I cannot say at what time Karthelis returned again. 10

I did not want to find out what the doctor's view was about the patient's condition. I was not interested.

The deceased sent me to call the headman at about 1 p.m. after the doctor had left. The deceased did not tell me why he wanted the headman. I did not in any way connect the request to see the headman with the proposed execution of the will. As far as I know the headman did not visit the place frequently. This was the first time I was sent to fetch the headman. I did not ask the deceased why he wanted to see the headman as he had just seen the doctor. Usually I do not ask these questions. It did not occur to me as strange. 20

The headman's house is close by; about 100 yards from the deceased's house. The headman was not at home. I did not ask where the headman had gone. I left a message telling the headman that the deceased wanted him. I returned and told the deceased about this. He made no further request for me to go and fetch anybody else. I have no recollection of seeing any servant going out to fetch anybody. There were servants; the tappers and carters were there in the garden. 30

I cannot remember seeing the boy going out and fetching any of the tappers or carters.

People known to the deceased came daily to see him. On this day also people arrived to see him. This day was no different from the other days.

Deceased gave me certain names and asked me to see whether those persons had come. They were people who came there frequently. I did not know them by their full names. Deceased specifically mentioned their names and asked me to find out whether they had arrived. I left the room to find out whether they had arrived because I did not know the exact names of the people. When the deceased gave me the names 40

I went out to see whether these particular people were present. At that time there were other people also on the verandah. Several of the people who work there were present. I cannot remember whether anybody other than the servants was present in the house.

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After the tapping of the rubber trees the tappers wait on the verandah until the time for collecting the latex arrives. Sometimes collection of the latex was not completed until 10-30 or 11 a.m. Thereafter they leave. At 2-30 in the afternoon they were idling and talking on the verandah.

10 I found the attesting witnesses on the front verandah marked "D" on the sketch. At 2-30 I found all the attesting witnesses, except Thomas seated on verandah "D". Only Parlis Gunatilleke and Handy Vel Vidane were to be found at the time the deceased asked me to search for them. I went back and told the deceased that only these two were present. Then he told me that when Thomas Appuhamy arrived I was to speak to them. I waited in my office.

20 Thomas arrived at about 3-30 or 4 p.m. Peter Jayasinghe had come earlier and gone out. About the time I went out to see whether the witnesses had arrived he came in. I mentioned to the deceased that Peter Jayasinghe also was present.

Sgd. N. SINNATHAMBY,
D. J.

(Adjourned for Lunch).

28th November, 1947.

(After Lunch).

DON SAMMY JAYASINGHE, Recalled. Affirmed.

(Cross-examination continued).

30 Q. When you went into the deceased's room on the 5th of October, either at 1 o'clock in the afternoon or at any later time, did you see the rough copy of the will which the deceased had taken from you?

A. I did not see it. The last time I saw it it was in the hand of the deceased.

I did not tell Carthelis or anybody else at any later date that I had left the rough draft in the deceased's hand. I cannot remember having said that to Carthelis.

I do not know what happened to the original copy of the will after I left it in the drawer on the 5th of October. I was in the house

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on the 12th and 13th of October. I was still going to the house as usual and attending to my work, even when deceased was in hospital, before he died.

Q. You had no reason to think that the deceased had taken the will to Colombo when he went to Colombo?

A. On that day I did not know; later I came to know.

When he left I had no idea that he was taking the will. When the deceased was taken to Colombo, one sister of the deceased remained in the house. I came to learn that the deceased's condition was such that the doctors had advised that the deceased should remain in the General Hospital, Colombo. After that Carthelis came back to the house. I was in the house when he returned.

10

Q. Then you realized that the last will of a person who was so seriously ill was a very valuable document?

A. At that time I did not know that he was in a critical condition.

Q. Before the deceased died you learnt that he was getting worse?

A. No, I did not come to know that.

Q. Did it not occur to you to inform Carthelis or any of his relations that there was his Last Will in the unlocked drawer?

20

A. I did not tell anybody about the Last Will because the deceased had sworn me to secrecy. Even if the Last Will was lost I was only concerned about keeping the matter secret as desired by the deceased.

Q. Even after the man died did you go and look for the Last Will to see if the Last Will was in the drawer?

A. No, I did not do that.

Q. When did you tell anyone that you had left that Last Will in the drawer?

30

A. I have no recollection as to whom I first gave that information. I first informed Carthelis about the Will on the 13th of October. I did not tell him that I had kept it in the drawer, but I told him that the deceased had left a Last Will.

Q. When did you tell anybody that you had left this Last Will in the drawer?

A. I did not tell anyone. My recollection is that I did not tell anyone. I never told anybody that I left the last will in the drawer until I came out with that fact in the court.

Carthelis met me on the 19th of October and asked me to come to the office of Mr. Alwis. I used to work there till the 19th of October. I continued to work there as I was working there during the lifetime of the deceased. Nobody was occupying the room of the deceased at that time.

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Q. When you discovered on the 19th of October that the last will was lost, did you then tell Carthelis that you saw the last will there on the 5th of October ?

10 A. I did not tell him that, but at that time several persons had come to know that the last will had been taken to Colombo.

Q. Who told you that ?

A. Someone there told me that but I cannot recollect now who it was who told me.

I did not tell anybody about my putting the last will into the drawer. I did not at any time go and look in the drawer to see if the last will was there. I saw Proctor Alwis about the affidavit only on one occasion. That was the occasion I signed the document. I gave him instructions for the preparation of the document. When I went to see him he asked me whether the deceased wrote a last will, and it was after he spoke to me that he prepared the affidavit. I did not tell Mr. Alwis that the last will was written because the doctors had advised the deceased to enter hospital. I cannot remember having told Mr. Alwis that. I do not know how it came to be so stated in the affidavit. I do not know whether that is the truth or not. I told Mr. Alwis that the document was taken down by me to the dictation of the deceased. I did not tell Mr. Alwis that I had prepared the document to his directions. I said I wrote it to the dictation of the deceased.

30 After the 19th of October I returned to Velun and continued to work under him. I had no further discussions with the people who were interested in finding the last will. I was not interested in that matter.

Q. When did you first hear that the will had been found ?

A. I was asked to come to Court by Carthelis. So far as I remember it was then that I came to know that the will had been found.

40 Carthelis asked me to come to court. I did not receive summons. I came to Court thereafter. Nobody asked me as to what evidence I could give before I came to Court to give evidence. Nobody asked me before that about Carthelis giving Rs. 500/- to Velun for the funeral expenses. I cannot remember anybody having asked me about that.

That sum of Rs. 500/- was given to Velun in my presence by Carthelis and it was I who noted down the expenses incurred in connection with the funeral. It was I who noted down the expenditure on

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the instructions of Velun Mudalali. I have not noted down anywhere that this money was taken by Velun from Carthelis.

(Shown R 12). This is in my own handwriting. I can definitely say that this is in my handwriting although it was written five years ago. Usually I write a slanting fist so I can recognize this as my writing. This is headed "Statement of all expenditure in connection with D. F. Siriwardene, deceased". There is nothing on this document to show from whom Rs. 500/- was received. It does not show that the money was received from Carthelis.

I came to know the deceased for the first time about January or February, 1942; about a month or so before I took employment under him. Even before that I knew him. I knew him in the village. I knew him at the time he was the Headman of the village. He is a man of the village. I knew him for a very long time. I had spoken to the deceased and known him for many years. I had known him long before 1942. 10

Q. Did the deceased follow your career from Buddhist monk, to printing press, the tailoring establishment, etc. ?

A. Yes, deceased knew that I did all those jobs. I do not know whether he always kept my address. He used to come to my tailoring shop and see me there. One day I met him accidentally in Colombo. Then he inquired where I was living and I told him. On that occasion I met him on the road. He was alone. He asked me where I was living and I gave him my address. After that he visited me. I think he came and saw me on two occasions whilst I was there. I knew that the deceased was staying in the village. When he came to Colombo he did not tell me where he was staying in Colombo. 20

I used to frequent the Maliban Hotel in Maliban Street. That is not the Maliban Hotel in Norris Road. I now know that the deceased used to stay in the Norris Road Maliban Hotel whenever he came to Colombo. I did not know that at that time. I have never gone to the Maliban Hotel in Norris Road; not even with a friend. 30

The Maliban Hotel in Maliban Street had no other name. There is a hotel called Saraswathie Hotel opposite my shop on Maliban Street. I stayed there and took my meals there regularly, but occasionally I may have gone to Maliban Hotel in Maliban Street.

Maliban Hotel on Maliban Street and Maliban Hotel on Norris Road are not more than a number of fathoms away from each other. The distance from one Maliban Hotel to the other Maliban Hotel is not more than a few fathoms, as the crow flies. 40

Q. You knew that I was asking you the distance from one Maliban Hotel to the other ?

A. Yes.

Q. Did you not realise that I wanted to know the distance for a person to go from one hotel to the other ?

A. No. Now I understand it in that way.

Q. From your establishment to walk to the Norris Road Maliban Hotel takes how long ?

A. About ten minutes. One has to go round. One has to get into Front Street, come along Front Street, get into Norris Road, and then come along Norris Road some distance. It may be about a quarter of a mile to come round that distance.

10 I never met John who was working in the Norris Road Maliban Hotel till I gave evidence in this case. After I left Velun's employment I started a new employment. That was a trading employment. I am running a tuckshop and that is the trade I am carrying on even now. I am doing that business from the time I left Velun; that is, about four years. I am running a hotel there and I am supplying meals to different people. My hotel is in the Customs premises. That is also a trade. To call a man running a hotel or tuckshop "velenda" is correct. Yesterday I said that my occupation was "trader". I used the word "velendama". I did not do any other trade after leaving
20 Velun, before doing this tuckshop business.

To Court; I went to Proctor Alwis' house and signed the affidavit. At that time I was under the employment of Velun. When I came back I did not tell Velun that inquiries were afoot about this will. I did not tell him anything about the will after I came back from Proctor Alwis. I kept quiet about my visit to Proctor Alwis.

Q. Why did you not tell Velun about it ?

A. Because the deceased had asked me to keep it a secret. I always kept it a secret. I did not divulge it to anybody.

30 I do not know why the deceased asked me to keep it a secret. The object of the will is that it might be made known at the death of the person who made it.

Q. So, what wrong was there if you mentioned it to someone ?

A. At that time the will had not come into the hands of the executors. So I thought I should keep silent about it.

Q. Did you tell Velun why you were going to Balapitiya ?

A. No. On the previous day I told him that I would not come to work the next day, and I went to Balapitiya.

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tion.
—continued

It was my object not to tell Velun anything about it. I thought that Velun would create trouble; so I kept it all to myself.

Sgd. N. SINNATHAMBY,
A. D. J.
28-11-47.

Further hearing on the 9th and the 19th of December, 1947.

Intld. N. S.
A. D. J.
28-11-47.

19-12-47.

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Appearances as before.

With regard to the D. C. Kalutara cases it is agreed that they be produced in evidence without the Secretary or an officer of the District Court, Kalutara, being formally called. The records will remain here till this case is finally decided.

DON SAMMY JAYASINGHE, Affirmed.

(Cross-examined by Mr. Wickremenayake).

I said on the last date that it was on the morning of the 5th October about 9 or 9-30 a.m. that deceased sent for me to make the draft will. The discussion over it, making the draft and fair copies took about 1½ hours. No one came into the room during that period of time. I also said that Karthelis arrived with the doctor about 1 or 1½ hours after this work was over. Before the doctor arrived that day there was no talk about the deceased going to hospital. I cannot say whether it was only after the doctor arrived that day that the deceased thought of going to hospital; I know nothing about the circumstances which made him go to hospital. The doctor came to see the deceased two or three times before that, daily. Before the doctor attended on him the deceased was treated by the vedarala. Even on the 5th October the deceased was in a position to go about in the house and outside. I could not see anything very wrong with the deceased up to the 5th October; apart from there being an indigestion there was no talk that the deceased was having any serious disease; that is how I understood the situation, I do not know how the deceased himself thought of it; there was no discussion about it with anyone to my knowledge. He used to be ill before this after I came to know him, but not for longer periods than this last illness; that is prior to 5th October.

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I remember the incident when Velin asked for the keys from Karthelis; on that occasion Karthelis did not hand over the keys. On

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that occasion I told Karthelis about the execution of the will. (Counsel refers to witness's evidence of the previous trial).

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tion.

Q. You stated that you told Karthelis that he was the executor of the will and the principal beneficiary?

—continued

A. I may have said so; I do not remember now what I stated so long ago. What I said then would be more correct than what I state now because my mind was fresher. My statement then was a true statement.

10 Q. You also said this: "I did tell him that he was the executor and I also asked him to get hold of the Will"?

A. If I have said so I admit the correctness of it. On that day, the 13th, I conveyed the message twice to Karthelis and for the third time Velin himself asked for the keys in my presence. Still it did not appear to me that Karthelis made an effort to find the will. Nor did Karthelis ask me where the will was, nor do I remember his asking me how I came to know about the will or any such details.

20 On the 15th I attended the cremation on the same grounds. It is the custom after the cremation for friends and relatives to go back to the deceased's house. As usual I attended the deceased's house that day and went back to the house after the cremation. It was late in the evening when the cremation was over and I waited there till about 10 p.m. I do not remember having spoken to Karthelis in the house after the cremation; nor do I remember whether Karthelis was there in the house after the cremation was over. But at the cremation itself I saw him. After the cremation all the people left the scene, and so did Karthelis. Karthelis was living in that house and that is where he would have normally gone after the cremation. I do not know whether he slept in that house that night. After the cremation I went to the house,
30 stayed there about two hours and assisted in serving refreshments to those who had come there. I cannot recollect having seen Karthelis doing that work. Velin's sons were there and other relatives also whom I do not know; Gomes was there and Amarasinghe, who were employees with myself, doing this work. Perhaps because Velin took the keys from Karthelis against his will Karthelis might have gone away in displeasure. I have no recollection of having met Karthelis after the cremation that evening, but I remember having met him on the almsgiving day 7 days after the death, i.e., three days after the cremation. That is the 19th. On the 19th he spoke to me about the Will. He may have
40 asked the other witnesses and got the details earlier. He told me the Last Will could not be found, that he had told the J.P. about it and that the J.P. had asked him to come there along with the witnesses. Therefore he requested me also to go there on the following day, that is the 20th. From that it was quite clear that before Karthelis spoke to me on the 19th he had spoken to the J.P. Karthelis and I were living within a distance of one mile: The J.P. was about 6 miles away.

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---continued

Q. According Karthelis and Thomas they had discussed about your part in the Will on the 15th; can you explain why Karthelis then did not have any conversation with you about the matter before the 19th?

A. Perhaps because he did not come there after the 16th and before the 19th. After the 15th I next met Karthelis only on the 19th. There was a talk that he had gone to Induruwa to his boutique as he sometimes did. To my knowledge no one searched for the Will in the house. On the 13th after I told Karthelis about the Will I myself did not search for the Will. I do not know whether the drawers were locked on the 13th, but when I put the Will into the drawer it was not locked. It did not strike me to go and search the drawer. I did not go and speak to Thomas or any others about this. I did not see Karthelis himself taking action. I did not consider it necessary to do any search myself.

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Don Sammy
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Re-exam-
ination.

Re-examination.

Karthelis had a boutique at Induruwa by the roadside, Colombo—Galle Road, roughly about 2½ or 3 miles away from the J.P's house. When Karthelis spoke to me on the day of the almsgiving, the 19th, I had no idea where the will was.

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A. D. J.

D. A. John
Perera.
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tion.

D. A. JOHN PERERA, Affirmed. 58, Manager, Maliban Hotel, Colombo.

At the time the Will was found in the Hotel I was working in the Hotel as Manager. Now I am recovering house rents and looking after the properties of the proprietor of Maliban Hotel, Mr. A. G. Wickramapala; this is a bigger job and my income is also higher now. I knew the deceased gentleman. We used to call him 'Ralahamy'. Before this document was handed to me this gentleman had been to our hotel. After his death I came to know his proper name. This hotel of which I was manager is the one at Norris Road facing the Fort Railway Station and that is the hotel which deceased used to visit; there is another hotel belonging to the same owner at Borella. There are three brothers owning three hotels by the same name, Maliban Hotel. There was another Maliban Hotel behind mine owned by another brother of the proprietor; it exists even now.

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On the occasion in question when the deceased came there in October 1942, altogether three persons or so came to the hotel in a car. The deceased was looking ill; he got down from the car and speaking to me went to the lavatory on the ground floor; that lavatory is still there thought not in use; he came back from the lavatory and sat on a chair near a table. There are screens separating each table with

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10 chairs. He wanted Soda water and I got it for him through a waiter. Then he spoke to Karthelis and said "See, the car has not yet come". After that he gave me a letter which he had in his hand saying it was a valuable document and asked me to keep it safe. He was still seated. I kept it safe in the drawer of the counter table and locked it. There was another gentleman who had come to pay in money—the deceased was seated at the table—and I asked that gentleman what this letter was before I put it in the drawer. He said it was a letter addressed to one Wilson Silva, a proctor of Kalutara. I then put it in. The old gentleman only told me it was a valuable document, nothing else, and he asked me to keep it safe; he was going to hospital and would come and take it back in three or four days' time. He used to keep his personal belongings in that way before this. The envelope was pasted.

20 (Shown P 8). This is like the envelope which was handed to me. The old gentleman did not wait for lunch but went away. About 5 or 6 days after that I fell sick and went home and was about three weeks at home. I read the papers at home and one day I saw a notice in the Dinamina that a certain writing was missing. (Shown P 5, Dinamina of 6th November 1942) This is the notice; it mentions Wilson Silva's name, a valuable letter lost between Colpetty and Fort on the way to the hospital. There is an offer of Rs. 50/- for anyone who found it. A few days after that I came back to the hotel, opened the drawer and examined the name on the envelope which was there. I got the hotel clerk to type out a reply to the advertisement and sent it to the Dinamina Office. (Shown P 6). This is the reply dated the 13th November and P 6 a (shown) is the envelope I used. I got no reply to my letter and I wrote another one P 7 (shown). I identify my signature there. The envelope of the 2nd letter which was sent by registered post is P 7 a (shown). When I saw this advertisement it struck me that the letter I had might be the one in question. It did not strike me why there was an advertisement about it; I thought the old gentleman was alive even then; I did not know the name of the old gentleman. After I wrote the second letter the petitioner came to see me; he asked me whether I was John Perera, I said Yes. He took the letter P 6 and showed it to me and asked me whether I was the person who wrote it; I said Yes. Then he said he was the person who inserted the notice in the paper. I said "It is the Ralahamy who gave me the writing, where is he". I identified this man as the one who came with the Ralahamy previously; I did not know his name. He said Ralahamy was dead. Then I asked him "Are you working under the Ralahamy"; he said he had been working under him for a long time and also said, "why, I came here with him that day, don't you remember". Then I was satisfied. I told him I had the document. I said "You have promised to give a reward of Rs. 50/-". After taking the writing into his hands he gave me the money. By this time we had come down from the stairs where we had the

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tion.
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tion.
—continued

conversation. I opened the drawer and gave him the envelope. He opened the envelope in my presence and took out some papers.

(Shown A). I think this is the document he took out. I read a little of this document though I did not take it into my own hands. At that time I saw what the document was, that it was a last will; it was in Sinhalese, and I can read Sinhalese. The money was paid to me and the document was taken away by him. Besides this document there were some other papers in English. (Shown P 21). This is in my handwriting; it refers to my receipt of Rs. 50/- in connection with the advertisement which appeared.

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(As Mr. Gratiaen is not in Court it is agreed that Mr. Wickremayake should cross-examine the witness first).

D. A. John
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Cross-
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tion.

Cross-examined by Mr. Wickremenayake.

I said that I recognised Karthelis as the man who came with the deceased; he had never come with the deceased prior to the occasion when this letter was given. Karthelis himself used to come to this hotel once a month or once in two months, for about 4 or 5 years, for his meals; he did not stay overnight on those occasions. I had never spoken to Karthelis before this; I did not know who he was. I had spoken to the Ralahamy. There was no occasion to speak to Karthelis. I spoke to the Ralahamy as a patron of the hotel; people used to call him Ralahamy and I also did so. I spoke to the other customers of the hotel also in the same way. I did not speak to all in that way, but I had a special regard for this Ralahamy because he was a very genial person who used to joke with me and enquire about my health. Generally I did not speak to all the customers unless they were known to me. I knew the Ralahamy before this. Karthelis may have come to that hotel about 50 times during the 3 or 4 years previous to this incident. Apart from showing courtesy to all customers I never spoke to Karthelis. I spoke to Ralahamy when he came on the day in question with Karthelis. Ralahamy came to the hotel carrying his bag himself, dressed in a white cloth, white closed coat; that was his normal dress; he always wore a closed coat. Apart from that he brought a small bag. Except that he looked ill it was like any other visit of his to the hotel. As he came he said he was not well. Quite apart from what he said he looked ill, his face appeared to be rather weak; while coming he asked for some soda; I thought he came there for refreshments; Karthelis also came with him. Ralahamy kept his suitcase on a table, called for the soda and went to the lavatory. Karthelis followed Ralahamy to the lavatory; I did not follow him. Till then the two of them were together. They came back from the lavatory to the table where the suitcase was; after that a boy brought the soda. He was not more than 2 or 3 minutes in the lavatory, but I am not quite sure. Ralahamy came back and sat at the table where his suitcase was; Karthelis also came back with him but he did not sit. Then he told Karthelis "See man,

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where have they gone". I was attending to my business and an employee of the hotel came and told me that the deceased wanted to see me. Roughly about 50 times, I cannot be sure, Karthelis had come there before. Kalutara people usually came to our hotel for their meals. From all this I remembered that Karthelis had come with the Ralahamy on the day in question.

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tion.
—continued

(Counsel refers to previous evidence).

Q. Did you say at the previous inquiry: "I cannot remember the fact that the petitioner was the other man"?

10 A. That must be a mistake of mine. (Later) What I said then must be correct.

Q. You said then that you could not be certain that it was Karthelis who came with the Ralahamy?

A. Yes, but I cannot be quite sure and definite. When Karthelis came for the letter it struck me slightly that he did come with the deceased.

Q. Will you explain why you said in 1943 that you were unable to swear that the petitioner was the man who came with the deceased?

20 A. When he came to get the document, from his statement and from the letter he showed me I remembered he was the person who came along with the deceased. What I stated at the first inquiry is correct.

Q. You have said at the previous inquiry that only when he gave you the reward you asked him 'was it you who came with the Ralahamy'?

30 A. I asked him before I gave him the document. I can swear to it. My recollection is that I handed him the document first and then I told him 'you have promised a reward' and then he gave the reward. (Counsel draws attention to the passage in previous evidence).

Q. You said "Later when he gave me the reward I asked him 'was it you who came with the Ralahamy' and he said Yes.

A. I cannot remember whether I said that. That must be a mistake because I did not ask him that question at that stage.

Deceased did not stay in the hotel for more than half an hour, roughly. When the car halted at the entrance Karthelis also came to the hotel. After he returned from the lavatory with the deceased he was not there with the deceased till the car came back.

40 Q. Did you say at the last trial: "Both of them were together for more than half an hour"?

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tion.
—continued

A. From the arrival till their departure all the time was not more than half an hour.

I remember the deceased brought the suitcase himself and I have said so.

Q. Are you aware that that is in keeping with the evidence that Karthelis has given?

A. I do not know that.

Q. Did you say at the previous trial that you could not say who was carrying the suitcase?

A. I said the Ralahamy brought the suitcase; I did not say at the previous trial that I could not say exactly who brought the suitcase. As far as I remember it was the Ralahamy who brought it. 10

Q. Have you any doubt in your mind that the Ralahamy brought it?

A. It was Ralahamy who brought it; I have no doubt about it. In 1943 my memory was better than it is today. I cannot forget what I saw with my own eyes. I said in evidence in chief that when Karthelis addressed me and said it was he who put the notice in the papers I asked him "where is the Ralahamy" and he said the Ralahamy was dead. I asked him whether he was working under Ralahamy. I asked him those questions to be quite sure that the document was given to the right person. Ralahamy had given the document to me. Another person was asking for it and I satisfied myself that he was the right person. I would not have given the document if I thought Karthelis was not a person fit to receive this document. 20

Q. Did you say at the last trial: "His statement that Ralahamy was dead did not influence my decision to give him the packet"?

A. I cannot remember what I said. It was because he said that the Ralahamy was dead that I gave it and also because I had a recollection that he had come along with the deceased, and he had advertised in the papers and also brought my letter. If he had not told me that the Ralahamy was dead but only told the other things I would not have given him the document. I never said at the previous trial that whether Ralahamy was dead or not I would have given the document. 30

Q. Did you say "I asked Karthelis who he was before giving him the letter"?

A. That is correct.

Q. Also "I did not ask him what right he had to get the document"? 40

A. I cannot remember saying that. I may have asked him.

If the Ralahamy was dead I knew his heirs should receive the property.

Q. Did you say at the last trial that you said "It was the Ralahamy who gave this to me, why do you ask for it"?

A. I cannot remember whether I said that in the witness box. If it is so recorded I admit it.

10 Q. You were asked this question: "Apart from the statement that Ralahamy was dead, as he gave you the reward you gave him the packet"? Did you give this answer to that question: "If he had brought the letter I sent I would have given him the packet irrespective of whether I knew Ralahamy was dead or not"?

20 A. I don't remember having said that. If it is so recorded I accept that statement. If the Ralahamy was not dead I would not have given the document under any circumstances. It must be a mistake if it is so recorded because I did not say that. I cannot swear to having said that. Now I say that unless I was satisfied that the Ralahamy was dead I would not have given the document. Unless I knew Ralahamy was dead and that Karthelis was entitled to the document I would not have given it to him. If I was not satisfied in that way I would not have given the document. In regard to the evidence at the previous trial which was read to me it is difficult for me to say that I stated so. My attitude all along was that I would not have given the document unless I was satisfied that the Ralahamy was dead and Karthelis was entitled to it. That was my attitude at the time Karthelis came to me. That being so, I could not have stated in evidence at the previous trial what was read to me earlier.

Sgd. N. SINNATHAMBY,
A. D. J.

30 Adjourned for Lunch.

19th December, 1947.

Resumed after Lunch.

D. A. JOHN PERERA, Affirmed.

(Cross-examination continued).

Q. In view of the fact that you were not prepared to give this document unless you knew that the Ralahamy was dead, and unless you knew that the petitioner had a right to it, you could not have said in the earlier proceedings that if the petitioner brought the letter you

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—continued

sent you would have given him the packet irrespective of whether the Ralahamy was dead or not? If that was the state of your mind you could not have given the answer you gave there?

A. What I stated first at the previous hearing is correct.

Q. In other words, irrespective of whether the Ralahamy was dead or not, if he (petitioner) produced the letter, you would have given him the packet?

A. That is so. That is correct.

Q. Then what you said today, that if you did not know that the Ralahamy was dead and if he did not produce the letter you would not have given it, is not correct? 10

A. What I stated in the course of the earlier proceedings is correct. What I stated today is incorrect.

Q. Therefore you have changed your evidence given at the last trial because your evidence has been criticised as being irresponsible and callous, by this Court?

A. I cannot remember what evidence I gave at the earlier proceedings.

(Passage in previous proceedings read to witness).

Q. You said in the earlier proceedings—"I had no proof whatever that the petitioner was entitled to that document. Nevertheless I handed him that document without further inquiry". You said that? 20

A. Yes, I said so in the earlier proceedings, and I accept that. I accept the truth of the statements I made at that trial.

Q. You admit that there is a flat contradiction between the position taken up by you then and now?

A. Yes.

Q. You admitted on the last date, that is the last trial proceedings, that all you were concerned with was getting the money or reward? 30

A. Yes. I accept that.

Q. You were not concerned about to whom you gave the document provided you received the money?

A. No, that is not correct. I gave him that document because he was the person who advertised in the papers and he said that he was a relative of the Ralahamy and he also said that the Ralahamy left it with me, and also because he brought with him the letter which I wrote to him.

Q. You were asked on the last occasion, if the Ralahamy turned up for the letter after you gave it to the petitioner, what would you have told him?

A. Yes. I accept that evidence as recorded. I have not given the answer to that question in those proceedings.

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10 Q. Even in your evidence in chief in the trial proceedings you have said this: "Subsequently, after about four days the petitioner came to the hotel. I had seen him before. Prior to the 7th of October I had seen him but I was not certain of his identity on that day. On that occasion I had not spoken to him". Even in this you made it clear that it was merely an exchange of the reward for the document. You were not concerned about anything else?

A. That is so.

20 Q. You said this in the earlier proceedings: "I did not hear of his death. When I read the notice in the "Dinamina" of the 6th of November, even then I did not know that the deceased was dead. I was at home at the time; when I read the notice I connected it with the packet because the address had been read out to me as Mr. Wilson de Silva, Proctor. It did not occur to me as strange that the Ralahamy who had handed the packet to me was advertising to recover it. When I read the advertisement I did not know that he was dead. Then it did not strike me that he was advertising to recover the packet. At that time I was only thinking of the Proctor's name. It did not strike me as to who had advertised. The advertisement was there and I sent a reply. The Ralahamy had entrusted the packet to me and said that I should return it to him. I had no authority to give it to anyone else. I replied to the advertisement without caring to whom I was sending the reply. My one anxiety was to secure the reward".
30 You were only concerned with getting the reward and you were not concerned whether it went to the proper person or not. Do you accept that as your evidence?

A. I accept that I gave that evidence. That is the truth.

Q. Whether the Ralahamy was dead or alive, whether the letter went to the person concerned or not, if you were given the reward you would have given the packet?

A. I gave it because he produced that letter which I wrote in reply.

Whether a reward was given to me or not, if an honest person came and asked for it, I would have given it to him.

40 Q. Even if there was no reward?

A. Yes.

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tion.
—continued

Q. Then what you said earlier that your only concern was in getting the reward is not correct?

A. My earlier evidence is correct. What is written in the record is correct. I accept my evidence as recorded. My present evidence is incorrect.

I cannot remember what evidence I gave in the earlier trial.

After I came into Court today I did not speak to Carthelis. Yesterday, and before this I have been speaking to Carthelis. I met Carthelis this morning and talked to him; that was the first time I met him after the last trial date. I did not meet him yesterday. I did not come to court on the 9th of this month. Carthelis told me that the case was postponed. When I came to the Court verandah Carthelis told me that the case was postponed. Two or three days before that I did not meet Carthelis. He did not read out to me the evidence I gave previously in this case, and he did not explain it to me. 10

At the time the advertisement appeared in the papers I was ill in Panadura. On the day the deceased handed me the letter I showed it to a customer and asked him what was written on it. That was not done in the presence of the deceased. I asked a customer who came to the counter to pay some money what was written on the letter. 20

Q. Why did you not ask the deceased what this was and what it was all about?

A. He had on earlier occasions left in my charge important articles. When he handed this document he told me that it was a very important document; so I kept it under lock and key.

To Court :

I was not bothered to find out what the contents of the document were.

Q. Then why did you show it to a complete stranger and ask him about this? 30

A. I asked the gentleman who came to pay cash, in order to identify it and I wanted to know what was written on it.

Q. But you could have asked that from the deceased himself?

A. I had no time to do that.

I had no time to write anything on the document in pencil in order to identify the document, after asking the deceased.

(Cross-examination continued).

Q. Why did you not ask the person who gave it to you if you wanted to identify the document?

A. I had no time for it. 40

Q. You could have written on the document in Sinhalese that this was the document you got from the Ralahamy?

A. It did not strike me at the time because he told me at the time that he may be returning for it in about three days' time.

Q. Then why ask a stranger?

A. That was to identify the document and remember it.

Q. If you had not asked this stranger to identify this document for you, then when you were ill at Panadura you would not have known that this advertisement referred to this document?

10 A. Yes.

It was only by that strange chance that I was able to connect this document with that advertisement. I did not think that I had to give the document to Wilson de Silva. I did not think about it.

Q. Who did you think was Wilson de Silva?

A. The name was written on the document as "Wilson de Silva" and it was stated on it that he was a Proctor.

Q. Why did you not think that the person who came for the document was Wilson de Silva?

A. It did not strike me.

20 I saw the advertisement more than one month after the document was given to me. As soon as I saw the advertisement I connected the document with this advertisement. I was not doing anything at home; so I was able to remember what the strange gentleman read out to me as was written on the document given to me. It struck me then and there that it referred to the letter handed to me by the Ralahamy.

I replied to the advertisement from the hotel in Colombo. I sent both replies from the hotel. I saw the advertisement on the 6th or 7th. I was ill at the time I saw this advertisement. About five or six days later when I got well I came back to the hotel to work. It was then that I replied to the advertisement.

30 Q. You said in the earlier trial "Then I went and opened my drawer to see whether the letter was there"

A. Yes, I said so.

Q. What made you look whether it was there? Had you any suspicion that the letter would not be there?

A. I was at home for about 20 or 22 days; if during my absence anybody had opened the drawer and removed the document I felt that I would have fallen into some difficulties.

40 The deceased came there and handed the document to me on the 7th of October. It was about a week later that I fell ill and went to

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Panadura. The man who handed the letter to me said that he would come about three or four days later. Before I fell ill I remained there for about a week. He did not come.

Q. Did you tell anybody in the shop that this Ralahamy who gave you the letter had promised to come and had not come for the letter?

A. I was only concerned about my illness. It did not strike me about this document when I left for my village after I fell ill.

I left everything in the charge of the Mudalali of the Hotel when I went after falling ill. The letter that was entrusted to me was left in a drawer of a table in the hotel. Nobody could have had access to that drawer in my absence. The key was with the proprietor. Whenever I leave the hotel I hand over the keys only to the proprietor. Apart from the Mudalali nobody else would open that drawer. The Mudalali had asked me not to hand over the keys of this drawer to anybody except himself. It is the Mudalali who manages this hotel.

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Norris Road Maliban Hotel is owned by Wickramapala and managed by him. Hinniappuhamy stays in the Maliban Street Hotel and he manages that hotel. Wickramapala is Hinniappuhamy's brother. They own a number of hotels and bakeries together. Three of them own these hotels. After the Company was formed now they have appointed separate managers only recently. Before that they were managing their own hotels. When I was in the Norris Road hotel I was the manager and Wickramapala was the proprietor. Wickramapala used to come in the morning, stay till ten in the morning, and leaves.

20

Q. And goes to some other business concern of his?

A. He goes to the estate. He does not go to the Borella Hotel. His only other hotel was in Borella, and it was I who used to go there early in the morning every day and attend to matters there.

30

Apart from the Mudalali nobody else could have had access to that drawer where I kept that document. At that time the Mudalali was in hospital. When I was leaving for Panadura the Mudalali was in hospital.

Q. If the Mudalali was in hospital it would have been some other employee who would have managed the hotel till you came back?

A. When I went to give the key to the Mudalali he said he was quite ill at the time and asked me to keep the key and not to give it to anybody else, and to go home and come quickly.

House rent receipts were kept in that drawer. There was no money in that drawer. Some other bills were also in that drawer. I took the key with me to the village and I stayed in the village for 20 days. Then I had no doubt whatever whether the document would be in the drawer or not. I did not reply to the advertisement from

40

Panadura because I wanted to make sure after seeing the document. When I saw the advertisement I thought I would go to Colombo and verify the document and reply. I had remembered the name on the document. The hotel is kept open the whole night. I thought in my absence some employee in the hotel might have forced open the drawer and removed the document. Those were signed receipts that were kept in that drawer. Daily cash collections were kept in the iron safe in that hotel. The key of that iron safe was with the Mudalali. There was a separate drawer to be used when the Mudalali was not there. The daily cash collections are put in that drawer and at the end of the day or next day that money is given to the Mudalali.

No. 25.
Petitioner's
Evidence
D. A. John
Perera.
Cross-
Examina-
tion.
—continued

That is another drawer in a separate table. The drawer in which I put the document is the drawer in the counter. (Shown P 5). The heading of this advertisement is "Lost". This document that was given to me was not a document that was lost. It was handed to me for safekeeping.

Q. You could not therefore connect it with the document you had?

A. Yes.

A Proctor like Mr. Wilson de Silva would have received several letters. This is an advertisement about a letter addressed to Mr. Wilson de Silva.

Q. Why did you think that this lost letter was the letter given to you for safekeeping?

A. Because it bore Mr. Wilson de Silva's name.

Q. But it was not lost. Somebody gave it to you and he said he would come and ask you for it? Why did you think that the letter that was advertised was this letter.?

A. Because of the name I thought that it might be the letter in question.

There are several ways to go to the General Hospital through the Fort from Colpetty.

Q. This advertisement makes it clear that the document was lost by somebody going to the General Hospital from Colpetty.

A. Yes.

This document was handed to me for safekeeping. It was not lost.

No. 25,
Petitioner's
Evidence.
D. A. John
Perera.
Cross-
Examina-
tion.
—continued

Q. Then why did you think this was the letter they were advertising for?

A. I did not think definitely that it was this letter.

(Mr. Wijeratne marks translation of the advertisement P 5A).

Further hearing on 6th of February, 1947.

Sgd. N. SINNATHAMBY,

A. D. J.

19-12-47.

6-2-48.

Appearances as before except that Advocate Malalgoda does not appear with Advocate E. G. Wickramanayake today. 10

D. A. John Perera. Affirmed.

(Cross-examination continued).

I said on the last date that I did not think definitely that it was for this document that the advertiser had advertised.

(Shown P 5) I find it difficult to read it; I do not use glasses. Those days I could read well; now I cannot see very well. (Witness reads P 5 with difficulty). I read the newspapers regularly and when at home I read the whole paper right through. This advertisement speaks of a letter that had been lost between Colpetty and the General Hospital via the Fort. It struck me that the advertiser did not know exactly the spot where it was lost, whether at Colpetty or between Colpetty and the Hospital via the Fort, and that he had dropped the letter or missed it. The document in question was handed to me. I did not know that the person who gave it to me was dead. But I had reason to believe that the document in my possession was the one required because I remembered the name of Wilson Silva. It is true that there may have been a number of letters bearing that name, but from the day the document was handed to me the name of Wilson Silva struck in my mind; it did not strike me then that there might be many letters with that name. When I went back to the hotel I did not make enquiries as to whether anyone had come and called for the document entrusted to me or whether anyone had come in search of me. It did not strike me that the old gentleman who gave the document would have come for it during my absence from the hotel. If anyone had called for me at the hotel I would have been informed, but no one informed me. When I went back I examined to see whether the letter was still there. I wanted to be sure that this was the letter advertised for, 20 30

At the last date of trial I said that I examined suspecting that someone might have forced open the drawer and taken the document, but I had no special reason for such suspicion. (Counsel refers to the last page but one of the witness' evidence on the last date).

No 25.
Petitioner's
Evidence.
D. A. John
Perera.
Cross-
Examina-
tion.
—continued

Q. Did you say this: "I thought in my absence some employee in the hotel might have forced open the drawer and removed the document"?

A. Yes.

Q. What made you think that someone might have extracted it?

10 A. I wanted to be sure that the document was there. I had no special reason for suspecting that the drawers would be rifled. I connected this advertisement with the document, in my mind.

Q. Did you think someone might rifle your drawer and take the document in order to get the reward of Rs. 50/-?

A. No.

I delayed replying the advertisement for several days. I was at home five days after seeing the advertisement, I came to the hotel and replied to it because I wanted to make sure that the letter was there. This aspect of the matter did not occur to me at the last inquiry. (Counsel refers to the previous evidence).

20

Q. You then said that the delay was because you wanted the reply to be written by the clerk?

A. Yes.

I told the clerk that a certain gentleman had given me this document and asked him to write a letter in reply, and he did so. For my own convenience I waited and wanted to get the clerk to write the letter. One reason for the delay was that I wanted to get the reply typed by the clerk, the other was my illness. It is true I was well enough to write a letter, but I wanted to go to the hotel and then attend to it. I did so after going back to the hotel and first attending to my other work. In my house I was thinking of sending a reply; I put it off till I went back to the hotel and after going back to the hotel I waited a day or two before I attended to it. It did not strike me to find out in the meantime whether the person who handed over the letter had come and called for it. I was only concerned about sending a reply to the advertisement.

30

I know Saraswathy Hotel, about 25 fathoms away, not within sight of our hotel. I had seen Sammy Jayasinghe. My hotel is in Norris Road; Maliban Street is on the other side of the hotel. I had not spoken to Sammy Jayasinghe before these proceedings started. I met him here but I have not spoken to him.

40

No. 25
 Petitioner's
 Evidence.
 D. A. John
 Perera.
 Cross-
 Examina-
 tion.
 —continued

Cross-examined by Mr. Kannangara.

I cannot remember the date on which I left the hotel on my illness; I was at home for about 3 weeks suffering from rheumatism; I could not stand or walk when I left the hotel. On leaving I knew I had to take a number of decoctions. I expected to return as soon as possible but the physician said I had to take a number of medicines and must stay at home for some time. When I left I expected to be away about a week. At that time the proprietor was absent but there was another manager upstairs whom I informed on leaving. Both upstairs and downstairs form one hotel; there are two or three others who were assistants to me; I am the second after the proprietor. I took away the keys of the drawer in which the document was kept. The deceased on handing over the document told me it was an important document and he would call for it in two or three days time. If he wanted it urgently he would have sent me a telegram. But I was not concentrating my attention on that document alone, I was more concerned with my own illness. I did not have to make arrangements about it; it was only entrusted to me for safekeeping and I would have kept it till it was asked for. The person who gave it to me, knowing I was ill, would have informed me if he wanted it in the meantime.

10

20

In the same drawer there were house rent receipts and other letters and documents, also my own personal letters. My deeds are kept at home. The important documents which were lying in these drawers were the house rent receipts and bills on which goods were bought. Mr. Subasinghe whom I informed on leaving is about 35 years old and a reliable man. He has a key for himself, for his use, and I did not give my keys to him. He attended to my work in my absence but it was not my practice to give anyone my private keys though the house rent receipts related to the business.

D. A. John
 Perera.
 Re-exam-
 ination.

Re-examined.

30

I was looking after the houses belonging to the business and also collecting rents. Subasinghe did not attend to that work. He was only an assistant to me in the hotel.

When I saw the advertisement I believed it related to the document given to me by the old gentleman. I have stated that I thought then that he was still alive. I thought he did not come for the document but advertised for it because he had forgotten the fact that he gave it to me. He was ill when I saw him that day, an old man.

I referred to a suitcase. It was about the same length as that file (witness points to counsel's foolscap file) but thicker. (Counsel refers to the evidence at the last inquiry). In answer to court I said "on the 7th October deceased brought a small suitcase with him; the deceased had it in his hand". But I said I could not swear to it. That was my recollection. I cannot swear to it even now that it was the deceased himself who was carrying the suitcase.

40

I was asked by Counsel in cross-examination whether I had seen Karthelis before this document was handed to me. I said I had seen him 40 or 50 times at the hotel. When Karthelis came for the document with the letter I had written, although I had seen him earlier, still I thought of asking him a few questions. When he came with my letter it struck me that I had seen him earlier.

No. 25.
Petitioner's
Evidence.
D. A. John
Perera
Re-examination.
—continued

Q. Did you identify him as the man who had come with the Mudalali?

10 A. I had a faint recollection that he had come with the Mudalali and in the course of the conversation I made sure of it.

I was asked when the mudalali gave me the document why I did not ask him what it was about. I did not do so because I did not think it proper to ask such a question. But in his absence I casually asked a gentleman who happened to be nearby what the name written on the envelope was so that I might remember and identify the document when the mudalali called for it later.

20 I knew Wilson de Silva was a Proctor; the name was on the envelope. The person who called for it later was Karthelis who was dressed in a sarong. I could not have mistaken him for Mr. Wilson de Silva.

Quite apart from the Rs. 50/- I gave the document to Karthelis because he brought the letter which I had written.

Sgd. N. SINNATHAMBY,
A. D. J.

CECILIA SIRIWARDENE, wife of Lewis Baddevidane, Bentara, Affirmed.

Cecilia
Siriwardene.
Examination.

30 I am a daughter of Karnelis. The deceased was a son of Karnelis by his first marriage. Karnelis had a second wife and had a number of children by her. Respondent is one of those children by the second bed; there was another call Davith. Karnelis had a third wife, Alice Nona. Myself and Lily are the children by the third wife. Both deceased and the contesting respondent are my step-brothers. My father during his lifetime made some provision for me and my sister.

(Shown P 26, Deed No. 12747 of 22nd February, 1923). That was a Deed which Karnelis executed in favour of his son the deceased Frederick. In the attestation it is said that in lieu of the money Frederick was to convey two properties to myself and my sister. I produce P 27 of the same date, Deed No. 12748 by which Frederick conveyed the two properties.

40 I produce my marriage certificate P 28 which describes me as the daughter of Karnelis. At the time when my father was alive deceased

No. 25.
Petitioner's
Evidence.
Ceoilia
Siriwar-
dene.
Examina-
tion.
—continued

Frederick was living in his own house; I lived with the father. I was married in 1925 in my father's house. My father died before my marriage. The funds were provided by my brothers including the respondent Velin and the deceased. Then I went to live at Bentara.

My younger sister was in the mulgedera when I left after marriage. After that she came from the mulgedera and lived with the eldest brother, the deceased. My mother also went to live with Frederick. Frederick was not married. I came back from Bentara in 1937 and lived in the house of the deceased till the time of his death because after my sister was married in 1937 there was no one to stay with my brother.

10

I have two children. My husband continued to stay at Bentara and one or two years later he also came and lived in my brother's house. At first I came there with the younger child, later the husband and the other child also came. My husband has his family house which is shared by the other members of his family in his village in Bentara; that house continued to be occupied by the other members of his family. I had no house to live in. My deceased brother was aware of that. My younger sister has her husband's house to live in and she is still living there.

20.

From 1937 till the deceased died neither Velin nor my other step-brother Davith visited the deceased in his house. My sister got married in 1937; Velin did not attend the wedding. Lily's husband died and she came back to the deceased's house. She was given in marriage again. Even for the second wedding these brothers did not come. The deceased and his brothers were not in good terms before he died. I never saw them in his house and to my knowledge deceased never visited these brothers of his. I was very friendly with my brother, the deceased. I called him Loku Ayya. I treated him and respected him as my father; he was much older than I. He was the head of the family and helped me right along. He looked after my mother and my other sister also. He was a rich man.

30

I did not go frequently into his room to see what took place there. I know Sammy Jayasinghe; he was employed under my brother and spent long hours in the house writing. I had seen him in my brother's room frequently previous to my brother's last illness, seated and working at my brother's table in his presence.

Till he was removed to hospital there was nothing wrong with my brother mentally; he attended to his work as usual and there were people who looked after his business affairs.

40

Velin's house is about 2 miles from the deceased's house. Still he did not visit the deceased's house from 1937 onwards.

I know Karthelis. At the time of deceased's death I had known him for about 20 years, growing up under my deceased brother. Deceased was very affectionate towards Karthelis. Towards the end Karthelis was treated as one of his own children and he was looking after all his business affairs. People used to come to that house often. Before he was removed to Colombo deceased was ill about a week and people visited him and more than one person came at a time.

No. 25
Petitioner's
Evidence.
Cecilia
Siriwar-
dene.
Examina-
tion.
—continued

Cross-examined by Mr. Wickremanayake.

Cecilia
Siriwar-
dene.
Cross-
Examina-
tion.

Deceased never took the position that I was not Karnelis' child.

10 (Shown R 1). There was a partition action brought by Alpi Nona my mother, myself, my husband and two others against Velin and others. There is a land called Nataugahalande Watta; that is my mulgedera where I got married. There was a case but I cannot remember what it was about; deceased Frederick was also a plaintiff, Velin and some others were defendants. I know that we got a share of the property, I do not know how, whether through my mother or on my individual right. I would not deny that whatever I got came through my mother. My father's property should come to us also. I got married in 1925 at the age of 23; I was born somewhere in 1902.
20 My mother was Weerakoon Alpi Nona. (Counsel draws attention to the marriage certificate, same as P 38). My mother was divorced from her former husband in 1910. I was born in 1902; I do not know how old I was when my mother was divorced from Monis. I came to live with Frederick after my marriage in 1937. Karnelis died before I got married at Nataugahalande Watta. After marriage I went to Bentara and lived there.

30 Shortly before Frederick died my husband Lewis started a boutique at Galmatte, about 4 or 5 years before the death. After that my husband came to live at Galmatte; till then he was a physician at Bentara where I lived with him. I have children. I left my husband and stayed with Frederick in his house; my husband continued to live in his house with another brother of his and his wife; his other brother was at Kotmale. I deny that I came to live with Frederick long after Lewis started the boutique at Galmatte. My rice ration book was at Bentara till Frederick's death, and only when we went there occasionally we bought our rations. We had no ration books at my brother's house. Earlier our names had been registered at Bentara. My husband was at Bentara when control started. After Frederick died the ration book was transferred to Galmatte and thereafter I drew
40 rations at Galmatte.

After Frederick's death there was trouble about our rights to stay in the house. We said we would stay on in our brother's house. This was later than 2 or 3 days after the funeral. Velin locked the house and asked us to go out more than a month after the funeral, I cannot

No. 25.
 Petitioner's
 Evidence.
 Cecilia
 Siriwar-
 dene.
 Cross-
 Examina-
 tion.
 —continued

be definite about the date. At that time there was no talk about the Last Will. I knew nothing about the Last Will. Generally there was talk about a Will among all. It was after I heard about the Will that we were asked to go out. I said under the Will I also had a right to remain and after the case was over if necessary I would leave.

I did not speak to Karthelis before the case was filed. I knew nothing about the Will till the case was filed. Deceased and Davith were not in good terms. Deceased and Velin too were not on speaking terms. It was not deceased who notified the death of Davith under his own name. I saw the obituary notice relating to Davith's death. My brother the deceased laughed about it saying that without his knowledge his name also had been inserted; so he said. I do not know whether he was angry about it. He also said there was something he could do about it. (Counsel refers to R 5). These brothers did not visit each other even on business. I came to live with deceased in 1937.

10

For my wedding dowry was provided by all the brothers. Among themselves there were differences but not with myself or my sister. The deceased did not talk to the other brothers; he came to the wedding but did not stay in the house a single night. He went to his home. He simply came to the wedding and went away. He also gave his share of the dowry; they did not jointly provide the dowry; each one gave separately. For the expenses there was my father's property also. Even at that time in 1925 the deceased was not on speaking terms with his brothers. The differences arose over some earlier litigation in respect of the land where my father was cremated—a separate land beyond, not Nataugahalande. There was a case earlier between the two brothers. My husband did not know about that case. I did not tell my lawyers about the cause of this quarrel; I cannot remember whether they asked me that. I have given them the particulars of my dowry deeds and they have been produced. My mother may have known the cause of this unpleasantness. I do not know whether any attempt was made to reconcile the brothers. I cannot say definitely whether that earlier case was before my wedding or after; must be before the marriage. After that in my father's testamentary case while the other brothers worked against me the deceased worked for us; that too was before my marriage. After my marriage these people tried to harass my mother and sister and after that my deceased brother Frederick took them away to his own house; the brother who was living in that house created a disturbance. Till my sister was married my mother was living at Frederick's house from 1926 till 1937. From that time onwards Frederick and Velin had nothing to do with each other. It is not true that Velin came to see him during his last illness. Now I know about the Last Will. When it was written I do not know.

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After Frederick died there was a quarrel about the keys; Velin wanted the keys, Karthelis would not give, the headman had to be

brought in. I do not remember whether Sammy Jayasinghe was there at that time. There was a corpse in the house and a quarrel between Velin and Karthelis about the keys; that was an unseemly incident. I thought it was an insult to my dead brother. Before the Headman was sent for I did not intervene to try and bring about a settlement. I knew what the trouble was about, that they were fighting for the keys. I do not know about Sammy Jayasinghe telling Karthelis that there was a will. Sammy did not tell me that there was a share for me under the will.

No. 25.
Petitioner's
Evidence.
Cecilia
Siriwardene.
Cross-
Examina-
tion.

—continued

10 I was in the deceased's house for several years from 1937 till his death and I carried out the duties of housewife. I was not in charge of all the household articles; it is true that I was looking after articles of food etc. The keys were not given to me; they were given to Karthelis.

Even if the Will is not admitted to Probate I maintain that as a sister of the deceased I will still get a share of the property. I do not know whether that matter has already been decided in Court.

Cross-examined by Mr. Kannangara.

20 Parlis Gunatilleke is from Bentota. He is not related to my husband. My husband is also from Bentota. I was in the deceased's house since 1937 and during that time I have seen Parlis Gunatilleke several times in the deceased's house. I do not know why Parlis has not given evidence. I have only come here to give evidence; apart from that I have not made any special efforts to get the Will proved. It is true I have spent money on this case in the earlier proceedings. I gave that money to Karthelis; I have given him from time to time about Rs. 400/- to Rs. 500/-. I have attended Court only on the days I was asked to come and on those days I have seen Karthelis.

Re-examined.

30 Deceased had his own paddy. No one was drawing rice on rations in deceased's house; there was no need for it. Only when I went back to Bentara I drew the rations, once in three months or so during my son's school holidays.

Cecilia
Siriwardene,
Re-examina-
tion.

In regard to the relations between the deceased and Velin and Davith, since my father's testamentary case they had fallen out. That was some time before my sister's wedding. I married in 1925. In 1927 there was litigation between Davith and the deceased Frederick. I produce marked P 3, proceedings in partition case of the District Court, Kalutara, No. 14312.

40 In regard to my marriage certificate (R 18) in cage 6 my father's name is given as K. A. Don Karnelis Siriwardene and it has been witnessed by Don Velin Siriwardene the respondent.

No. 25.
Petitioner's
Evidence.
Cecilia
Siriwardene.
Re-examination.
—continued

During the last illness of my deceased brother Velin did not come to see him; he came there only after the corpse was brought home; he showed his interest in the deceased only after his death. Sometime after that the doors of the deceased's house were closed against us and we were asked to get out. The Police inquired into that matter on my complaint and there was an arrangement between the Proctors of the case about it. Now I have left the house and I am not drawing any paddy belonging to the deceased's estate. It is all used by Velin. I am now compelled to draw on my ration book.

Sgd. N. SINNATHAMBY,
A. D. J.

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Further hearing on 28th, 29th, 30 June, 1948.

1-9-48.

ADVOCATE NAVARATNARAJAH with ADVOCATE SAMARAKOON and MANOHARAN for petitioner.

ADVOCATE H. W. JAYAWARDENE with ADVOCATE SAMARAWICKREMA for 1st respondent.

ADVOCATE E. G. WICKREMANAYAKE with ADVOCATE V. WIJETUNGE for intervenient-respondents.

Mr. Navaratnarajah proposes to lead in evidence the evidence already recorded of the handwriting expert Fr. Julian Fernando if the other side has no objection. His evidence was recorded at the previous hearing before another Judge. The Supreme Court has indicated, when this matter went up in appeal, that evidence may be led as suggested by learned counsel subject to the right of the other side to cross-examine. Both Mr. Wickramanayake and Mr. Jayawardene have no objection to the evidence of Fr. Julian Fernando being so read. Mr. Wickramanayake asks that the evidence of Mr. Muttukrishna on the same matter, viz. with regard to the handwriting, be also admitted and read in evidence. Mr. Jayawardene and Mr. Navaratnarajah have no objection to this too being done.

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With regard to Fr. Julian Fernando's evidence, Mr. Navaratnarajah does not wish to put to him any further questions. Neither Mr. Wickramanayake nor Mr. Jayawardene wishes to cross-examine him further. This applies to the evidence of Mr. Muttukrishna also. Both handwriting experts are stated to be very ill and unable to stand the strain of cross-examination or even to give evidence for anything longer than very short periods. It is in view of this that Counsel desire to take this course.

This agreement, it is agreed, covers all such documents which have been produced by both handwriting experts at the previous hearing. These documents are admitted without objection by either side. This admission is subject to the objection raised by Mr. Gratiaen with regard to documents P 9 to P 14, vide proceedings of 9th July, 1947.

No. 25.
Petitioner's
Evidence.
—continued

Mr. Navaratnarajah reads the evidence of Fr. Julian Fernando. He closes his case reading in evidence P 1 to P 41 and P 46 and P 47.

No. 26.

Respondent's Evidence.

No. 26.
Respon-
dent's
Evidence.

Mr. Jayawardene reads in evidence the evidence given by Mr. Muttukrishna in the previous proceedings. He closes his case reading in evidence R 1 to R 40.

Mr. Navaratnarajah objects to document R 7. Mr. Jayawardene withdraws that document.

Mr. Navaratnarajah also objects to R 38 and refers to the proceedings of 10th July. Mr. Jayawardene states that the doctor cannot be called in the circumstances, in view of the undertaking given when the document was produced that the doctor would be formally called. This document is now ruled out and withdrawn.

Mr. Jayawardene closes his case reading in evidence R 1 to R 6, R 8 to R 37, R 39—40 and R 41 which is the same as P 8 b with the addition of a list of witnesses. Mr. Wickramanayake states the last document has not been referred to in the proceedings.

Further hearing tomorrow.

Sgd. N. SINNATHAMBY,
A. D. J.

2nd September 1948.

Same appearances.

MR. WICKRAMANAYAKE calls:

JAMES WEDASINGHE. Affirmed.

I live in Galmatta. I knew the deceased Fredrick Siriwardene. I was living within sight of his house in Galmatte. I was employed under him as a tapper. In the mornings I used to tap trees and in the afternoon I used to roll out the rubber in the machine.

James
Weda-
singhe.
Examina-
tion.

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No. 26.
 Respon-
 dent's
 Evidence.
 James
 Weda-
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 Examina-
 tion.
 —continued

I remember the time the deceased fell ill; his last illness. I remember the deceased being taken to hospital. Prior to being taken to the hospital he had some stomach disorder and he was purging. For about three or four days he was able to go to the lavatory without assistance. After that he had to be supported by somebody. Before he went to the hospital one Gomes attended on him and I assisted in the house. On the day he left for hospital he left home at about 7 a.m. by car. He was not able to go to the car by himself. He was supported and taken to the car. I was in the verandah of the house at that time. The deceased was dressed in a white sarong, he had a shirt on and he was covering himself with a woollen shawl; he had no coat on. He was reclining in the back seat of the car on two pillows. Carthelis the petitioner and Vedamahatmaya Lewis Baddevidane accompanied him. No others went. Besides the pillows nothing else was taken in the car. A day or two before he was removed to the hospital I was in the house. I did not know Parliss Gunatilleke at that time. I know him by sight now.

10

Q. He was in the habit of coming to the deceased's house?

A. I had never seen him in the deceased's house.

Q. It is suggested that on the 5th, that is two days before he was taken to the hospital five persons came there, went into the room of the deceased, locked the door and executed a will—did you see such a thing taking place?

20

A. No.

Such a thing could not have taken place without my seeing it. Five of them could not have come to the house like that.

Before I got into the witness box I was questioned by Counsel as to what I knew about this matter. For that purpose I went to the bungalow of that counsel. That was today. Before that also I went; that was the day before yesterday.

30

Q. That is to my bungalow?

A. Yes.

The others who went with me on that day to the counsel's bungalow were Velun Siriwardene and his son, myself and a driver. I do not know the name of the driver. That is the driver who drove the deceased's car. The deceased did not have a car. He drove the deceased to Colombo. I do not know from where the car was brought. I cannot remember the date he drove the deceased to Colombo. The deceased was ill so he drove him to Colombo. The deceased was brought to Colombo for treatment. This was about four or five days before he died.

40

The driver was examined on that day in Counsel's bungalow. That driver has not turned up in Court today.

(To Court: I expected him to be here today).

I know the man called Amarasinghe. He is dead. He was also employed under the deceased at that time. I attended Amarasinghe's funeral. He gave evidence in this Court in the last trial. Gomes' whereabouts are not known. He is not in the village.

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tion.
—continued

Cross-examination.

To MR. JAYAWARDENE; No questions.

To MR. NAVARATNARAJAH:

James
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tion.

10 Jamis Wedasinghe is my full name. I am not known by any other name. I was employed as a rubber tapper and also for rolling the rubber in the machine. Gomis was the rubber maker. Generally I used to go to work at about 7 a.m. sometimes later than that. After going there the first work I do is to tap the rubber trees. That takes about two hours to tap one block. I tapped only one block.

(To Court: There were 150 trees—only few trees in that block. Every day I tapped the same block; no alternative tapping).

20 After tapping the trees I go home for meals and come back. My house was within hearing distance of the deceased's house. After I came back from meals I collect the latex from the trees. That work will take about one and a half hours. The interval of time between tapping trees and collecting latex is about half an hour. It is not between that half hour that I go home for meals. I go home after the latex had been collected; that is, I go for my noon meal. I have my meal at 12 noon. I work the roller from about 1 or 1.30 p.m. till about 4.30 or 5 p.m. During that time Gomis has to feed the rubber to the roller and I turn the roller. Gomis and I are absolutely necessary to work that machine.

I am paid on a daily basis but I take my wages once a month.

30 (To Court: I do not take advances weekly. I draw provisions from a boutique and when I draw my wages at the end of the month I settle my account).

After the day's work is over I go home, attend to any work there and come back to the bungalow. I used to sleep in the bungalow. I was married, my wife was there, but my master was ill and I used to come to sleep in the bungalow.

Q. What do you do usually, not during the illness?

A. Mostly I spend my time in the bungalow.

Q. That is in the night also?

A. Some days I go home, some days I sleep in the bungalow.

40 (To Court: I used to sleep in the bungalow when my master was ill, when he was not ill I used to go home).

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I am still a rubber tapper. I am working under the 1st respondent. I am certain that I worked under the deceased. The names of the rubber tappers are entered in a check roll. My name should be in that check roll.

(Shown R 14): I cannot say whether this is the book in which the names of the rubber tappers were entered. The second name under October in R 14 is my name. It reads Galmatta Jamis. There are several days on which I don't go to work. I am not paid a salary on days I don't work. It is for that purpose this book R 14 is maintained.

10

Q. According to this book you are absent on the 5th, 6th and 7th?

A. I did not go to work on those days because I was attending on my master who was ill.

Q. Now your version is that you were in the house from morning till evening on the 5th, 6th and 7th?

A. I did not live in the bungalow the whole time; I used to go to the boutique; I was available there. Other tappers worked in the estate on those days.

Q. On the 5th, 6th and 7th rubber was tapped but no rubber was made?

20

A. There were other people who attended to the roller.

I cannot remember the names of the people who did that work. Gomis did not do that work on the 5th. Other people who were working there, tappers and others, did that work. I cannot say who worked on the 6th, I cannot remember.

I cannot remember whether I worked in the Estate after the 7th.

Q. You remember the date your master died?

A. I know he died.

Q. During the time of your master's illness, two days before or two days after he was removed to hospital, were you working in the estate?

30

A. I cannot remember,

I cannot remember what I did on those days. I cannot remember whether work was done on those days.

Q. But you definitely remember the time your master left for hospital?

A. I remember the facts but not the dates.

Q. If you did not do any work on the 7th it could not have been because of your master's illness?

A. I cannot remember.

Q. On the 7th your master had left the estate—that is according to you long before the time you ordinarily start your work—and then if you had not done any work on that day it could not have been because of your master's illness?

A. It could not have been because of my master's illness.

10 Q. If according to the check roll you did not do any work on the 7th will you accept that as correct?

A. I accept what is in the check roll.

I cannot remember for how many days before my master was removed to hospital I attended on him. I remember his illness prior to the removal to the hospital. During that time Meegama Vedamahatmaya was treating. At that time Gomis was attending on the deceased, not I. During the days Meegama Vedamahatmaya treated the deceased Gomis did not do any work in the estate. When I went to attend on the deceased the same Vedamahatmaya was treating him.

20 Q. So that you were not working in the estate for at least two days when the Meegama Vedamahatmaya was attending to the deceased?

A. That may be so.

Q. Then you were looking after the deceased for six or seven days prior to his going to the hospital?

A. Yes.

I cannot remember whether I worked on the estate on the 1st, 2nd, 3rd and 4th October.

Q. I put it to you that you did not work for about twelve days continuously after your master left for the hospital?

30 A. I cannot say. May be it was on account of rain.

(To Court: I cannot remember whether it was due to rain. No, it was not due to rain.)

(Shown R 14, under month October, 1942): The third name appearing on this page is Gomis. This Gomis is not the Gomis I spoke of. The name of the rubber maker Gomis is not here. The third name here reads W. G. Gomis. W. G. stands for Wala Gedera. The Gomis I know and have spoken of is not Wala Gedera Gomis. He is Debarakotage Gomis. His name does not appear in this page. There is no other name Gomis here.

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(Shown Check Roll P 42 under October, 1942): Name number four there refers to Wala Gedera Gomis. He is not the Gomis I spoke of. The Gomis I spoke of is Debarakotage Gomis but I do not know under what name he is called in the check roll.

I was asked when I was in the witness box whether I was known by any other name than the name I gave and I said No. It is only after I was shown the check roll I said I was also known as Galmatta Jamis.

(To Court: The rubber maker Gomis' village is Walagedera. Besides that Gomis there was another Gomis employed in the estate. Both Gomis were Walagedera. The rubber maker is Debarakotage Gomis. I do not know the ge name of the other Gomis). 10

I got summons in this case. Summons was served on me some months ago, about five months ago. That was the first time summons was served on me. I know there was an earlier trial in connection with this Will.

Q. When did you first discuss the matter of your giving evidence with the 1st respondent ?

A. I cannot remember.

Q. Have you talked to him ?

20

A. No.

1st Respondent spoke to me. That was more than eight months ago, about one year ago. He spoke to me first. He asked me to tell what I knew.

Q. He asked you "I am putting you down as a witness, come to court and say what you know" ?

A. Yes.

Q. He did not tell for example what to say ?

A. No.

Q. The first time you made any statement of what you knew was to counsel about two or three days ago ? 30

A. Yes.

Before that I had not made any statement to anybody. This was the occasion I say the driver came along with me to the counsel's bungalow.

I earn about Rs. 20/- to Rs. 22/50 a month. I am also possessed of property. I have fields, about two acres in extent. I get about

fifteen bags of paddy. I am still the owner of these fields. I have sold a useless portion of a field. I sold it about two months ago. The name of the field is Waturawa. The name of the field I possess now is Polduwela.

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I said I did not work on certain days in October, 1942. I said I did not do work for two days at least because of the illness of my master. I cannot say whether I was not paid for those days. If according to the check roll I was not paid for those days I will accept that.

—continued

10 *Re-examined.*

(Showd P 42, the page containing the October Check roll enteries is marked P 42a). I was shown this and I was asked to point out my name and I pointed out the second name Galmattage Jamis. When I receive my salary I sign my name against it. I have signed against this name. I identify my signature.

James
Weda-
singhe.
Re-exam-
ination.

(P 42 is a check roll for tappers).

(The page in R 14 shown to witness giving the October check roll is marked P 14a. This is a check roll for ordinary labourers).

20 (Shown P 19 photograph): (Witness points out Rubber maker Gomis as the first person on the left and the one next to him as Amarasinghe).

(Mr. Wickramanayake draws attention to the list of witnesses filed on the 15th June, 1943. The fourth name is this witness).

I spoke about having made a statement to counsel a few days ago. I also made a statement to Mr. Kannangara some years ago. I attended court for the previous trial. I was summoned in that case too.

Sgd. N. SINNATHAMBY,
A. D. J.

301 Mr. Wickramanayake moves to read in evidence the evidenee of Amarasinghe given in the previous proceedings. Mr. Navaratnarajah and Mr. Jayawardene have no objection to this evidence being led as it is clearly admissible.

Mr. Wickramanayake marks it R 42.

Mr. Wickramanayake closes his case reading further in evidence R 42.

Mr. Navaratnarajah reads in evidence R 13 and R 14 (which is also marked P 42) the two check rolls.

Addresses on 28th September and 1st October 1948.

Sgd. N. SINNATHAMBY,
A. D. J.

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No. 27.**Addresses to Court.**

28th September, 1948.

MR. ADVOCATE NAVARATNARAJAH with MR. ADVOCATE MANOHARAN for the petitioner.

MR. ADVOCATE JAYAWARDENE with MR. ADVOCATE DISSANAYAKE and MR. ADVOCATE SAMARAWICKRAMA for the 1st respondent.

The appearance for the intervenient respondents is the same as on the last date.

10

Mr. Wickremanayake addresses Court :

He states that this is an action to propound a last will. The Court is called upon to judge the probability of the story that is being placed before it. He submits certain dicta have been made to lay down the principle which has to be followed by court on one or two occasions when the will was particularly unreasonable. In the circumstances of those cases the court has said sometimes that the will itself is thoroughly unreasonable and in view of that fact the court must be vigilant and be careful to have all suspicions of the will removed. When the next case comes along to be proved counsel naturally seek to show reasonableness in a particular way and if he can satisfy the court that it appears to be reasonable then he will ask court to apply the other principle that all suspicions should be removed.

20

What is reasonable and what is unreasonable? This is not a matter one can easily judge. When a will seems unreasonable the Supreme Court has said that they must be satisfied beyond all reasonable doubt and all suspicions they may have must be removed. The court will not look at this case in that way but will judge the case in the way in which it will judge any case on the question of probability. The court has to judge the story as it stands. Therefore it has to look at it and say whether if in ordinary life a story like this is told it can be believed or not. That is the test laid down by the Evidence Ordinance.

30

It is equally material to find out whether the will is a reasonable one, in one sense in that the testator did certain things one expected him to do unless there is something very strange in his life that he intended to do something and did something else. In this particular case nothing has happened one way or the other.

Evidence in this case clearly shows that the testator was unmarried, earned money all his life, saved money and bought properties and left cash in his house and that he did not seem to care very much about his relations. Is there any special reason for him to give anything to Karthelis or to his sisters Cecilia and Lily. The deceased has disposed of all property he had. Inventory R 37 will show very little left. All property he had was property acquired.

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10 The person putting forward the will is trying to show that the deceased was angry with the other members of the family. This is no truer than the story he is seeking to place before court. Document R 5 disproves the story that the deceased was angry with David.

20 The deceased was a very shrewd business man who, always in life, was careful of what he did. According to Wilson Silva's evidence he was a firm litigant and was well informed in matters of litigation. A person like that, if he wanted to execute a last will is not the person who would have done this in this haphazard manner. A few days before he died he sent somebody on his behalf to get the opinion of Mr. Nadarajah and Mr. H. V. Perera on some other matter. It is more likely that a man of this nature, doing business in that particular way would have, when notaries were available to him, got a notary to execute the will.

The evidence is quite clear that when the deceased knew he was getting worse, he came to Colombo to see Dr. Jayasuriya and go back but no intention of staying in hospital. Under those circumstances there was no urgency for the writing of this will just before he left for Colombo. He made no other arrangements with regard to anything else he had at home before he left.

30 There are other factors of the execution of the will itself. Apart from the fact that he could have got a notary, if he wanted persons to attest his signature he could get the headman who lived near his house and the school master in the opposite garden of the school which he endowed. The evidence of Karthelis is that he was in friendly terms with the school master. He does not get either of them but instead he got down persons who lived miles away. (See evidence of Peter Jayasinghe).

40 According to Sammy Jayasinghe the deceased got the will drawn up and was waiting for these witnesses. One of the witnesses who came there Peter Jayasinghe, was in a hurry to get away. There were four persons in the house when he went. Thomas the fifth witness had not come back yet. Peter Jayasinghe himself spent his time not in the house but went to the school master and he was chatting with the school master. If he wanted to attest the will and go away he could have got the school master. All this is done to make Thomas available as a witness.

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No reliance can be placed on Thomas's evidence. They could not get the school master to sign this and get him to give false evidence.

After the execution of the will it was put away in a drawer. On the following morning the deceased decides to go to Colombo to see Dr. Jayasuriya and come back. He leaves all his cash in the house, clothes and valuables. Is it at all probable that a man who is just going away to be examined by a doctor who has left everything else in the house, would take this document with him on the way to the hospital? Essentially that is an improbable story. That story had to come out in order to explain the delay in the filing of the last will. 10

They started to Colombo with a suitcase. Karthelis says he took the bag to the hospital and brought the bag back to Galmatta. There is evidence that the deceased was admitted in a banian and cloth. Thomas says just before they left he saw the deceased put the last will in that bag. There was no need for the bag, nothing was taken out. When the last will was decided to be filed in a particular way they advertised without having any idea of the cross-examination that will take place. They said "lost between Kollupitiya and Fort". When it was put to them they tried to explain by saying that the deceased got down at Kollupitiya at a lavatory and the bag was opened to take out a cloth and the will was lost there. The evidence of Karthelis is that this was in Kollupitiya. When cross-examined Karthelis said the lavatory was on the sea side. This was checked up and there was no lavatory on the sea side all the way from Kollupitiya down to Wellawatta. When he found it out he said he did not know that it was Wellawatta. It is far too much to believe that a man who has been to Colombo so many times did not know the difference between Kollupitiya and Wellawatte. The evidence is deliberately false. 20 30

There is no reasonable explanation as to how the will was dropped in the lavatory. The bag was in the car. It must have been dropped inside the car or just outside, to have been noticed. Assuming that Karthelis believed that that was the only place that the document was dropped, he explains the finding of the document by the advertisement. He finds that instead of this document being dropped on the way-side, it has been taken by the deceased to Colombo without any particular reason and left with an unknown mudalali or manager of Maliban Hotel.

With regard to the finding of this document there are curious features. The document was put into an envelope. In order to be able to trace the document they had to describe the nature of the document and all they could do was to say that it was a document inside an envelope addressed to Wilson Silva, Proctor. They were able to give that because Thomas says he was expressly told by the 40

deceased that the name on the envelope is that of Wilson Silva. As to why the deceased should have gone out of his way to say that beats one. The only reason is the deceased contemplated the possibility of the document being lost beforehand. When they advertised for the document the man whom it was given for safe custody recognised the document. The man himself did not know to read English; quite casually without any reason for it he asked a man who came to the counter to read the address. That is the evidence of John Perera: There are far too many coincidences in this story to be accepted as true. It is far too artificial to be true. (See evidence of Thomas and John Perera).

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Thomas Perera while giving evidence in the earlier trial said that he identified the document by the mark he found there, namely, P 8. This was the marking put in Court. When pointed out he came out with various other stories. Thomas' evidence is utterly unworthy of credit and is open to suspicion. If it has not happened that the deceased had told Thomas about the document there could have been no advertisement in the form in which it was advertised.

There is another unusual feature. The deceased was a sick man and was brought from Galmatta to Colombo to see Dr. Jayasuriya. It could be presumed that they were anxious to see the doctor as soon as possible. Karthelis' evidence is that the deceased at Kollupitiya told that he must go to the doctor's house. Then it is found that the deceased told that he wanted to go to the lavatory; then it is said that he told the driver to drive him to Maliban Hotel. No explanation was given. When persisted for an explanation he said the deceased wanted to answer a call of nature. There was no need to go to Maliban Hotel for that as he had already done it in Kollupitiya. Karthelis himself admits that in the previous trial he made no mention of answering a call of nature at Maliban Hotel. A further reason is given that he wanted a drink of soda, he was thirsty. This could have been done anywhere along the road. Why did he come all the way to Pettah? Just in order to be able to meet this particular John Perera to take charge of the envelope. It is significant that Maliban Hotel is in an area where Sammy Jayasinghe had a tailoring establishment up to 1945 and it was said the deceased went to the other Maliban Hotel on the other side. Sammy Jayasinghe is brought in by John Perera to tell the court how the will was found. Here was John Perera with a document entrusted to him by a Ralahamy, not knowing what the document was, did not know the Ralahamy's death, left the document in the safe and went to his village: he sees an advertisement. The advertisement in English does not say "between Kollupitiya and the General Hospital via Fort" because the English advertisement is not intended to be read by the finder because they knew who was to be the finder. It is the Sinhalese advertisement

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—continued

that was read by John Perera. He promptly comes to the conclusion that this was the document that was entrusted to him and he wrote reply marked P 6. The language used is "I have found the documents and the documents are now safe with me". This is quite clearly an answer by him to an advertisement in respect of something which he himself believed the advertiser had meant. His conduct when the advertiser come to him is still more curious. His conduct is so strange that it is not the normal thing that will happen in ordinary life; it is just to fit in with the explanation they are putting forward. That explanation is essential in view of the conduct of the parties after the death.

10

The deceased died on the 12th and the body was taken to Galmatta and Velun Siriwardene, who obviously had not associated very frequently with the deceased but who did have the same relationship as two brothers would have, turned up and took charge and he asked Karthelis for the keys. It is significant that the deceased's income was Rs. 3,000 a month according to Karthelis. All this money was kept by him in cash: he had no bank account. Karthelis refused to give the keys. There was a tussle and the tussle was pretty acute because the headman was sent for and he settled the dispute. While the tussle was going on Sammy Jayasinghe's evidence is he told Karthelis that there was the last will by which Karthelis was the manager provisionally and the sole executor. Is it conceivable if Karthelis had been told that on that day and at that time, he would not have been insisted by the headman that he was the executor and that there was a last will. Karthelis told the headman that he was not prepared to give the keys because he was all those years trusted by the deceased, but he did not say that he was the sole executor. All these five witnesses were in and out of the house. It is not conceivable that these five of them would be in the house and keep quiet.

20

30

The headman was told that there had been a last will. He admits that he should have ascertained where the last will was. Having been told that, he said because he was not told by Karthelis himself he did not report that a last will was executed but he reported on the other hand that the deceased had died intestate giving Velun's name as the next of kin. He says that before he did that he asked Lewis Beddevidane whether a will was executed and was told he knew nothing about it. Apart from that he was expressly told that Karthelis was the executor and he did not ask Karthelis anything about it at all. The headman goes to all the people who knew nothing about the will. He admits that he should have gone to Thomas who had already told him about it. The explanation of the headman with regard to these matters is as artificial as the rest of the story.

40

See Sammy Jayasinghe's evidence given on the 28th November. He drew up the last will and signed as a witness. He knew properties were left to Karthelis. Yet, when an elder brother takes charge he does not tell Velun that there is a last will. Working under Velun he goes with Karthelis to Proctor Alwis of Bentara and signs an affidavit that there was a last will executed. He is an ex-buddhist priest, a man of some experience and learning—the man who was responsible for the language of the will. He is a man who tries to keep to the winning side.

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10 The driver of the car has not been called. All along the cross-examination was on lines intended to indicate that they went directly from Kalutara, turning off at Kollupitiya, to the doctor's bungalow in Ward Place. The burden of proof being on them they should have called the driver. On the other hand the driver was summoned by the respondents. There is evidence of one witness James Weddasinghe to testify to the fact that Weddasinghe was employed under the deceased, that he was attending on the deceased and on the day the deceased left by car he was in the verandah and he did not see Thomas in the car. The court will accept that evidence. Not a
20 suggestion was made on that evidence. Check rolls were produced and it was proved that he worked under the deceased. This is not denied. There is a further piece of very strong corroboration of his evidence. He said on the dates before the deceased went to the hospital he attended on the deceased and did not attend to his rubber tapping. It is found in that same check roll that he was absent on those dates.

30 There is another factor the court will bear in mind in rejecting the evidence of Thomas. Thomas says the deceased was able to carry a bag. Mr. Wilson Silva states that the deceased was so feeble that he could hardly speak. The car driver should have been called by them. Weddasinghe said that the driver attended a consultation on the previous day at Counsel's bungalow and made a statement. On the day he was expected to turn up in court he did not turn up.

40 The court cannot on this evidence, acting as a reasonable man would act, hold that the last will was signed by the deceased in the way in which it is spoken. Other questions of testamentary capacity, reasonableness of the will, seeking to have all suspicions removed, all this will not arise. The Court has had an opportunity of seeing the witnesses and forming an impression.

With regard to the handwriting experts, the only evidence before court is the evidence of Fr. Julien on one side and Mr. Muttukrishna on the other. Fr. Julian is not a handwriting expert by a graphologist. Fr. Julian himself has admitted this. He is not an expert at all; he has his own methods. He has not identified a single document which

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he accepted as standards. As against this there is the evidence of Mr. Muttukrishna who has given reasons for his opinion. He is accepted as an expert in all the courts of this Island for quite a long time.

MR. DISSANAYAKE does not propose to address me. He states he has nothing to add to what Mr. Wickramanayke has stated.

MR. NAVARATNARAJAH addresses Court :

He states that he proposes to examine the evidence closely and not superficially and endeavour to prove that the one conclusion the court can draw from the facts which have been discharged and the proof of which cannot be doubted is that this will is the act and deed of the deceased. He proposes also to assume for the purpose of argument that this will is a fabrication and test the evidence with regard to certain facts and find out whether the evidence fits with such an assumption.

10

With regard to the cross-examination of the witnesses for the petitioner he states that these witnesses are villagers and uneducated and they have been called upon to give evidence of a transaction that took place more than six years after the execution of the will. These witnesses have also given evidence in the same action in 1942. There are certain contradictions and variations between their evidence but they are not in reference to any material part of this case.

20

He cites *Taylor on Evidence P 60 para 6* on contradictions and variations.

What has been emphasised in the cross-examination is the contradictions and variations.

The incidents relating to this transaction go so far back as 1923 when the father of the deceased died. The father died on 3rd May 1923, a testamentary case was instituted and the deceased in this case applied for letters. P 16 is the petition. The deceased took up the position that Cecilia and Lily, two children by the last bed, were legitimate children, but the 1st respondent took up the position that these two children were illegitimate and were not entitled to any share of the father's property. This difference of view appears to have led to serious disputes between the deceased and Velun. P 17 is a partition action instituted by the deceased and his sisters whom he regarded as legitimate step-sisters against Velun and others. That is a fairly important case to show the relationship of the parties as far back as 1923. The evidence given by the deceased in that case is also marked.

30

40

See Cecilia's evidence. She says it was after her father's testamentary case trouble between the deceased and his brother Velun commenced. This dispute carried on for a long period and lasted until the date of the deceased's death. A number of witnesses in this case have stated that Velun never called on the deceased during his illness and never had any dealings with the deceased. It is further proved by circumstances that the deceased left to the hospital in the morning, his brother Velun lived a short distance from his house but he did not think of entrusting the keys to him.

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10 The other person affected by the will is Karthelis. He is 37 or 38 years of age, unmarried. He was not the first person from his family to start work under the deceased. The first person was his elder brother. Karthelis came there started work as a servant but later on became a partner of the deceased in his own business (P 1). Karthelis was treated by the deceased as a relation, like a son. The persons who were directly attached to the deceased and with whom he was very friendly were Karthelis, Cecilia and Lily. On the other hand, the evidence in the case is, the persons with whom he had his quarrels and troubles were Velun and his other brother. If the deceased has thought on the 5th October to execute a will what is the sort of will he would have executed? If it was a will under which Velun was benefitted that will certainly would be open to attack; it will be an unnatural will. The court will certainly not expect Velun's name there as one of the beneficiaries. But the deceased would certainly have made provisions for his two step-sisters particularly because he was aware that on his death these two sisters would not be entitled to any share of his property. The Court would certainly expect him to have made some sort of provision to Karthelis, the man who remained a bachelor right through and worked for him for more than 25 or 30 years. The first point the court will consider is: what are the circumstances in which the will was made, circumstances meaning not the circumstances at the time of the execution of the will but the relationship between the various parties. Having that in mind, the question the court will ask is: is this a natural and a proper will?

He cites 36 *Allahabad at p. 93 and 97* where they deal with this theory of improbability.

40 He refers to the clauses in the will. The deceased has excluded all the property that has been inherited from his father. Why? There is evidence in this case that soon after the death of the father of the deceased Velun had taken possession not only of the house of his father but all the lands and paddy fields and Velun had, since the date of his father, possessed all these properties as his own. The deceased therefore did not want to deal with properties which had been in the exclusive possession of Velun for the last 25 years. He did not want to create troubles for the persons who were the devisees under his will. If it is suggested that this will is a fabrication then why were these ancestral properties left out even if their value were small.

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to Court.
—continued

These properties are devised to these three persons subject to a fidei commissum. Lily has not been given a share of the residing house. There is evidence that Lily was possessed of a house and the only persons who had no house were Karthelis and Cecilia. If the will is a fabrication why all these various clauses, why have these properties been divided in this manner.

It has been suggested that the parties who had collaborated with Karthelis in the fabrication of this will are these five witnesses and John Perera the headman. What is the reason which has been alleged why these witnesses should have joined together in such a fraud.

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There is one very interesting matter in this case, that is the way in which the headman was treated by counsel for the 2nd respondent. He made a suggestion that the headman received Rs. 1,000/- as a bribe. The second suggestion made was: is it not true that the evidence given today is different from the evidence given on the earlier occasion. The headman has given a reply. No allegation whatsoever has been made against any other witnesses. These witnesses may be village witnesses; they may not know English, they may not be educated but in their own walks of life they are fairly important men. Peter Jayasinghe's evidence. Why should he join with Karthelis for the purpose of fabricating a false case. Or is it not likely that when the deceased thought of making a will he wanted his friends to bear witness unto that will.

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Hendrick Singho is the Vel-Vidane of the place.

Thomas Appuhamy admittedly is a relation of the deceased, fairly well off in life.

Palis Goonetilleke is also a friend of the deceased and appeared in the photograph along with the others.

Curiously enough these people are friends of the deceased: not friends of Karthelis, Cecilia or Lily. There is nothing of which these witnesses could be ashamed of. They were cross-examined at great length and there is no proof that any of these witnesses had in the past done anything of which they should be ashamed. After a great deal of cross-examination it was elicited that 25 years ago this witness Peter Jayasinghe had assaulted somebody.

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Since the 29th September the deceased had been ill. He knew that his condition was bad and he had to go to Colombo for treatment. Is it strange that at that time on the 5th October, he should have thought of executing a will and inviting his friends to witnessing it and the evidence is on that day the persons whom he had in mind as witnesses were these four and the headman.

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Sammy Jayasinghe's evidence as to what happened on the morning of the 5th. The account given by him is not unnatural or improper.

Very strong criticism has been made about the evidence of Peter Jayasinghe. It was suggested that the school incident was entirely false, that this visit to the school was introduced falsely to account as to why the will had to be signed at 5 o'clock and not earlier. If this will is a fabrication why don't these witnesses say that it was signed at some other time. Why does he make that statement unless such an incident did really take place on that day.

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—continued

(Further hearing adjourned for 1-10-48).

Sgd. N. SINNATHAMBY,
A. D. J.

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1-10-48.

Appearances as on previous date.

Mr. Navaratnarajah continues his address.

One of the points raised by respondents was that the will was not attested by a lawyer, but that criticism may be made of any will signed by witnesses. In this connection he invites reference to the observations of Keuneman, J. at page 535 of 46 N.L.R.

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The second point was that on the 5th October the deceased had no intention at all of staying in hospital. The evidence in the case shows that on the 4th or 5th October the deceased had been advised by Dr. Ratnayake to go to Colombo for treatment. See the evidence of Proctor Wilson Silva. "He appeared to be ill at that time, he told me he was going to Colombo, apparently to hospital. Also see what deceased told Peter Jayasinghe. On the 5th October deceased knew very well he had to go to Colombo and take treatment there. The evidence clearly indicates that.

The third point was, why was the Headman not called. On that matter there is the evidence of Sammy Jayasinghe that the headman was not there, corroborated by the Headman's own evidence.

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Mr. Navaratnarajah refers to the observations of Keuneman, J. at p. 533 (top), 46 N.L.R.

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Mr. James Joseph in his judgment in regard to the Maliban Hotel incidents states that the identification of the envelope, delivery of the will to John Perera and the handing of it by Perera to Karthelis all these were too good to be true. In regard to the envelope P 8, undoubtedly it was handed by Wilson Silva to Thomas Appuhamy, that is proved by the evidence of Wilson Silva himself; he says it contained Mr. Nadarajah's opinion; Thomas Appuhamy says the envelope containing that opinion was handed to the deceased; these facts have not been canvassed. Respondent has admitted that the deceased was a careful person. Admittedly this envelope was with

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to Court.
—continued

the deceased on the 5th October. How did it come to Karthelis' hands in November 1942 and Karthelis was able to hand it to his own proctor. On the 7th October deceased left the house. Either he took the will with him or he left the envelope safe in the drawer. The evidence is Karthelis had possession of the keys. Karthelis could have got this envelope any time between the 7th and the 12th. On the 12th Karthelis had left for Colombo. On the 13th he returned with the dead body to the house. On the 13th the keys were entrusted by Karthelis to the Headman. This envelope could not have taken by Karthelis on the 13th, 14th or 15th, and the evidence is on the 15th evening Karthelis left the place.

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Learned counsel for the respondent lost the significance of this: he asks Wilson Silva "you say this is the envelope sent by Nadarajah, is this Mr. Nadarajah's writing"? Wilson Silva says no, his clerk's writing was there. Those questions were put in order to suggest that that envelope might have been a fabrication, but that it is genuine is clearly proved, the stamp on the envelope bears the date 1st October. It was the same envelope handed by Wilson Silva to Thomas Appuhamy on the 5th. If Karthelis removed it, he must have done so before the 11th. In regard to this envelope respondents have not suggested anything. The only one they put forward was that this might have been a fabrication. Is it likely that this man on the 11th could have conceived that elaborate plan and thereafter fabricated this story? Does it not indicate that it was the deceased who took the envelope with him on the 7th October; this is more probable.

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Then they say the story is false because the deceased when he went to Colombo on the 7th October had no intention whatever of staying in hospital. He has already referred to various passages which show that when he left on the 7th October deceased thought he would have to stay. Apart from that there is evidence to show that deceased was suffering from dysentery. Is it not likely that he took some change of clothing with him, for which he had to take a suitcase on the 7th.

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Then it is asked if deceased took the Will on the 7th why did he not hand it to Wilson Silva. In regard to see that Justice Keuneman's judgment.

In regard to the Colpetty incident, respondent says it shows that the story is false. This Colpetty incident must have been thought of at the latest when the advertisement appeared in the Daily News and Dinamina. Petitioner must have been ready with the story. Could he fabricate the story without having first taken the elementary precaution of going to Colpetty and finding out whether there was a lavatory there or not? When he was cross-examined about the Colpetty incident Karthelis was describing not Colpetty but Wellawatte. On that date he did not know that the lavatory was at Wellawatta.

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and not at Colpetty, but still he gave a description of the place which fits in with Wellawatte and not with Colpetty. But if the man fabricated the story would he not have gone there and verified? When the car stopped his mind was not directed to the geography of the place at all but to the deceased's needs. The same mistake was made by Thomas. If the story was a fabrication this witness would not have made this mistake about Colpetty at all.

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10 Mr. Navaratnarajah refers to the evidence where Karthelis was cross-examined on the basis that there was no urinal in the place he referred to at the Maliban. Assuming he wanted to fabricate the incident he would have found out earlier if there was a urinal downstairs; he would have been definite about it; his evidence is that of a man who had gone there but whose attention had not been directed to this detail. But the Proctor and Counsel had both gone there and found a place which at the time in question was used as a urinal but now converted to some other use.

We do not know why, but the deceased perhaps did not want to tell Karthelis or anybody about his intention in regard to his property. He may have wanted to entrust the document to John Perera.

20 In regard to the advertisements, in the Daily News Colpetty and General Hospital were mentioned. In the Dinamina however it is between Colpetty and General Hospital via Fort. It was suggested that it was done with a deliberate purpose. At least Karthelis could have been asked to explain the difference. But there is a very simple explanation. Probably the wording of the advertisement in the Dinamina was made by Karthelis and got hold of someone to give him an English version. But what is significant about it is this: here is a man who had decided on that day to tell Court on some future date 'I put in this advertisement, thereafter I discovered this will in the Maliban Hotel'. He says something which is consistent with what he had been told by Thomas Appuhamy. The indication in the advertisements is that the document might have fallen anywhere between Colpetty and the General Hospital.

40 The Will must have been in existence on the 20th October because on that date the affidavit had been signed; it is unlikely that people would have sworn an affidavit without the Will being in existence on that date. It is suggested that John Perera was a party to a conspiracy, but he waited 7 days to send a reply, and he gives an explanation for it. On the 17th November he writes a second letter. Why should he write again a second letter if he was party to a conspiracy? If the will was in existence on the 20th October one thing Karthelis would have realised is this must be produced as early as possible. Why then all this unnecessary delay? The delay in this case indicates it is not a fabrication.

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to Court.
→ continued

In regard to the identification of the envelope it is asked why John Perera should show it to the man at the counter. Most people are by nature inquisitive, but they don't want those about whom they are inquisitive to know it. So John Perera does not ask the person who gave him the envelope but someone else. John Perera placed it in the drawer but he wanted to satisfy himself in regard to it as all ordinary men normally do.

Thomas Appuhamy identifies the document in this way. He says the deceased told him this was an envelope addressed to Wilson Silva; Secondly this is the one taken by the deceased when he went to hospital. Mr. Navaratnarajah agrees with the other side that Thomas Appuhamy's means of identification is an important link in the petitioner's case. The same evidence he gave earlier. When Thomas Appuhamy was being cross-examined the Court put him a question. One is bound to make mistakes in regard to identification. The envelope was pasted when it was handed to the deceased from Wilson Silva. Thomas was doing some contract work in the village and was in and out of the house; he had seen the envelope being pasted on the 5th; he must have seen it lying there on the 6th and 7th and when it was being taken out, and said himself this is the envelope that I brought.

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The next point is why did John Perera hand this document to Karthelis. John Perera had given a number of reasons, some contradictory. Karthelis said he told John Perera a number of things in order to persuade him to hand him the document. John Perera says at one time I was more concerned about the Rs. 50/-, then he says he was satisfied that Siriwardene was dead. When these things happen in everyday life men do not think out logically before acting. Probably John Perera was more concerned about the Rs. 50/-, but in the witness box he wanted to show that he was a very honourable man who was not so concerned about the money. Although he has contradicted himself badly about his motives the incident itself can be understood.

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Mr. Navaratnarajah states that the chief thing he relies on to show that the Maliban incident is true is that the envelope came into petitioner's hands. How did it come?

See Justice Keuneman's observations on the incidents of the 13th October. Karthelis refuses to give the keys. The headman comes, the keys are not handed to him at once till the almirahs and drawers were locked up. When Karthelis handed over the keys to the headman he says, before you do anything to the keys, before you hand it to Velin, you will have to take an inventory of every little thing in the almirahs and drawers. On the 15th after the cremation Karthelis takes no interest in the keys but goes away. What was it that he was anxious to protect on the 13th morning? Was it money? The evidence in the case is there was no money in the

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almirah. What he was trying to protect was the will which he thought was in the drawer. On the 15th however when he heard from Thomas Appuhamy that that will had been taken by the deceased in the suitcase, he took no further interest and went away. That that is what happened on the 13th is clear from the evidence. Karthelis had gone with the corpse on the 12th night, the man who had not visited the deceased for 12 years suddenly appears on the scene. Thomas Appuhamy had given evidence in regard to what sort of man Velin is. Peter gives the reason why he did not want to speak about the will—there would have been a murder. Sammy says he went to Karthelis and told him Velin wanted the keys, but there is a will in which you have been made executor. Immediately Karthelis reproves him, this is not the time to talk about wills, let us look after the funeral. See Karthelis' evidence. If Velin got the keys he would have got the documents. Karthelis wanted to prevent Velin from getting the keys and thought when the body was cremated it would be time to deal with those matters. Every little incident that happens on the 13th, 14th, 15th shows that this was the attitude of Karthelis.

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Sgd. N. SINNATHAMBY,
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1st October, 1948.

(After Interval).

MR. NAVARATNARAJAH continues his address :—

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The reason why Karthelis refused to give the keys to Velun was to protect the will which was in the drawer. He thought at that time the will was in the drawer or in the almirah (see evidence). Sammy says he did not mention about the will to anybody until the 15th because when he mentioned about it to Karthelis earlier Karthelis said this is not the time to talk about the will.

(See Thomas' evidence).

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Thomas did not tell there is a will because if he said there would be trouble. Thomas realising that something that was being done was not correct tells the headman on the 13th evening that there is a will. The headman says he did not believe it although because he was not told by Karthelis or Velun, but at the same time he told Thomas not to go and tell Velun at that time because he thought there would be a fight. This story of the headman is corroborated by another fact: the headman says he mentioned to Velun about the will on the 16th or 17th. Velun has not got into the box to deny this story. All these witnesses including the headman were anxious that Velun should not be told anything about the will because if Velun knew about it there would be trouble. Is the court going to take the view that this knowledge is consistent with Karthelis' knowledge of the existence of a will

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Court.
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on that day or not? Velun does not come there to grief over the death of his brother; he is more concerned about the keys. Sammy tells Karthelis: "Velun is asking for the keys, but there is a will". This is really a situation which Karthelis never anticipated. How does Karthelis act? He says: "I don't want to give you the keys but I will give the keys to the headman". He said that because there was the will in the drawer and he feared that if Velun got to know about it there would be a fight. Karthelis hands over the keys to the headman on the 15th and he does not interest himself in this matter: he goes to his village.

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Why does he not see that the headman carries out his earlier request? Because on the 15th evening he knew that the will which he thought was in the drawer was not in the drawer but had been taken in a suit case by Thomas Appuhamy. Karthelis says he believed Thomas when he said that the will was put in an envelope and put into the suit case. He gives his reason as to why it was on the 15th he was satisfied that the will was not in the drawer but had been lost on the journey from Galmatta to Colombo. This envelope came into the hands of the deceased on the 5th. The deceased admittedly is a careful man. He either took it along with him or saw to it that this document was safe.

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If this will is a fabrication the court will have to come to the conclusion that this envelope was taken by Karthelis on the 11th with the intention of fabricating the will. Having decided to fabricate the will what is it that he decides to do when Velun comes there? To support the story on the 13th the person to whom Karthelis would be anxious to convey the existence of the will was Velun. If he wanted to fabricate the will on the 11th the first man to whom he would have said about the will was Velun when he came there on the 13th. On the other hand there is evidence that all the witnesses refused to tell Velun of the existence of the will.

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The man who decides to fabricate the will goes to his village on the 15th and on the 16th he goes and complains to Proctor Alwis that there is a will and tells him who the witnesses are. Even before the will is fabricated, according to Alwis, Karthelis complains to him that there is a will. Is it probable that a man would have acted in that way. Thereafter Karthelis sees Sammy who was working under Velun. Is it likely that this man would have gone to Sammy and suggested the fabrication? Would he have told that to a man working under Velun? Was it necessary for him to have gone to Sammy Jayasinghe. There was Thomas Appuhamy who was in and out of the house. Karthelis could have got him to do it.

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On the 20th an affidavit is sworn to by the witnesses. When one looks at these incidents one cannot but come to the conclusion that the will could not have been fabricated after the death of the deceased

because it is unlikely that a statement would have been made to Alwis that there was a will and these were the witnesses.

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Court.
—continued

It was suggested that Karthelis had come on the 11th to rifle the safe. He was cross-examined on that matter. Whether he did this or not could have been proved by the production of the account books. The deceased admittedly kept account books. If they had been produced the accounts would have shown how much money he had and Karthelis could have been questioned as to what happened to this money.

10 Karthelis was asked what he did when the will was lost. Can a man be expected to go to Kollupitiya about two weeks after the incident happened to find the will there? He was asked why he did not complain to a respectable person. His view is this: The Will is lost, now one has got to be discreet: one has to get back the document without Velun coming to know about it because if he comes to know he will get hold of the document and destroy it.

20 How have the respondents met the petitioner's case? The respondents first of all endeavoured to create the impression that the petitioner had not called the driver. It has been said that the driver was summoned, that he went all the way to the counsel's bungalow and made a statement and that he was asked to come to court not the following day but the day after. He was asked to come the day after without summons. The driver's statement could have been produced through the Proctor. This has not been done. The respondents found the driver had not come the following day and they assumed straight-away that he was kept away by the petitioner. They did not get a date to enable the driver to be called. This driver was not a witness discovered after the last date of trial. He was a discovery even then.
30 He was summoned to give evidence at the last trial by the respondents but he was not called. On that date no allegation was made that the driver was kept away by Karthelis.

40 The respondents have put forward another witness, namely, James Wedasinghe. He suddenly becomes the man who looked after the deceased. Four days before the deceased left for hospital he worked in the deceased's house looking after him without getting a cent as pay. It was not put to any of the petitioner's witnesses that Wedasinghe was the man who looked after the deceased. A question was put to Karthelis about the people who were looking after the deceased. No one suggested the name of James Wedasinghe. Amarasinghe, whose evidence was read, has told who the people were who looked after the deceased (see evidence of the earlier proceedings). At that time they never thought of calling James Wedasinghe but intended to call Gomes. The circumstances under which Wedasinghe was called show that he was put in as a stop-

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gap. An examination of the check roll will reveal that Wedasinghe was not the only person who did not work on the relevant dates. Wedasinghe is working under Velun; he has come without summons. On the last occasion Gomis was called when he was working under Velun.

With regard to the handwriting experts it was said that the documents that were examined by Fr. Julian have not been proved. They have been proved for the reason they have been read in evidence without any objection on the other side except the standard documents which were admitted subject to proof. The photographs were all proved. 10

The comparison documents used by Mr. Muttukrishna were documents from 1925 to 1935. He says he called for documents closer to the date of death but the Proctor for the respondents was not able to get any documents. The deceased was a man who had constant litigation and probably it would have been the easiest thing to have obtained from the Courts documents signed by him even as late as 1940. No such attempt was made.

(See Mr. Muttukrishna's evidence).

He refers to Osborne page 27 about selection of standard writings for comparison. 20

Also Hagan on Handwriting at page 85.

32 N.L.R. 139 for observations of Dalton J. on Mr. Muttukrishna's evidence.

With regard to the photographed signatures, Mr. Muttukrishna has photographed the disputed signatures so many times larger than the comparison signature and has pointed to a number of differences. One knows very well that when a signature is enlarged so many times one sees there so many things that are not found in a signature when not so enlarged. 30

According to him document P 12 is a forgery and the signature on the will was copied from P 12. Mr. Muttukrishna had to attack P 12 because that was the the case of the respondents.

Though Fr. Julian may not be an expert it was held in the 32 N.L.R. case at page 121 that his reasons were bona fide.

The handwriting experts give no assistance whatsoever because the comparison documents they used are not the documents which they ought to have used. The Court is therefore left entirely with the evidence of the petitioner supported by documents and his witnesses.

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See the clauses in the will. Is it likely that if the will is a fabrication these people will fabricate a will which curtails their powers of dealing with the property. Why should Karthelis fabricate a will which gives him only a one-third share of the properties dealt with in the will.

10 Judgment on 15th November, 1948.

Sgd. N. SINNATHAMBY,
A. D. J.

No. 28.

Judgment of the District Court.

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17-1-49.

10th December, 1948.

JUDGMENT.

The petitioner seeks in this case to obtain probate of the Will marked A dated the 5th October, 1942 alleged to have been executed by one Don Frederick Siriwardene one week before he died. In earlier proceedings his application for probate was dismissed by this Court but in appeal the judgment of this Court dated 4th February, 1944 was set aside and the case sent back by the Supreme Court for re-trial before another Judge. When the witnesses gave evidence at the subsequent trial a period of nearly 6 years had elapsed since the date on which the will is alleged to have been executed. In consequence it was but natural that each witness' recollection of the facts should be somewhat imperfect and perhaps even inaccurate at least with regard to the details. Furthermore the depositions of the witnesses at the previous trial provided a wealth of material upon which learned and experienced Counsel were able to draw freely in their cross-examination of the witnesses. Contradictions of the evidence given by them at the earlier trial by witnesses at the subsequent hearing naturally did occur and in assessing their evidence due allowance had to be made.

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The petitioner is not in any way related to the deceased. He is named the executor and according to the evidence enjoyed the confidence of the deceased for several years right up to the date of his death. He entered the services of the deceased as a boy in the capacity of a servant: his brother too was similarly employed prior to

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him. At the time of the making of the will he had been about twenty years in the service of the deceased and during that period of time had gradually been entrusted with the control and management of the deceased's business and estate. Eventually in respect of one boutique he was taken into partnership. Bill head P 1 was produced in support of this. The evidence shows that the petitioner was actually, shortly prior to the deceased's death, manager of all his affairs. He was treated by the deceased as a member of the household and, according to some of the witnesses, like a son. He supervised the tappers in the rubber estate, the work of the clerk and such other items as plucking nuts and managing the boutiques. Under the terms of the will he receives a one-third share of the estate after some payments and dispositions in favour of certain charities have been made. The other two-third share is devised and bequeathed to his "two poor sisters" Cecilia Siriwardene and Lily Siriwardene. The will excludes from its operation property inherited by the deceased and deals with only the properties acquired by him. The evidence shows that the inherited properties are not of much value according to the inventory filed in the testamentary case instituted in respect of the deceased's father's estate (P 16 and R 37). The deceased appears to have been entitled to only a one-tenth share of this and compared to the property left by him on his death, this is certainly of very little value. This inherited property goes to his blood relations by intestate succession.

Cecilia and Lily referred to by the deceased as his poor relations were admitted in the course of the proceedings before me to be the illegitimate children of the deceased's father Cornelis Siriwardene. It would appear that Cornelis Siriwardene married Alpi Nona the mother of Lily and Cecilia when Alpi Nona was living separated from her lawful husband and although Cornelis subsequently married Alpi Nona, the children were born before the latter was divorced from her husband (vide R 17 and R 18). It will thus be seen that by his will the deceased excluded from his acquired properties all his blood relations and devised these properties to those who were near and dear to him. The respondents are the blood relations of the deceased and learned counsel who appeared for them submitted that the will was for this reason an unnatural will. I am unable, however, to agree with this contention and I would most respectfully adopt the reasons given by His Lordship Mr. Justice Keuneman in the first appeal for holding that the will is both natural and reasonable. It is in evidence in this case that Cecilia and Lily were living with the deceased: Lily married from the deceased's house twice: after the death of her first husband, she came back to the deceased's house and from there she married a second time: the deceased's house was built by him in the village where he lived and died: on her second marriage Lily went and lived with her husband and after her second husband's death continued to live in her husband's house looking after her children and paying frequent visits to the deceased.

That is the evidence in the case and it stands uncontradicted by any of the respondents. Two witnesses called by them did give evidence to the contrary but I am not prepared to accept their evidence on the point.

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—continued

10 The 1st respondent Velin, who is the chief opponent to the will is a step-brother of the deceased and is a child of the second marriage of Don Cornelis Siriwardene. The deceased himself was a child of the first marriage and was the eldest son in the family. The evidence also shows that Velin, though he lived close to the deceased's house, was not on visiting terms with the deceased. Velin has not chosen to get into the box at the trial before me and deny this. In point of fact he came to the house of the deceased after the deceased's death only on receipt of a telegram sent to him by the petitioner Karthelis. Davith, a full-brother of Velin, died before the deceased. The evidence is that even Davith was not on visiting terms with the deceased but this did not prevent the deceased from issuing the obituary notice R 5 on the death of Davith. It is clear from the evidence of the petitioner's witnesses that the deceased was on terms of cordiality and friendship with his 20 two "sisters" Cecilia and Lily and was not well disposed towards Davith or Velin and their children. In point of fact, according to Cecilia, neither the step-brother Davith nor Velin attended the marriages that were arranged for Lily, nor did they visit their brother though Velin lived only two miles away.

30 According to the petitioner's case the will in question was executed on the 5th October, 1942 in the presence of five witnesses. Prior to that the testator had been of indifferent health suffering from, what the witnesses called, stomach trouble. It would appear that early in September the deceased, who had been taking ayurvedic treatment, consulted Dr. Ratnayake who advised him to go to Colombo for treatment. Following this advice the deceased decided to leave for Colombo on the 7th October, 1942. At that time there were living with him in his house Cecilia, her children and her husband one Louis Baddewitarne, Cecilia's mother Alpi Nona, Podihamy a servant and the petitioner Karthelis.

According to Peter Jayasingha, who lives about a mile away, on the 5th of October the deceased sent for him about 1 or 2 p.m. and spoke to him. as follows :—

40 "I have had no improvement since I started to take treatment under Dr. Ratnayake, and I am going to Colombo to get treatment; therefore I have written a last will in favour of my younger sisters and Karthelis".

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The deceased is alleged to have asked him to sign the will as a witness. None of the witnesses were present when the draft of the will was made. The only person who is able to speak to it is Sammy Jayasinghe. According to Sammy Jayasinghe the draft of the will was prepared on the 5th of October before noon; at the request of the deceased he brought a piece of paper and pencil and took down what the deceased stated: it was written to the deceased's dictation and read out to him: this draft was immediately copied down in ink and both the copy in ink and the draft which was in pencil were handed over to the deceased. According to Sammy Jayasinghe document A is the document which was in ink. It was after this draft had been prepared that Peter Jayasinghe was sent for. When the deceased made a request of Peter Jayasinghe the latter agreed to sign as a witness and was asked to wait for some time. Peter Jayasinghe says that he went to the hall and sat down for a few minutes and shortly afterwards went to the school which was in the compound opposite the deceased's house across the road and remained talking to the school master till about 4 or 4.30 p.m. Having spoken to the school master he returned about 4 or 4.30 p.m. and he found Handy Vel Vidane and Parlis Gunatilleke there. Almost immediately the witness Thomas Appuhamy also came in. While they were talking Sammy Jayasinghe the clerk came and called them in saying that the master wanted them. When they went in the door was closed and the deceased asked Sammy Jayasinghe to take the writing out and read it; Sammy read it and at the deceased's request wrote down the full names of the witnesses: the deceased read through the document and signed it; thereafter the witnesses signed the document in the order in which their names appeared. This occurred about 5 p.m. According to Peter Jayasinghe, Vedamahatmaya Louis Baddewitarne and Parlis Gunatilleke were there when he arrived at the deceased's house about 1 or 1.30 p.m.: when he came back from the school Handy Vel Vidane had also arrived and was with Parlis talking to him: it was then that Thomas came from another direction of the house. On this point as to the time when Thomas came there is a discrepancy in the evidence of the witness Peter Jayasinghe and of Samy Jayasinghe. According to Samy it would appear that Peter, Handy and Parlis were talking together for some time before Thomas Appuhamy came, but this is not a matter of much consequence and, of the two, I certainly prefer to act on the evidence of Peter Jayasinghe. In the main the evidence of Peter Jayasinghe is corroborated by the other witnesses called by the petitioner, namely, Thomas Appuhamy and Samy Jayasinghe.

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While this was being done the petitioner Karthelis was not in the house. According to his evidence he had gone early in the morning to bring the Doctor, who, after examining the patient, went back accompanied by petitioner. Petitioner states that he went back to the Doctor in order to obtain some medicine: but from the Doctor's house he went to Ingiriya to his boutique attended to some business

and came back late in the evening. His movements were strongly criticised by learned Counsel for the respondents who suggested that he deliberately kept out of the way in order to avoid giving evidence regarding the execution of the will. Although at first sight it would seem strange that the man who went to bring medicine for a sick person should stay away till late in the evening, petitioner however explains it by saying that the medicine was required only for the following day as the medicine previously obtained was available to be given in the meantime. He also says that he decided to go to his boutique to see how things were going on there in view of the fact that, presumably owing to the deceased's illness, he had not been there for some days. I see no reason to reject this explanation; it is probably a true statement of what occurred.

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Having executed the will in the manner stated all the witnesses except Thomas and Samy left the room. The evidence is that Thomas was the last to leave. Thomas is a relation of the deceased and though he lives far away by comparison to others who might have been called to attest the will, he appears to have been in constant touch with the deceased. In point of fact Proctor Wilson Silva says that whenever the deceased came to him he came accompanied by either Karthelis or Thomas. Furthermore, it would appear that previously on that day the deceased had sent Thomas on a mission to see Proctor Silva and to pay him a sum of Rs. 10/-. Thomas did so and Proctor Wilson Silva handed to him a letter in a long envelope (P 8) which Thomas brought back to the deceased about 4.30 p.m. that day. Thomas' evidence on this point is corroborated by Wilson Silva. It was on his return that the will in question was executed by the deceased and witnessed by him. After the others had left he handed over this envelope P 8 to the deceased: the deceased inquired of him if no other letter had been given by Proctor Wilson Silva. Thereafter Thomas Appuhamy also left. Prior to that, the will after it had been executed was, at the deceased's request according to the witnesses placed in the drawer of a teapoy or table on which it had been placed and signed. Thomas Appuhamy went back to the deceased's house on the 7th morning and accompanied him to Colombo in the car. He says that before deceased got into the car he put into the bag the letter which Thomas had brought from Proctor Wilson Silva, containing also the last will. He says he noticed the last will because the deceased took it out from the table drawer and read it; no one else was in the room at the time the deceased put it into his suit case with the other clothes: thereafter the suit case was carried to the car by Karthelis and the party left for Colombo.

With regard to the trip and the events that occurred in the course of it Karthelis is corroborated by the other witness Thomas. They left Walagadera where the deceased lived, at 7 a.m. On the way they stopped at Beruwala and got a letter from Dr. Ratnayake: they then

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proceeded on their way and stopped at Kalutara where the deceased spoke to Proctor Wilson Silva. The subject of the conversation according to Karthelis appears to have related to the administration case in respect of Lily's husband's estate in which the deceased was the guardian of Lily's children (vide P 2). Wilson Silva says that the conversation was related to deceased's inability to attend Court: deceased told him that he was going to Colombo for treatment and he appeared to be very ill: the deceased also spoke to him about a case concerning which Mr. Nadarajah had given his opinion and which opinion was enclosed in the envelope P 8. Wilson Silva appears to have asked him to send a medical certificate, which was done. From Wilson Silva's office the car proceeded to Kollupitiya where it was stopped in order to enable the deceased to answer a call of nature. Throughout the evidence-in-chief witness Karthelis referred to this halt as having been made at Kollupitiya, but on a subsequent date when he was cross-examined he said that he had made a mistake; that he had since been to the spot and that the halt was actually at Wellawatta. He was however definite that the halt was near a public lavatory. In cross-examination he said that he knew the Kollupitiya junction but did not know the light signals; the car was stopped near the lavatory; he was also unaware of the existence of Walkers Petrol Shed. He further stated that the place where he stopped was far away from Mr. R. L. Pereira's house. On a subsequent date when cross-examination was continued he stated that he had since verified the place where the car was stopped and then knew it to be near the approach road to the Wellawatta Railway Station. Wellawatta Railway Station is some distance away from Mr. R. L. Pereira's house and there are no light signals there; there is a Public latrine there and there is no latrine near the Kollupitiya junction. I believe Karthelis Appuhamy was making a mistake when he described the place where this halt was made as Kollupitiya; presumably he was referring to Wellawatta. If his story was entirely false and concocted, one would have expected the witness to have verified these facts which were so easy of verification before giving evidence. A false witness who gives evidence stating that the car was stopped at a public latrine near the road at any particular spot will take the precaution of seeing that in point of fact there was a public latrine at that spot and he would make sure to ascertain the correct name of that locality. If Karthelis was giving false evidence he would not have been mistaking Wellawatta for Kollupitiya. His explanation is that he was not acquainted with these places as he generally travelled by train and not by car. He, however, says he knew the place where the stop was made by the name boards appearing at various business places. Obviously he was making a mistake when he said this.

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The deceased, according to Petitioner and Thomas, got down at Wellawatta and walked up to the latrine. In fact it was urged on behalf of the respondents that as the deceased was very ill he could

hardly walk and that this evidence must necessarily be false. Mr. Wilson Silva undoubtedly does say that the deceased appeared to be very ill. In point of fact the deceased who normally gets down at Wilson Silva's office sent for Wilson Silva. The suggestion is that he did so because he was too ill to get down and walk. There are many reasons why a person who is sick unless compelled to do so would prefer not to walk. When he has to answer a call of nature he must necessarily himself get down and walk. At Wellawatta he had no option but to do so. At Wilson Silva's office he could have, as he actually did, got Wilson Silva up to the car. As a sick man he would have preferred not to walk but this does not necessarily mean that he was unable to walk. The evidence is that when he got into the car at Welagedera he walked up to the car unassisted. I can quite understand this and I would not draw an adverse inference by the mere fact that he did not choose to get down and walk into Wilson Silva's office. The deceased was admittedly sick and that is sufficient ground for his not wanting to walk except when it becomes absolutely necessary to do so.

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After answering the call of nature at Wellawatta the deceased appears to have directed the driver of the car to go to the Pettah. Karthelis' evidence on this point is somewhat confused. He stated at one stage that at Kollupitiya junction, meaning Wellawatta junction, the deceased told the driver to go to Dr. Jayasuriya's and spoke to him but he could not say what the deceased talked to the driver about. Earlier he said he heard the deceased asking the driver to go to Maliban Hotel but later he said that he heard the deceased ask the driver to go to Pettah and the driver said that he needed some petrol. When the car proceeded towards the Pettah the deceased directed the car to be stopped at Maliban Hotel. There, according to Karthelis, the deceased and he got down while the car went off to purchase some petrol. They got into the hotel and the evidence is that the deceased wanted to urinate and also to take a drink of soda. This is the reason suggested by Karthelis to account for the desire of the deceased to go to the Hotel. According to Karthelis the lavatory was on the ground floor. Having answered the call of nature the deceased came back to his table where he had earlier deposited his suit case and asked Karthelis to see why the car had not returned. Karthelis left the hotel and came back sometime later. On seeing the car return he had walked back. In the meantime the deceased, according to the evidence of the Manager of the Hotel John Perera, handed over the will which was along with other papers inside the envelope P 8 to John Perera for safekeeping. The evidence with regard to this visit to Maliban Hotel was strongly criticised and challenged. The respondents were at one stage very definite that there was no urinal or lavatory on the ground floor but after both Proctors had visited the Hotel they reported to court that there was an abandoned lavatory which could have once been used as a lavatory. The evidence of the

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Manager of the Hotel John Perera is that it was at that time being used for such a purpose. Apart from Thomas Appuhamy, nobody else appears to have been aware of the fact that the will was in the suit case.

From the Hotel the party then went to Dr. Jayasuriya's and from there to the Hospital where the deceased was admitted as a patient on the same day. The deceased remained in the hospital for about four days but his condition had not improved. Karthelis says that at deceased's request he returned on the 11th to consult a physician at Kelaniya and find out if the deceased could stay there and get treatment. After seeing the physician Karthelis went back home on the 11th at about 10 p.m. and came to Colombo the following morning to the hospital. On his way he dropped in at a rubber dealer and received information that the testator had died. The body was in due course removed to Walagedera on the 12th night.

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On the 13th morning Velin appears on the scene presumably in response to telegram R 3. Velin did not visit the deceased in hospital according to the evidence of the petitioner's witnesses. I have no doubt that this is so. Had he visited the testator in the hospital he would probably have been there when the testator died or at least have been informed by the hospital authorities of the death of the deceased. If he was in friendly terms with the deceased one would have expected him to have admitted the deceased to hospital and to have taken all the necessary steps after his death to remove the body from the hospital. In point of fact even when the deceased entered the hospital the keys of his house were in the hands of Karthelis and not of Velin. The photograph of the coffin taken at Colombo after the death of the deceased was produced marked P 19; Velin does not appear in that photograph. On the 13th morning, having come to the house of the deceased he began to throw his weight about and was given Rs. 500/- by Karthelis for the funeral expenses. A statement of the expenses was kept by Samy Jayasinghe and was produced marked R 12. While friends and relatives were in the house Velin sent Jayasinghe to demand the keys of the house from Karthelis. Karthelis refused saying that he was in no mood to do that as the corpse was still in the house and that he would hand over the keys on a more suitable occasion. Velin himself, thereafter, personally spoke to Karthelis and insisted on his handing over the keys. According to Samy Jayasinghe on that occasion Velin said he was the chief person in the house and that everyone will have to listen to him: Karthelis however refused and the Headman was thereupon summoned. On the intervention of the headman Karthelis agreed to put the keys in a drawer, lock it up and to hand over the drawer key to the Headman. This was accordingly done. When Samy Jayasinghe came with the message from Velin Karthelis says that Samy told him that the deceased had written a last will and asked him whether he

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was in possession of it. At that time Karthelis says that he was in no mood to listen to him or to discuss such matters. It would appear that after that, on the same day after the Headman had locked up the keys, Thomas Appuhamy told the Headman at his house of the existence of the will and the Headman advised him not to mention about it at that moment, for, if he did so, it would only provoke a further fight between Velin and Karthelis. Thomas says that he accordingly kept quiet. On the 14th nothing appears to have happened and on the 15th the cremation took place. On that occasion Samy told the petitioner that the will was executed by five witnesses who were all present at the cremation. By this time Karthelis had apparently got over his grief and was trying to obtain particulars of the will. He himself appears to have made no search for the will in the house while he was there. In point of fact as the keys of the almirah and the drawer where such valuable things are likely to be kept, were with the headman he could not have effected a search between the 13th and the 15th, From the 7th to the 11th he was in hospital. He was in the bungalow again from the 11th night till the 12th morning. If there was a will in the drawer or in the almirah it was possible that he may have seen it. After the 15th Samy Jayasinghe says that he made no search for the will on behalf of anybody. The only effort made by anyone according to the evidence to find out whether the will was available was made by Kartheiis when he casually made inquiries at Maliban Hotel while he was in Colombo, but got no information at all. According to Karthelis, and this is corroborated by Thomas, he had information from Thomas that the will had been put into the suitcase by the deceased when he went to the hospital. This was after the cremation. That being so there was no point in making a search for the will thereafter in the house. Karthelis it was who sent the suit case back from the hospital having opened it and put the soiled linen into it. Subsequently on the 12th also Karthelis took out the dirty clothes from the suit case when he came to the village and put in some fresh clothes. On that occasion too he did not see the will in it.

On the 16th Petitioner says that he went to Proctor Alwis and and consulted him. On his advice he took the five witnesses to the will to Mr. Alwis on the 20th and they swore to the affidavit marked P 18. On the 19th there was an almsgiving in the house of the deceased, seven days after his death. All the witnesses attended this almsgiving. Karthelis too attended and it was then that he arranged with the witnesses to take them to Mr. Alwis. Samy Jayasinghe too went. The affidavit P 18 makes no mention of the fact that the petitioner was made executor or who the beneficiaries under the will were. I do not think that at that point of time any of the parties were concerned with that aspect of the matter. As the contents of the affidavit seem to indicate the parties were then concentrating on the capacity of the deceased to make a will, his ability to understand its contents and the fact of the execution itself. Reading through the

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affidavit it would appear as if it were drafted by a lawyer with these objects in view. Presumably Mr. Alwis, who cannot at this distant date be expected to know all details of the information that was given him, also concentrated his attention to these points and got information with regard to them. The affidavit starts off by stating that all the witnesses were well acquainted with the deceased and goes on to state that the first affirmant was a clerk under the deceased and that he (the first affirmant) wrote out the will and all instructions had been given by the deceased. It gives the reason for the execution and says that the deceased desired to execute the last will as he was unwell and the doctors had advised him to enter the hospital. It goes on to state that though unwell the deceased was quite conscious, his strength of mind was quite good and he was able to give directions. Furthermore it states that the witnesses signed all being present at the same time. There is no reference at all to any of the beneficiaries or what the contents of the will with regard to the disposal of his property were. The affidavit contains so much as is necessary to establish the fact that the will was executed and that the deceased was then conscious and of sound disposing mind. Mr. Alwis says that the witnesses did not tell him what the terms of the will were or who had been appointed executor and that if the terms were given to him he would have included them in the affidavit, but he did at the same time say that in his view the contents of the will were not necessary for the purpose for which the affidavit was drawn up. It was on his advice that it was drawn up and his advice was sought because the will was then missing. With regard to what the witnesses told Alwis, his evidence does in some points differ from theirs, but it is just possible that before the instructions for the drawing up of the affidavit were taken down, in the course of the conversation and the answers to questions put to the witnesses they did make some reference to the dispositions. After a lapse of about six years one cannot expect the witnesses or Mr. Alwis for that matter, to remember all the details of what was said and what was not said. The fact, however, remains that on the 16th all the witnesses did depose to the fact that they signed a will as witnesses to the signature of the deceased Siriwardena.

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After this document was executed Karthelis was wondering what steps he should take to obtain the will and while the matter was being discussed in his boutique at Induruwa he was advised by the Headman of the village to advertise in the papers. Incidentally Induruwa is very close to Proctor Alwis' office and this fact is an answer to the criticism that Karthelis should have chosen to go to Proctor Alwis instead of going to several Proctors in Kalutara with whom the deceased had business transactions. In consequence of the advice given him Karthelis inserted advertisements in the Daily News of the 5th November, 1942 (P 4) and in the Dinamina of the 6th November, 1942 (P 5). In the issue of the Dinamina the advertisement was to the effect that on the 7th of October, 1942 several valuable documents

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enclosed in an envelope bearing the name of Mr. Wilson de Silva, Proctor, Kalutara were lost between Kollupitiya and the General Hospital; via Fort. A reward of Rs. 50/- was offered to the finder. At this time John Perera the Manager of Maliban Hotel was sick in his house and was not attending to work at the Hotel. Like most sick persons he scanned the newspapers from the first page to the last omitting nothing and he came across this advertisement. He accordingly remembered the fact that the deceased had handed him an envelope containing certain papers and that the envelope was addressed to Wilson Silva. His evidence is that when the envelope was given to him by the deceased he did not ask the deceased what it was about: nor did he question the deceased with regard to the name appearing on it as addressee. He took it from the deceased who was seated by a table drinking a soda to his counter and there, before putting it into the drawer, showed it to a customer who had come up casually to make a payment and asked him what name was on it. The customer mentioned the name of Wilson Silva and that was how he came to remember that the document given to him bore the name of Wilson Silva and connected that document with the document in respect of which the advertisement appeared. Much criticism was made of this aspect of the petitioner's case. The document according to John Perera was stated by the old gentleman the deceased, whom he referred to as Ralahamy, to be a valuable document. John Perera was asked to keep it safe: Ralahamy had told him that he was going to hospital and would come back and take it within three or four days. The name of the deceased was not known to John Perera and it was suggested that this story of the document being shown to a customer at the counter was all false and introduced in order to enable John Perera to connect the document with the advertisement. While it must be admitted that the evidence of John Perera with regard to how he came to know the address on the envelope does appear a little unusual, one can understand a person of his status and position in life not wanting to question a person of the status and standing of the deceased with regard to the contents of the document, but at the same time out of curiosity, trying to find out what was written on the document from a third party. That possibility is what did happen. The fact, however, remains that John Perera did send a letter to the Dinamina on the 13th November (P 6) and as he got no immediate reply followed it up with the letter P 7 on the 17th of November. Then subsequently, before P 7 actually reached the hands of the petitioner, the petitioner saw John Perera with the letter P 6 and asked for the document: John Perera gave the document and also obtained his reward of Rs. 50/- for which he gave a receipt P 21. John Perera says that Karthelis opened the document in his presence and among the papers was the will A. John Perera was cross-examined with regard to the reason why he was prepared to hand over a document given to him by the Ralahamy to another person without even knowing at that stage, namely, when he answered the advertisement;

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that the Ralahamy was dead. His answers I must confess were far from satisfactory. The reason he gave for handing over the document he varied from time to time. He was pressed several times and cross-examined with regard to his answers. He found himself getting into deeper and deeper waters as a result, but the explanation it seems to me is to be found in the fact that at the time he was more concerned with the reward than with anything else. Immediately the petitioner arrived he was informed of the death of the deceased and I take it that his first explanation as to why he handed over the letter is a correct one, namely, because petitioner told him that the Ralahamy was dead, because he had a recollection, though faint, that the petitioner had come with the deceased, because it was the petitioner who had advertised in the papers and also brought the reply to the advertisement signed by the witness John Perera. In the course of the trial he did in these proceedings say that he had a recollection that it was the petitioner who came with the deceased to the Maliban Hotel; in the previous trial he had stated that he could not remember that fact. Whatever the real reasons that prompted him to hand over the document I am satisfied that he did so in response to the advertisement. Having got the will the petitioner then took steps to have it admitted to probate.

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With regard to the witnesses who gave evidence in this case I may say that witness Karthelis Appuhamy the petitioner and Peter Jayasinghe impressed me as being truthful witnesses. With all due deference to the views expressed by my learned predecessor of the impressions these witnesses created upon him at that hearing, my view is that these two witnesses spoke the truth and I feel I can act upon their evidence with confidence. With regard to Thomas Appuhamy, while I am not prepared to say that he was untruthful, there are certain matters elicited in cross-examination which renders it unsafe for this court to act upon his testimony except where it is corroborated with other independent evidence. The facts I refer to are with regard to his identification of the envelope P 8. He stated at the first trial that he identified it by the mark in blue pencil (P 8) written upon it by the Judge when it was produced in court. Before me he professed to identify it by two stamps which he says were on the envelope; in point of fact there were three stamps and then he said that he identified it by the three stamps. It seems to me that the possible explanation for his efforts to identify the document in this manner is to be found in the statement he made when he was re-examined in the earlier proceedings. Therein he says when he was pressed for identification marks he showed the writing P 8; presumably he pointed to the first thing that struck his eye. With regard to Samy Jayasinghe I agree with my learned predecessor that he is a man on whose evidence no court could act with confidence. He appears to have been concerned right throughout only with himself and his own interest. As learned Counsel put it he was trying all along to be on the winning side.

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After the death of the deceased he continued to be in the employ of Velin. While he was there, without Velin's knowledge and after giving him a false excuse, he goes with Karthelis to Proctor Alwis' office and signs an affidavit: he comes back and says nothing about it to Velin: Velin questions him about the existence of the will and he gives a non-committal answer; an answer which would seem to suggest that with regard to the will, whether it existed or not, he was willing to do as Velin told him. This is what he says:—

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10 “Velin asked me whether the deceased had left a will. I told him that whatever the deceased told me during his lifetime to do I did and now that I was employed under him whatever he told me to do I would do.....When he asked me whether the deceased had left a last will I knew the true answer was yes but I could not give that answer. I did not mention it.”

20 Still later he says that if the will was never found he was willing to continue under Velin and that he was more concerned about his job. In other words his position seems to have been that if the will was not found he was willing to continue under Velin on the footing that no will existed, but if the will was found he was willing to work under Karthelis.

30 The conduct of Headman Jayanetti I find rather difficult to understand. He was the Headman of the village. There was a dispute about the keys. He was called in by Velin in order that Velin may secure possession of the keys. He was told by Thomas Appuhamy after the question of the keys had been settled in the manner already stated, that there was a will in which Karthelis is made executor, yet he takes no steps to hand over the keys to the rightful person. He does not mention this fact to the Inspector. He sends information in pursuance of his duty to the Government Agent reporting the death and stating that Velin should be asked to take out letters of administration. If there was a will his obvious duty was to report that fact to the Government Agent; he does not do so. His explanations are unsatisfactory. They are to the effect that even if there was a will, he thought that it was the nearest next-of-kin who was entitled to take out letters and to the possession of the deceased's estate. Perhaps an explanation for his conduct is to be found in his evidence that these villagers are not accustomed to making wills. During the period of his service of about 18 years he never had occasion to report that a person had died leaving a will. In point of fact no one he says during that period did die leaving a will. Had his evidence stood alone I would not have attached much value to it.

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Learned Counsel for the respondents laid much stress upon the fact that if a will had been in existence mention of it would have been made when the dispute for the keys arose. According to Karthelis, Samy, Peter Jayasinghe and Thomas were there when the Headman

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came. Peter Jayasinghe says that he did not discuss anything about the will with Karthelis on the 13th: on the 14th he went there and heard that there was a quarrel about the keys but he did not meet Karthelis on that day and on the 15th he told him about the will at the cremation. According to the Headman Jayanetti, he did not see Thomas Appuhamy but he met Samy Jayasinge when he went to inquire about the will. Thomas Appuhamy was there but he did not say anything to Karthelis; on the other hand he informed the Headman subsequently at the Headman's house. There is much force in the criticism that these witnesses did not discuss the existence of the will when this dispute arose. Samy Jayasinghe says he told Karthelis. Of the others, Thomas who admittedly was there at that time, did nothing; he went and informed the Headman subsequently. Peter Jayasinghe does not say whether he was present at the time of the dispute. He says he was there on the 13th and that Velin was not there. Presumably he had left before Velin came. If this is so he could not have mentioned anything on the 13th to Karthelis. This is confirmed by the fact that on the 14th he says he heard about the dispute on the 13th but did not meet Karthelis on the 14th: he met him for the first time on the 15th and told him about the will. By that time none of these witnesses knew that the will had actually been lost. Peter Jayasinghe corroborates Thomas' statement that Thomas told Karthelis that on the 15th the deceased took the will to Colombo. On this point there is some doubt as to whether his recollection is correct. In the earlier trial he is recorded to have stated that this statement was made three days after the cremation. However, this fact about the will being put into the suit case and being taken to the hospital is mentioned in the affidavit P 18 signed before a Justice of the Peace on the 20th by Thomas and Peter. There is no evidence that the Vel Vidane or Handy was present at the time of the alleged dispute about the keys.

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It must however be said for the petitioner that it is just possible that at that moment he was more concerned with the cremation and was so overcome by grief that he paid no attention to the benefits that may or may not accrue to him as a result of the discovery of the existence of a will. He thought that that was a matter which could be attended to at a later stage. In refusing to give over the keys, according to Samy Jayasinghe, he is alleged to have stated that he had been working under the deceased all that time and after everything was over some arrangement could be made. If this were so at that moment he was not thinking of his own rights under the will so much as of the impression it would have caused among the people who came to the funeral to find that he, the trusted servant of the deceased, was ousted from his position of trust and regarded as being one who was not fit to have the custody of the keys.

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It was also urged that no mention had been made by the deceased to anyone else about the execution of this will or of his intention to do

so prior to the 5th October. This certainly is so, but it is to be remembered that on the 5th October he was going to the hospital. The evidence on this point is clear. He intended to remain there for some time though he did not expect to die and it is possible that he then thought that it was desirable to execute a will. The reason why he did not give it to Wilson Silva or to the petitioner himself is not clear but it is possible that the deceased wanted to keep this document to himself without informing Karthelis for some reason of his own.

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10 Criticism was also levelled at the fact that persons who were not living close to the deceased's house were called in as witnesses. On this point it must not be forgotten that the witnesses who signed the will were all friends of the deceased and some of them relations. They appear to have been almost, if not of the same status in society as the deceased. Peter Jayasinghe was a member of a Village Committee : so is Thomas Appuhamy. Handy is a Vel Vidane. It is in evidence that an attempt was made to call the Headman to sign as a witness. Samy Jayasinghe says that he was first asked to go and see if the headman was at home and his evidence is corroborated by the Headman himself who said Samy came in search of him but he was not at
20 home at the time. With regard to the school master there is evidence that although the deceased built the school there were differences of opinion between him when he was manager and the Education authorities in consequence of his refusal to reinstate a teacher he had dismissed and that he had to resign : after that he did not take much interest in the school. What exactly were his relations with the present school master is not disclosed though it is in evidence that he was not angry with the school master. Perhaps he had his reasons for not wanting the the school master to be summoned as a witness. Thomas Appuhamy, he was expecting back from Wilson Silva and it
30 is very natural that he would like to have so close a companion and a relative to witness his last will. He had instructed the witnesses not to mention the fact of the execution of the will to anybody and that was given by those who gave evidence as a reason for not mentioning anything about it at least up to the date of the deceased's death.

The case for the petitioner is considerably strengthened by two facts : the first is with regard to the affidavit sworn to at Mr. de Alwis'. According to the evidence on the 16th at least the existence of the will was made known to him when Samy Jayasinghe consulted him. All the witnesses at that time spoke to having attested the will. If therefore the will was a fabrication it must have been fabricated at some
40 time prior to the 20th or even the 16th. If it was fabricated it should have been put into an envelope addressed to Wilson Silva with some other papers and handed over to John Perera. How did Karthelis get possession of this envelope ? To do so he should have been in the house of the deceased : he left the house on the 15th : on the 12th, 13th and the 14th all the valuable documents, in which one may reasonably

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include the opinion of Mr. Advocate Nadarajah, were under lock and key and the keys were in the hands of the Headman. It would be reasonable to infer therefore that the petitioner could not have fabricated the will after the 12th. Could he have fabricated it earlier? What is the need for him to do so? Even at that stage no one thought that the deceased was going to die. Preparations were being made to have him treated at Kelaniya. Furthermore what was the need to insert this forged will into an envelope containing the opinion of Counsel regarding some other case. I do not think anyone would think of forging a will during the lifetime of the alleged testator.

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The second point which strongly supports the petitioner's case is what has been described as the Maliban Hotel episode, viz: the facts deposed to by the petitioner's witnesses to the effect that the will was left with John Perera and that its existence there was discovered only after an advertisement in the papers. It was suggested that John Perera was persuaded to become a collaborator in forging the will by Samy Jayasinghe who at one stage lived in Maliban Street. Maliban Hotel is in Norris Road close by. This suggestion seems to me to be too far fetched. Furthermore would persons who want to forge a will go through this elaborate procedure of effecting its recovery by means of advertising in the press? If it was a conspiracy immediately when the advertisement appeared would not John Perera have responded by writing at once? And why should Karthelis delay in answering John Perera's letter instead of proceeding to the hotel and taking immediate possession of the document? Thomas Perera's evidence that the will was put into the suit case is corroborated by the fact that a statement to that effect is made in P 18. It was only this bit of evidence which prompted Karthelis to insert the advertisement in the press.

20

It must be conceded that the Petitioner's witnesses have, in regard to certain matters, contradicted themselves in relation to the evidence given by them in the previous proceedings and in relation to each other, but in assessing their evidence one has to take into consideration two factors already referred to: first, that they gave their evidence in this court in these proceedings about six years after the incidents of which they spoke to, took place: secondly, there was available to learned Counsel who cross-examined them the depositions of witnesses recorded at the previous hearing. Some of the witnesses were subjected to lengthy and gruelling cross-examination and I am not surprised that they did on certain matters, not of a very material nature, contradict themselves. After making due allowance for these factors and not forgetting that the witnesses were mainly village witnesses, I am satisfied that their evidence with regard to the main facts is true.

30

40

For the respondents a witness by the name of James Wedasinghe was called and the evidence of Amarasinghe given at the previous proceedings read as he is now dead. Gomes who was called at the

previous trial was not called. The cross-examination of Wedasinghe makes it manifest that he is not what he professes to be. I am satisfied that he never worked in the deceased's bungalow or slept there about the time of the deceased's death assisting Gomes. His name appears in R 14 as the second name. R 14 is the check roll. According to the book he was absent on the 5th, 6th and 7th. According to the check roll he does not appear to have worked for about 12 days after the deceased left the hospital. At first he said this may have been due to the rain. He is a witness who was not called at the previous trial and the first statement he ever made relating to the facts in this case was only a few days before he was called as a witness. He did not impress me favourably and I am not prepared to accept his evidence. Amarasinghe's cross-examination at the previous trial conclusively proves that he was not working on the Galmatta estate at or about the time of the deceased's death. The witnesses who were called by the petitioner were cross-examined with regard to Gomes who was not called but they were not cross-examined with regard to James Wedasinghe who appears to have been an after-thought. Amarasinghe professed to be supervisor of the rubber tappers but he himself knew nothing about tapping. He admits that he came to work plumbago on the deceased's pits and the deceased had a pit at Uniyawa. He said that work in the plumbago pit ceased about six months before the deceased died and that he had been in the deceased's house in Galmatta for 2½ or 3 years during which time Gomes also was residing there. But he had signed the householder's list P 43 in July 1942 showing that he was a resident of Hikkaduwa on the 3rd July. His occupation therein is given as a trader. According to P 42 he appears to have been working in the plumbago pit after June 1942. According to this book it would appear that he worked for the first time in Galmatta on the 8th October. The book was prepared for the payment of salary after the death of the deceased but his name does not appear in that book in September, August or July. I accordingly reject his evidence as being untrue.

There now remains for me to consider only the evidence of the experts. The Petitioner relied upon the evidence of Fr. Julian but the standards with which he compared the disputed signature have not been satisfactorily proved. I do not think it necessary to consider his evidence any further. With regard to Mr. Muttukrishna his standards were signatures which the deceased signed over ten years prior to his death. A man's signature changes from time to time and speaking for myself I can say that my own signature of ten years ago is visibly different to my present signature. Mr. Muttukrishna, however, has given an emphatic opinion based upon these old signatures. I do not, however, propose to rely upon it as it is well recognised that in order to compare signatures satisfactorily the standards selected should be from writings made at or about the time of the alleged impugned signature (vide Osborne page 27). I should like in this connection

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17-1-49.
—continued

also to refer to the observations contained in Sarkar on Evidence (6th Edition) page 455, where referring to expert opinion on handwriting the learned author makes the following observations:—

“Expert opinion must always be received with great caution, but perhaps none so with more caution than the opinions of handwriting experts. These gentlemen stand in an impregnable fortress of their own and invariably give emphatic opinions. They try to create an impression by talking glibly of pen-pressure, pen-scope, pen-pause, pen-presentation, pen-lift, hand-movement” etc.....“They are a type of remunerated witnesses and like others of that class have an unconscious bias in favour of the party calling them.”

10

In view of my findings on the fact I am not prepared to attach any value to the evidence of Mr. Muttukrishna.

I answer the issues framed as follows :

- (1) Yes.
- (2) Yes.
- (3) Yes.

I accordingly declare the will proved and admit it to probate. The Supreme Court has left the question of costs of the previous trial to this Court. As Petitioner has succeeded in these proceedings it is my view that he would be entitled to the costs of all steps and proceedings that had been taken in order to vindicate his right. I accordingly allow him the costs of the earlier proceedings as well as those of the present proceedings.

20

Sgd. N. SINNATHAMBY,
Addtl. District Judge.

Colombo, 10-12-48.

Pronounced in open court in the presence of :
Mr. Parnavitarne, Proctor for Petitioner;

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Mr. Gomes, Proctor for Respondents who takes notice on behalf of Mr. Kannangara also. Velin Siriwardene 1st Respondent is also present.

Sgd. N. SINNATHAMBY.
Addtl. District Judge.

17-1-49,

No. 29.

No. 29.
Petition of
Appeal
of the
Respondent
to the
Supreme
Court.
24-1-49.

Petition of Appeal of the Respondent to the Supreme Court.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of the Last Will and Testament
of KATHRI ARATCHIGE DON FRED-
ERICK SIRIWARDANA of Walagedera
..... *Deceased.*

D. C. Colombo
No. 10277
Testamentary
Jurisdiction.

10

ARACHCHI APPUHAMILLAGE DON
CARTHELIS APPUHAMY of Walagedera
..... *Petitioner.*

vs.

KATHRI ARATCHIGE DON VELIN
SIRIWARDANA of Kolehekada in Katugaha-
hena in Iddagoda Pattu of Pasdun Korale
West..... *Respondent.*

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., of Buddhist
Head Quarters, Norris Road, Pettah, Colombo.
..... *Added-Respondent.*

20

1. KATHRI ARATCHIGE PREMA-
WATHIE SIRIWARDANA of Kolehe-
kada.
2. CECELIS KANNANGARA of Kalutara
..... *Intervenients-Respondents.*

KATHRI ARATCHIGE DON VELIN
SIRIWARDANA of Kolehekada in Katugaha-
hena in Iddagoda Pattu of Pasdun Korale
West..... *Respondent-Appellant.*

vs.

30

ARACHIAPPUHAMILLAGE DON CAR-
THELIS APPUHAMY of Walagedera
..... *Petitioner-Respondent.*

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., of Buddhist
Head Quarters, Norris Road, Pettah, Colombo.
..... *Added-Respondent-Respondent.*

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Petition of
Appeal
of the
Respondent
to the
Supreme
Court.
24-1-49.

—continued To,

1. KATHRI ARATCHIGE * PREMA-WATHIE SIRIWARDANA of Kolehada.
2. CECELIA KANNANGARA of Kalutara
..... *Intervenients-Respondents-Respondents.*

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER
JUSTICES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

This 24th day of January, 1949.

The petition of Appeal of the Respondent-Appellant abovenamed appearing by James Alexander Wijekoon Kannangara his Proctor states as follows :— 10

1. The Petitioner-Respondent sought in this case to propound a Last Will alleged to have been executed by one Frederick Siriwardana in the presence of five witnesses. The Respondent-Appellant opposed the grant of Probate to the said Will and challenged it as a forgery.

2. After inquiry the learned District Judge delivered Judgment on 17th January, 1949 admitting the said Last Will to Probate and granted to the Petitioner the costs of this Inquiry and of an earlier Inquiry the order on which was set aside in appeal. 20

3. Being aggrieved at the said order the Respondent-Appellant begs to appeal to Your Lordships' Honourable Court on the following among other grounds that may be urged by Counsel at the hearing of this appeal.

(a) The said judgment is contrary to law and to the weight of evidence led in this case.

(b) The learned District Judge has found the bulk of the evidence called by the Petitioner-Respondent, consisting of the evidence mainly of witnesses to the Will unsatisfactory. The learned District Judge has however, on a consideration of the probabilities accepted the evidence of one witness to the Will viz :— Peter Jayasinghe and of the Petitioner-Respondent and has on that evidence considered the said Last Will to have been proved. 30

(c) It is submitted that the learned District Judge has not given consideration to the effect of calling of a number of false witnesses on the evidence he has accepted, of witnesses speaking to the same facts. It is submitted that it is not always possible to demonstrate that every witness is testifying falsely. But when, of two witnesses testifying to the same facts, one is shown to be a palpably false witness, the evidence of even the other witness must be accepted with great caution. 40

(d) The learned District Judge has not properly assessed the probabilities in the case, nor has he considered sufficient points that render the story of the Petitioner-Respondent highly improbable. It is submitted that in a case where a Will is attacked it is impossible for an opponent of the Will to prove that the story of the propounder is false except by pointing to grave improbabilities therein. A failure to give sufficient weight to such improbabilities must necessarily vitiate a judgment.

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—continued

10 (e) The learned District Judge gave judgment several months after the evidence and even the addresses were concluded. He has erred in stating that Counsel for the Respondent-Appellant contended that the Will was unreasonable. Counsel conceded the reasonableness of the Will throughout the entire proceedings and contended only that no inference could be drawn out from the reasonableness of the Will. Similarly the learned District Judge has forgotten the impressions created by the witnesses and has reconstructed them from his reading of the cross-examination. No weight can therefore be attached to the acceptance of evidence by the learned District Judge on impressions created in him by the witnesses.

20 (f) Several features remain unexplained and the absence of explanation has not been duly considered. The learned District Judge has paid too much heed to the affidavit sworn to before Proctor Alwis which affidavit was in keeping with the design of the Petitioner and formed a necessary part of the conspiracy alleged by the Respondent-Appellant.

30 (g) The whole story of the Petitioner-Respondent with regard to the execution of the Will and its discovery is utterly unreal. No reason is suggested why a man who was going to Colombo to be examined and not, as he then thought, to be admitted to hospital should have taken with him a Will he had executed because of his illness. Still less reason is suggested why having taken it with him, he should have left it for safe keeping with a Hotel Manager. No account has been taken of the fact that the said Last Will would never have been found but for the fact that, purely fortuitously a customer happened to be near the Manager as he put away the document and equally casually the Manager asked that customer what was written on the outside of the envelope. Nor yet of the fact that the address then read out to the Manager made the manager think that this document entrusted to him for safe-keeping was the document that was
40 being advertised for as having been lost between Colpetty and Fort.

(h) The learned District Judge has accepted the explanation of the Petitioner-Respondent of the variation of this story that the

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deceased went to a lavatory at Colpetty. It is submitted that the original story of going to a lavatory at Colpetty was to fit in with the advertisement. At that stage the Petitioner-Respondent merely assumed that there was a lavatory in Colpetty. The cross-examination made him check up as to where the public latrines were and having found out that the nearest one to Colombo on the sea side was at Wellawatta he came out with the story that although he had been times without number to Colombo he had confused Wellawatta with Colpetty. It is submitted that for the purposes of his advertisement alone he would have ascertained, if it were true, where the first stop of the car had been, whether at Colpetty or at Wellawatta.

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(i) The learned District Judge has been too easily satisfied with the explanation of the conduct of the Petitioner-Respondent when the Respondent-Appellant insisted on his handing over the keys. It is admitted that on that day he was informed of the execution of the Will and of its contents. It is submitted that if that were so, his conduct on that occasion was utterly improbable and inexplicable.

(j) A consideration of the evidence of the Petitioner-Respondent in the light of the probabilities renders that evidence extremely difficult of acceptance.

20

(k) The learned District Judge has rejected the evidence of a Witness Wedasinghe called for by the Respondent-Appellant, holding that he had not been employed by the deceased at the relevant time. It is submitted that the cross-examination of that witness with the books earlier produced by the Petitioner-Respondent should conclusively prove that he had been in the employment of the deceased and his story of the nature of his work on the days his name did not appear on the check-roll is just what one would accept to happen in such an employment.

(l) The driver of the car was on the list of witnesses for the Petitioner-Respondent and though available was not called. It is submitted that he was not called because he would give the lie to the story of the trip to Ward Place via the Pettah.

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(m) It is submitted that taken all in all, the story of the execution of the Last Will and of its discovery is one that is utterly improbable and should not have been accepted in proof of the execution of a document, the forgery of which cannot possibly be affirmatively established.

(n) The learned District Judge has paid no heed whatsoever to the evidence of the handwriting experts and has not even considered their evidence.

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Wherefore the Respondent-Appellant prays that Your Lordships' Court may be pleased :—

- (a) To set aside the said order of the learned District Judge.
- (b) to dismiss the application of the Petitioner-Respondent for Probate of the said Last Will.
- (c) to grant to the Respondent-Appellant the costs of this appeal and of all other proceedings in the Court below and such other and further relief as to Your Lordships' Court shall in the circumstances seem meet.

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Petition of
Appeal
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Respondent
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—continued

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Sgd. J. A. W. KANNANGARA,
Proctor for Respondent-Appellant.

No. 30.

Judgment of the Supreme Court.

No. 30.
Judgment
of the
Supreme
Court.
25-4-51.

S. C. No. 100/50.

D. C. (Inty) Colombo
Case No. 10277.

Present : GUNASEKARA, J. & PULLE, J.

Counsel : N. K. CHOKSY, K.C., with H. W. JAYAWARDENE and R. S. WANASUNDERA for appellant who was respondent in the lower Court.

20

S. J. V. CHELVANAYAGAM, K.C., with H. W. THAMBIAH, P. NAVARATNARAJAH and W. D. GUNASEKERA for the respondent who was petitioner in the lower Court.

M. A. SAMARAKOON for the 1st Interveniēt Respondent.

C. S. BARR KUMARAKULASINGHE with T. W. RAJARATNAM for the 2nd Interveniēt Respondent.

Argued on : 24th & 25th April, 1951.

Decided on : 25th April, 1951.

30

GUNASEKERA, J.

This is an appeal against an order made by the District Court of Colombo admitting to probate the alleged Last Will of one Fredrick Siriwardana, a land owner and merchant of Welagedera in Pasdum Korale West, who died on the 12th October, 1942, in the General

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Judgment
of the
Supreme
Court.
25-4-51

--continued

Hospital at Colombo. The appellant, Velin Siriwardana, who is a half brother of the deceased, attacks the Will on the ground that it is a forgery. The petitioner, Carthelis Appuhamy, who is the executor named in the alleged Will, valued the estate at about Rs. 91,000/-. Out of the greater part of it, comprising what is described in the alleged Will as the properties acquired by the deceased by his own exertions, certain properties were devised to certain religious and educational institutions and the rest was left to the petitioner and two persons, Cecilia Siriwardana and Lily Siriwardene. It appears that these two were illegitimate children of the deceased's father and they had always been looked after and befriended by the deceased. The petitioner himself, who was about 32 years of age at the time of the deceased's death, appears to have been a trusted servant of his, having entered his service at the age of 12 and served him continuously for about 20 years. According to the uncontradicted and unchallenged evidence of the petitioner, he was latterly entrusted by the deceased with the management of all his landed properties and his business as a merchant and was generally his steward. It also appears that the deceased admitted him to partnership with him in the business of a sundries boutique that he ran at Induruwa. There can be little doubt that if the deceased made a Will these three persons would have been among the most likely beneficiaries; for those who would succeed to his property upon the intestacy would be the appellant and the children of another half brother named Davith, and two half sisters, and it appears that the deceased was on unfriendly terms with the appellant and Davith's children and had been on similar terms with Davith himself.

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The document in question, which is marked 'A', purports to be a nuncupative Will executed at the deceased's residence in Walagedara on 5th October, 1942, two days before the deceased entered the General Hospital at Colombo as a patient. Three of the attesting witnesses before whom it purports to have been executed have given evidence. They are the deceased's clerk, Sammy Jayasinghe, a relative of his named Thomas Appuhamy, and one Peter Jayasinghe who is said to be a member of the local Village Committee and a friend of the deceased. The other two attesting witnesses were a Vel Vidane, named Handy Singho, who was a partner of the deceased in one of his ventures, and one Parlis Goonetilleke.

30

The learned District Judge considers the evidence of Sammy Jayasinghe and Thomas Appuhamy to be unreliable. Carthelis Appuhamy and Peter Jayasinghe however impressed him, he says, as being truthful witnesses upon whose evidence he was able to act with confidence. He also accepted the evidence of a witness named John Perera, the manager of a hotel in the Pettah, who deposed to the deceased having entrusted to his custody certain documents, including the document 'A'. According to the evidence of John Perera and the

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petitioner this entrusting took place on 7th October, 1942, before the deceased entered the hospital.

No. 30,
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Court.
25-4-51.
—continued

10 It was contended for the appellant that the learned Judge has erred in accepting the evidence of these three witnesses. Upon a detailed examination of the evidence Mr. Choksy pressed upon our attention various circumstances as rendering it highly improbable that the deceased would have executed a nuncupative Will, or that if he did, he would have chosen these attesting witnesses in preference to certain others, and he contended that the conduct imputed to the
20 deceased in relation to the will that is alleged to have been executed was inherently improbable; that it was also highly improbable that John Perera would have been entrusted with that document in the circumstances in which it is alleged that the deceased handed it to him; or that the document would ultimately have found its way into the custody of the petitioner in the manner in which it is alleged that he got it. He also drew our attention to various discrepancies in the evidence of the petitioner and his witnesses, both in statements made by the same witness at different times and in statements made by
30 different witnesses about the same matter, and contended that these discrepancies showed that their evidence was untruthful. He also made a point of the conduct the petitioner imputes to himself as indicating that petitioner's story was not one that the Judge should have accepted.

In my opinion there is great force in most of these contentions; all of them were matters that deserved the earnest consideration of the District Judge. Not even the minute scrutiny to which learned Counsel has subjected all the evidence in the case, however, has brought to light a single point of substance that the learned Judge has omitted to consider, in what I may be permitted to describe as an exceedingly
30 careful judgment. I can see no reason for holding that the learned Judge has erred in his findings of fact, which alone are challenged in this case. I would therefore dismiss the appeal with costs.

Sgd. E. H. T. GUNASEKARA

Puisne Justice.

PULLE, J.

40 I confess I have had some difficulty in understanding why the deceased should have carried with him the Will on his journey to the hospital on 7th October, 1942, and why he should have entrusted it to the keeping of John Perera at Maliban Hotel. The learned District Judge finds that Carthelis, the petitioner, is a truthful witness and upon that finding it follows inevitably that the deceased did in fact pay a visit to the Maliban Hotel on the 7th October. There is the

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of the
Supreme
Court.
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—continued

fact that the advertisements were inserted in the 'Dinamina' and the 'Ceylon Daily News' and as a result of these advertisements Carthelis did in fact trace John Perera and recover the will. If Carthelis's evidence is believed, and there is no reason to disturb the learned Judge's finding that he is a witness of truth, then any suggestion that John Perera has been either a victim of a hoax or a collaborator in a conspiracy falls to the ground. The difficulty in regard to the reason why the deceased handed the Will to John Perera would still remain but that in no way can give cause for disturbing the finding of the learned District Judge that the Will was executed and attested in the manner spoken to by another witness Peter Jayasinghe whose evidence was accepted without reserve. I, therefore, agree that this appeal should be dismissed with costs.

10

Sgd. M. F. S. PULLE,
Puisne Justice.

No. 31.

Decree of the Supreme Court.

No. 31.
Decree
of the
Supreme
Court.
25-4-51

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN,
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS KING,
DEFENDER OF THE FAITH.

20

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

K. A. DON VELIN SIRIWARDENA of
Kolehekada in Katugahahena in Iddagoda Pattu
of Pasdun Korale West....*Respondent-Appellant.*

vs.

A. DON CARTHELIS APPUHAMY of
Walagedera.....*Petitioner-Respondent.*

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., of Buddhist
Head Quarters, Colombo.....*Added- Respondent-
Respondent.*

30

1. K. A. PREMAWATHIE SIRIWAR-
DENA of Kolehekada.

2. CECELIA KANNANGARA of Kalutara
.....*Intervenients- Respondents- Respondents.*

Action No. 10277/T.

District Court of Colombo.

This cause coming on for hearing and determination on the 25th day of April, 1951, and on this day, upon an appeal preferred by the

Respondent-Appellant before the Hon. Mr. E. H. T. Gunasekara, Puisne Justice and the Hon. Mr. M. F. S. Pulle, K.C., Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondents.

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of the
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Court.
25-4-51.
—continued

It is considered and adjudged that this appeal be and the same is hereby dismissed with costs.

Witness the Hon. Mr. R. F. Dias, LL.D., Senior Puisne Justice, at Colombo, the 4th day of May, in the year of our Lord One thousand Nine hundred and fifty one, and of Our Reign the Fifteenth.

10

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S. C.

No. 32.

Application for Conditional Leave to Appeal to the Privy Council.

No. 32.
Application
for Condi-
tional Leave
to Appeal
to the
Privy
Council.
3-5-51

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of the Last Will and Testament of
KATHRI ARATCHIGE DON FREDE-
RICK SIRIWARDENA of Walagedera
.....*Deceased.*

20

D. C. Colombo
No. 10277
Testamentary
Jurisdiction.

ARACHCHI APPUHAMILLAGE DON
CARHELIS APPUHAMY OF Wala-
gedera.....*Petitioner.*

S.C. No. 100/'50 (Inty).

vs.

KATHRI ARACHIGE DON VELIN SIRI-
WARDANA of Kolehekada in Katugahahena
in Iddagoda Pattu of Pasdun Korle
West.....*Respondent.*

30

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., of Buddhist
Head Quarters, Norris Road, Pettah,
Colombo.....*Added-Respondent.*

1. KATHRI ARACHIGE PREMAWA-
THIE SIRIWARDANA of Kolehekada.
2. CECELIA KANNANGARA of Kalu-
tara.....*Intervenients-Respondents.*

No. 82.
Application
for Conditional Leave
to Appeal
to the
Privy
Council.
8-5-51.
—continued

KATHRI ARACHIGE DON VELIN SIRI-
WARDANA of Kolehekada in Katugahahena
in Iddagoda Pattu of Pasdun Korle
West..... *Respondent-Appellant.*

vs.

ARACHCHI APPUHAMILLAGE DON
CARHELIS APPUHAMY of Wala-
gedera..... *Petitioner-Respondent.*

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., of Buddhist
Head Quarters, Norris Road, Pettah,
Colombo..... *Added-Respondent-Respondent.*

10

1. KATHRI ARACHIGE PREMAWA-
THIE SIRIWARDANA of Kolehekada.
2. CECELIA KANNANGARA of Kalutara
..... *Intervenients-Respondents-Respondents.*

To,

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER
JUSTICES OF THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON.

20

On this 3rd day of May, 1951.

The humble petition of the abovenamed Respondent-Appellant
appearing by John Wilson his Proctor sheweth as follows :—

1. That feeling aggrieved by the judgment and decree of this
Honourable Court pronounced on the 25th day of April
1951, the abovenamed Respondent-Appellant is desirous of
appealing therefrom to His Majesty the King in Council.
2. That the said judgment is a final judgment and the
matter in dispute in the appeal is upwards of the value of
Rs. 5.000/-.
3. Wherefore the Respondent-Appellant prays for Conditional
Leave to Appeal against the said judgment and decree of
this Honourable Court dated the said 25th day of April,
1951 to His Majesty the King in Council.

30

Sgd. JOHN WILSON,
Proctor for Respondent-Appellant.

No. 33.

Judgment of the Supreme Court granting Conditional Leave to Appeal to the Privy Council.DON CARTHELIS APPUHAMY *vs.* SIRIWARDENA.

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO THE PRIVY COUNCIL IN S.C. 100 D.C. (Inty) Colombo No. 10277.

Present : DIAS, S.P.J. & GUNASEKARA, J.*Counsel* : E. B. WICKREMANAYAKE, K.C., with J. W. SUBASINGHE for the Respondent-Appellant.

10 H. W. TAMBIAH for the Petitioner-Respondent.

Argued & Decided on : 30th July, 1951.

DIAS, S.P.J.

Of consent the application for leave to appeal to the Privy Council is allowed.

This is a testamentary action in which a contest arose as to whether a will was genuine or a forgery. The learned District Judge pronounced it to be genuine and in appeal this Court affirmed that finding. The respondent-appellant is now appealing to the Privy Council.

20 It appears that pending the final decision of this case the respondent-appellant was appointed administrator *pendente lite*. The petitioner-respondent has filed papers in this Court asking for a declaration that the respondent-appellant has ceased to be an administrator *pendente lite*, or in the alternative that this Court should remove him from the said office and the petitioner-respondent be granted probate, or in the alternative be appointed administrator *pendente lite*. It is also prayed that the respondent-appellant be ordered to hand over the movable and immovable properties of the estate to the petitioner-respondent. It is to be noted, however, that neither the law nor the

30 authority under which this large relief is claimed from the Supreme Court has been set out in the motion paper.

Mr. H. W. Thambiah for the respondent-petitioner has endeavoured to support this application under Rules 7 and 8 of the Privy Council Appeal Rules (Legislative Enactments, Volume 2, page 423) which reads :—

40 “7. Where the Judgment appealed from requires the appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, to direct that the said judgment shall be carried into execution if the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such order as His Majesty in Council shall think fit to make thereon.

No. 33.
Judgment
of the
Supreme
Court
granting
Conditional
Leave to
Appeal to
the Privy
Council.
30-7-51.

No. 33.
Judgment
of the
Supreme
Court
granting
Conditional
Leave to
Appeal to
the Privy
Council.
30-7-51
—continued

8. Provided, nevertheless, that if the appellant shall establish to the satisfaction of the Court that real and substantial justice requires that, pending such appeal, execution should be stayed, the Court may order the execution of such judgment to be stayed if the appellant shall give sufficient security for the due performance of such order as His Majesty in Council shall think fit to make thereon."

I am of opinion that these rules have no application to a case of this kind.

What is the decree which has been appealed against? It is a decree declaring that a certain document is a genuine last will. How is that decree to be executed? The kinds of decrees which a Court of original jurisdiction can lawfully enter in this island are enumerated in s. 217 of the Civil Procedure Code. A decree which declares a will to be genuine does not fall within any of the heads A to F in s. 217. Such a decree falls under head G of s. 217 which provides: "Or it (the Court) may, without affording any substantive relief or remedy, declare a right or status". While procedural rules have been laid down for the execution of decrees under heads A to F, there is no procedure provided for the execution of decrees falling under head G. The language of s. 217 also makes it clear "that in the case of decrees which declare a right or status the Court may without affording any substantive relief or remedy, make that declaration". A decree declaring a status would be one, for example, where A seeks a declaration from the Court that she is the lawfully married wife of B. If the Court gives A such a decree there is no means by which that decree can be executed. A decree declaring a right would be one as in this case—where the Court has declared that the applicant for probate has the right to have the testator's will admitted to probate, and so far as I can see there is no method by which that decree can be executed except by admitting the will to probate. Until the Privy Council finally decides this case, it cannot be said that the executor's right to probate has been established. Therefore, under the Civil Procedure Code, this decree is incapable of execution. Furthermore, the language of Rule 7 of the Privy Council Appeal Rules makes it clear that that rule only applies where the decree under appeal "requires the appellant to pay money or perform a duty". Therefore there may be decrees which are capable of execution in the lower Court but incapable of execution under Rule 7. In the present case the decree of the District Court does not require the payment of money or the performance of a duty.

The application is dismissed with costs.

Sgd. R. F. DIAS,
Senior Puisne Justice.

GUNASEKERA, J.

I agree.

Sgd. E. H. T. GUNASEKARA,
Puisne Justice.

No. 34.

Decree granting Conditional Leave to Appeal to the Privy Council.

No 34.
Decree
granting
Conditional
Leave
to Appeal
to the Privy
Council.
30-7-51.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS
KING, DEFENDER OF THE FAITH, EMPEROR OF INDIA.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

10

KATHRI ARACHIGE DON VELIN SIRI-
WARDENA of Kolehekade in Katugahahena
in Iddagoda Pattu of Pasdun Korale West
.....*Respondent-Appellant.*

vs.

ARACHIAPPUHAMILLAGE DON CAR-
THELIS APPUHAMY of Welagedera
.....*Petitioner-Respondent.*

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD. of Buddhist
Head Quarters, Norris Road, Pettah Colombo
.....*Added-Respondent-Respondent*

20

1. KATRI ARACHIGE PREMAWATHIE
SIRIWARDENE of Kolehekada.
2. CECELIA KANNANGARA of Kalutara
.....*Intervenients-Respondents-Respondents.*

Action No. 10277 (S.C. 100/50 Inty.)

District Court, Colombo.

In the matter of an application dated 8th May, 1951, for Condi-
tional Leave to Appeal to His Majesty the King in Council, by the
Respondent-Appellant above named, against the decree, dated 25th
April, 1951.

30

This matter coming on for hearing and determination on the 30th
day of July, 1951, before the Hon. Mr. R. F. Dias, LL.D., Senior
Puisne Justice and the Hon. Mr. E. H. T. Gunasekera, Puisne Justice
of this Court, in the presence of Counsel for the Respondent-Appellant
and Petitioner-Respondent.

It is considered and adjudged that this application be and the
same is hereby allowed upon the condition that the applicant do
within one month from this date:—

No. 34.
Decree
granting
Conditional
Leave
to Appeal
to the Privy
Council.
30-7-51.
-continued

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000/- and hypothecate the same by Bond or such other security as the Court in terms of Section 7(1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.
2. Deposit in terms of provisions of section 8(a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300/- in respect of fees mentioned in Section 4(b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar. 10

The application of the petitioner respondent asking for a declaration that the respondent-appellant has ceased to be an administrator *pendente lite*, or in the alternative that this Court should remove him from the said office and the petitioner respondent be granted probate, or in the alternative be appointed administrator *pendente lite* and that the respondent-appellant be ordered to hand over the moveable and immovable properties of the estate to the petitioner-respondent is dismissed with costs. 20

Witness the Hon. Mr. H. A. de Silva, Puisne Justice, at Colombo, the 8th day of August, in the year of our Lord One thousand Nine hundred and Fifty one and of Our Reign the Fifteenth.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S. C.

No. 35.

Application for Final Leave to Appeal to the Privy Council.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 85.
Application
for Final
Leave to
Appeal to
the Privy
Council.
22-8-51.

In the matter of the Last Will and Testament of
KATHRI ARATCHIGE DON FREDE-
RICK SIRIWARDANA of Walagedera,
.....*Deceased.* 30

D. C. Colombo
No. 10277
Testamentary
Jurisdiction.

ARACHCHI APPUHAMILAGE DON
CARTHELIS APPUHAMY of Walagedera.
.....*Petitioner.*

S. C. No. 100/50 Inty.

vs.

KATHRI ARACHIGE DON VELIN SIRI-
SIRIWARDANA of Kolehekada in Katugaha-
hena in Iddagoda Pattu of Pasdun Korale
West.....*Respondent.* 40

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., of Buddhist
Head Quarters Norris Road, Pettah, Colombo.
.....*Added-Respondent.*

No. 35
Application
for Final
Leave to
Appeal to
the Privy
Council.
22-8-51.
—*continued*

1. KATHRI ARACHIGE PREMAWA-
THIE SIRIWARDANA of Kolehekada.
2. CECELIA KANNANGARA of Kalutara.
.....*Intervenients-Respondents.*

10

KATHRI ARACHIGE DON VELIN SIRI-
WARDANA of Kolehekada in Katugahahena
in Iddagoda Pattu of Pasdun Korale West.
.....*Respondent-Appellant.*

vs.

ARACHCHI APPUHAMILLAGA DON
CARTHELIS APPUHAMY of Walagedera
.....*Petitioner-Respondent*

20

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., of Buddhist
Head Quarters, Norris Road, Pettah, Colombo.
.....*Added-Respondent-Respondent.*

1. KATTHRI ARACHIGE PREMAWA-
THIE SIRIWARDANA of Kolehekada.
2. CECELIA KANNANGARA of Kalutara.
.....*Intervenient-Respondents-Respondents.*

To

THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER
JUDGES OF THE SUPREME COURT OF THE ISLAND OF CEYLON.

On this 22nd day of August, 1951.

30

The humble petition of the Respondent-Appellant abovenamed
appearing by John Wilson and his assistant John Wilson (Jr.) his
Proctors states as follows:—

1. That the appellant on the 30th day of July, 1951 obtained
Conditional Leave to Appeal in the above case to His
Majesty the King in Council against the judgment of this
Court pronounced on the 25th day of April, 1951.
2. That the appellant in accordance with the conditions on
which such leave was granted (a) has deposited with the
Registrar of this Court a sum of Rupees Three thousand

No. 35.
Application
for Final
Leave to
Appeal to
the Privy
Council.
22-8-51.
—continued

(Rs. 3,000/-) and has hypothecated the same by bond in favour of the Registrar, and (b) has deposited with the said Registrar a sum of Rupees Three hundred (Rs. 300/-) in respect of the amount and fees payable in terms of Section 5 (2) (b) and (c) of Ordinance No. 31 of 1909.

Wherefore the appellant prays for final leave to appeal against the judgment of this Court dated the said 25th day of April, 1951 to His Majesty the King in Council.

Sgd. JOHN WILSON,
Proctor for Respondent-Appellant.

10

No. 36.
Decree
granting
Final Leave
to Appeal
to the Privy
Council.
20-9-51.

No. 36.

Decree granting Final Leave to Appeal to the Privy Council.

GEORGE THE SIXTH, BY THE GRACE OF GOD OF GREAT BRITAIN
IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS
KING, DEFENDER OF THE FAITH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

KATHRI ARACHIGE DON VELIN SIRI-
WARDANA of Kolehekada in Katugahahena
in Iddagoda Pattu of Pasdum Korale West
..... *Respondent-Appellant.*

20

vs.

ARACHCHI APPUHAMILLAGA DON
CARTHELIS APPUHAMY of Walagedera
..... *Petitioner-Respondent.*

THE COLOMBO BUDDHIST THEO-
SOPHICAL SOCIETY LTD., of Buddhist
Head Quarters, Norris Road, Pettah, Colombo
..... *Added-Respondent-Respondent.*

1. KATHRI ARACHCHIGE PREMA-
WATHIE SIRIWARDANA of Kolehe-
kada.

30

2. CECILIA KANNANGARA of Kalutara
..... *Intervenients-Respondents-Respondents.*

Action No. 10277 (S. C. No. 100 Inty)

District Court of Colombo.

No. 86.
Decree
granting
Final
Leave to
Appeal to
the Privy
Council.
20-9-51.
—continued

In the matter of an application by the Respondent-Appellant abovenamed dated 22nd August, 1951, for Final Leave to appeal to His Majesty the the King in Council against the decree of this Court dated 25th April, 1951.

10 This matter coming on for hearing and determination on the 20th day of September, 1951, before the Hon. Mr. H. H. Basnayake, K.C., Puisne Justice and the Hon. Mr. E. H. T. Gunasekera, Puisne Justice of this Court, in the presence of Counsel for the Petitioner.

The Applicant having complied with the conditions imposed on him by the Order of this Court dated 30th July, 1951, granting Conditional Leave to Appeal.

It is considered and adjudged that the Applicant's application for Final Leave to Appeal to His Majesty the King in Council be and the same is hereby allowed.

20 Witness the Hon. Sir. Edward George Perera Jayetileke, Kt., K.C., Chief Justice at Colombo, the 26th day of September, in the year of our Lord One thousand Nine hundred and Fifty one and of Our Reign the Fifteenth.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S. C.

Exhibits.
No R 17.
Decree in
D. C. Kalu-
tara.
Case
No 4142.
14-3-10.

PART II.

EXHIBITS.

No. R 17.

Decree in D. C. Kalutara Case No. 4142.

DECREE OF DIVORCE "A VINCULO MATRIMONI"

No. 4142.

IN THE DISTRICT COURT OF KALUTARA

DONA ALPINONA WEERAKOON HAMI-
NE of Kalawila.....*Plaintiff.*

Against

- 1. KALAWITAOPATRIGE alias MEE-
BEDDEKANEGEY.....(torn)
- 2.(torn)

10

This action coming on for disposal before A. C. G. Wijekoon Esquire, Acting District Judge of Kalutara on the 14th day of December 1909 in the presence of Mr. C. P. Wijeratne proctor on the part of the plaintiff and the defendants not appearing.

It is ordered and decreed that the marriage between Dona Alpi Nona Weerakoon Hamine of Kalavila and Kalavilapathirage alias Meebedde Liyanagey Monis Appuhamy of.....be set aside, dissolved and annulled by reason of the 1st defendant's living in adultery with the 2nd defendant unless sufficient cause be shown to the Court why this decree should not be made absolute on the 14th day of March 1910.

20

And it is further decreed that the defendants do pay to the plaintiff abovenamed her costs of this action as taxed by the Officer of the Court.

Sgd. A. C. G. WIJEKOON.

14th December, 1909.

This action coming on for final disposal before P. E. Peiris Esquire, District Judge of Kalutara on the 14th day of March 1910 in the presence of Mr. C. R. Wijeratne, Proctor on the part of the plaintiff and the defendants not appearing: It is ordered and decreed that the marriage between Dona Alpi Nona Weerakoon Hamine of Kalawila and Kalawila pathirige alias Meekade Leanege Monis Appuhamy of be set aside, dissolved and annulled by reason of the 1st defendant's living in adultery with the 2nd defendant.

30

And it is further decreed that the defendants do pay to the abovenamed plaintiff her costs of this action as taxed by the Officer of the Court.

Sgd. P. E. PEIRIS

14th March 1910.

D. J.

40

No. R 19.

Marriage Certificate of Dona Alpinona Weerakoon.

R 19.

No. 407. CERTIFICATE OF MARRIAGE.

MARRIAGE REGISTER OF IDDAGODA PATTU DIVISION IN
WESTERN PROVINCE.

Exhibits.

No. R 19.
Marriage
Certificate
of Dona
Alpinona
Weerakoon.
12-6-10.

- | | | | |
|----|--|---|-------------------------------------|
| 1 | Name of Parties : | Male Party | Female Party |
| | | Kathriaratchige Don
Carnelis Siriwardene
Appuhamy | Dona Alpinona Weera-
koon Hamine |
| 10 | | | |
| 2. | Age (in years): | 65 years | 40 years |
| 3. | Condition : | Widower | Divorced wife |
| 4. | Rank or Profes-
sion & Nationa-
lity : | Government Service
Sinhalese | —————
Sinhalese |
| 5. | Residence : | Kolehekade | Kolehekade |
| 6. | Full name of the
Father : | Kathriaratchige Don
Andris Siriwardene
Appuhamy | Don Awneris Weera-
koon Appuhamy |
| 20 | | | |
| 7. | Father's Rank
or Profession : | Cultivator | Cultivator |
| 8. | Name and Divi-
sion of the Regis-
trar who issued
the Certificate : | Don Porolis Wijesinghe Gunaratne
Registrar of Iddagoda Pattu | |
| 9. | Place of Marriage: | Registrar's Office at Kotagedera. | |

The marriage was solemnised by (in my presence) on the 12th day of June 1910.

30

Sgd. D. F. W. GUNARATNA,

Registrar.

This marriage was effected by us in the presence of the under-mentioned witnesses.

Sgd. DON CARNELIS SIRIWARDENE.

This is the × Crossmark of
Alpinona Weerakoon Hamine.

Exhibits.
No. R 19.
Marriage
Certificate
of Dona
Alpinona
Weerakoon.
12-6-10.
—continued

Signature of Witness Sgd. GIRIGORIS.
1. Full name, occupation or rank and residence of witness. Weliwitige Girigoris
Rodrigo Appuhamy.
Cultivator, Kotagedera.

Signature of Witness. Sgd. PEIRIS APPU.
2. Full name, occupation or rank and residence of witness. Tantirige Peiris Appu.
Cultivator, Kotagedera.

Signed in my presence Sgd. D. F. W. GUNARATNE,
Registrar.

I, K. T. S. Gurusinghe Additional Assistant Provisional Registrar of the Kalutara District do hereby certify that the foregoing is a true extract from the Register of Marriages of D. F. W. Gunaratne Registrar of the Iddagoda Pattu Division filed in this office and the same is granted on the application of D. D. Siriwardene. 10

Sgd. K. T. S. GURUSINGHE,
Addl. Asst. Provl. Registrar.

Assistant Provincial Registrar's Office,
Kalutara, 13th May, 1927.

Translated by me.

Sgd.
Sworn Translator. 20

D. C. Colombo, 26-10-43.

No. P 26.
Deed
No. 12747.
22-2-23.

No. P 26.
Deed No. 12747.

TRANSLATION. Lands 2.
No. 12747.

This 22nd day of February, 1923.

Deed of Transfer, Rs. 1500/-.

KNOW ALL MEN BY THESE PRESENTS that I, Katriaratchige Don Carnelis Siriwardene, retired Headman of Kolahekada in Iddagoda Pattu of Pasdun Korale West do hereby sell transfer set over and assign (1). All that undivided half part or share from and out of field called Galketiya Aswedduma and of everything belonging thereto situated at Kolehekada in Iddagoda Pattu of Pasdun Korale West of Kalutara District Western Province and bounded on the North by Gobbaddamullewatta and the Wela, East by the Crown 30

land, South by the jungle and Galketiya, West by a portion of Galketiya Aswedduma and containing in extent of 8 acres and 1 rood and 15 perches within the said boundaries and held and possessed by me upon deed of transfer bearing No. 14506 dated 19th September, 1891 and attested by B. G. Perera N.P. in my favour, and

Exhibits.
No. P 26.
Deed
No. 12747.
22-2-23.
—continued

2. All that undivided one third part or share of the entire land within the boundaries and of the trees and plantations belonging thereto (excluding the two upstairs boutique houses that have been erected by the Vendee hereof towards the eastern direction bordering the High road leading from Gulanegoda, and the coconut, jak and del plantations etc. that have been planted by the said person adjoining the said boutique house, and the four coconut trees that have been planted by the said person towards the western direction); together with the boutique house that has been erected by me the said vendor which is built up of Cabook and covered with tiles and abutting the aforesaid two boutique houses, from and out of the land called Kajugahaowita situated at Pallegoda in Iddagoda Pattu aforesaid and bounded on the north by the two portions of fields possessed by Malmutuge Seuwaraya and the high road to Pallegodawatte, East by Olagandoowe wela, South by the canal of the village limit of Meegammedde, West by Galagawakumbura belonging to Malmutuge Enga and containing in extent of about six acres within the said boundaries and held and possessed by me the said vendor by right of purchase unto Kaththriaratchige Don Frederick Siriwardena Police Headman of Walagedera in consideration of a sum of Rs. 1,500/- (Rupees One thousand five hundred) of the lawful money of Ceylon which I have counted and received in full.

Therefore the above disposed of property together with all my right title interests and privileges in and to the same be hereby vested with the said vendee Kaththriaratchige Don Fredrick Siriwardena Police Headman and his heirs executors administrators and assigns from this day forever with full powers and authority to possess and enjoy same undisputedly forever or to do whatever like with the same and hereby declaring that I have the lawful right and authority to dispose of the said property and that I have not done any act prior to this to alienate the said property or any part thereof contray to this sale, I the said vendor for myself and my heirs executors and administrators further convenent and agree to and with the said vendee and his aforewritten heirs to warrant and defend the said sale in all respects to be responsible for and settle and grant if any disputes were to arise hereafter contrary to the said sale and also to execute any deeds acts and assurances at the cost and expense of the said vendee and his aforewritten heirs if application is made upon reasonable grounds for better support of the title hereby given.

And the I the said vendor do hereby further promise and agree that if the said sum of Rs. 1,500/- were to be repaid to me by the said

Exhibits. vendor within a period of two years from the date hereof, to transfer
 No. P 26. the said premises to the vendor.

Deed

No 12747.

22-2-23.

—continued

In witness whereof I the said vendor Don Carnelis Siriwardena retired Headman and the vendee Don Fredrick Siriwardena Police Headman set our respective signatures hereunto and to two other writings of the same tenor and date as these presents at Alutgama on this 22nd day of February, 1923.

We the witnesses to this declare that we are well acquainted with the executants herein signed and know their proper names occupations and residences.

10

1. Sgd. D. D. SIRIWARDENA,

Sgd. Illegibly (DON CARNELIS)

2. Sgd. In English.

Sgd. In English.

(This is the signature
 of DON BRAMPY
 SIRIWARDENA).

(This is the signature of
 DON BRAMPY SIRIWARDENA).

Sgd. G. B. SAMARANAYAKE,

Notary Public.

I, Gilbert Basil Samaranayake of Paiyagala Notary Public of the District of Kalutara do hereby truly certify and attest that in the presence of the two witnesses Kathri Aratchige Don Davith Siriwardena Appuhamy of Kolahankada who signed as D. D. Siriwardena and ditto Don Brampy Siriwardena Appuhamy of the same village both of whom are known to me the foregoing instrument having been duly read over and explained by me to the said Kathri Aratchige Don Carnelis Siriwardena retired headman who signed illegibly and ditto Don Fredrick Siriwardena Police Headman who are known to the said witnesses and to me, the same was signed by them and by the said witnesses in my presence and in the presence of one another all being present at the same time at Alutgama on this 22nd day of February, 1923.

20

30

And I do hereby further truly certify and attest that it was stated before me that the consideration hereof was set off in part payment of the value of properties sold to two daughters of the vendor by the vendee hereof in this office this day upon Deed No. 12748 and that the duplicate hereof bears six stamps of the value of Rs. 24/- and the original a stamp of the value of one rupee which said stamps were supplied by me.

Attested on this 22nd day of February, 1923.

Seal.

Sgd. G. B. SAMARANAYAKE,

Notary Public.

40

I do hereby certify that this is a true copy supplied by affixing a stamp of the value of one rupee.

Attested on this 19th day of June, 1943.

Seal. Sgd. G. B. SAMARANAYAKE,

Notary Public.

Exhibits.
No. P 26.
Deed
No. 12747.
22-2-23.
—continued

Translated by me.

Sgd. W. R. P. SIRIWARDENA,
Sworn Translator.

D. C. Colombo, 21-6-43.

No. P 27.

Deed No. 12748.

TRANSLATION.

No. 12748.

Lands 1.

No. P 27.
Deed
No. 12748.
22-2-23.

10

This 22nd day of February, 1923.

Deed of Transfer, Rs. 2,000/-.

20

KNOW ALL MEN BY THESE PRESENTS that I, Kathriaratchige Don Pedrick Siriwardena of Walagedera in Iddagoda Pattu of Pasdun Korale West do hereby sell transfer set over and assign the land called Ranmudugalemanana together with species of trees that have been planted thereon named Para rubber, situated at Nauntuduwa in Iddagoda Pattu of Pasdun Korale West Kalutara District Western Province bounded on the North by Lot bearing No. 0428 in Preliminary Plan No. 6293, and by Lot bearing No. 10419 in Preliminary Plan No. 11025. East by the lands in Title Plans bearing Nos. 195723, 195658 and 195657, South by the land in Title Plan No. 195653, West by Lot 10419 in Preliminary Plan No. 11025 and containing in extent of two acres and twenty four perches and held and possessed by me upon deed of transfer bearing No. 2945 dated 23rd November, 1906 attested by Mr. C. A. K. Marikar Notary Public in my favour; unto the two persons Kathriaratchige Dona Cecilia Siriwardena hamine and do Dona Lily Siriwardena hamine both of Kolahakade in consideration of a sum of Rupees Two thousand (Rs. 2,000/-) of the lawful money of Ceylon which I have counted and received in full.

30

Therefore the above disposed of property together with all my right title interest and privileges in and to the same be hereby vested with the said two vendees and their heirs, executors, administrators and assigns with full power and authority to possess and enjoy same undisputedly forever or to do whatever like with the same.

Exhibits.
 No. P 27.
 Deed
 No. 12748.
 22-2-23.
 —continued

And hereby declaring that I have the lawful right and authority to dispose of the said property, and that I have not done any act prior to this to alienate the said property or any part thereof, I the said vendor for myself and my heirs executors and administrators further covenant and agree to and with the said vendees and their aforewritten heirs to warrant and defend the said sale in all respects to be responsible for and settle and grant if any dispute were to arise hereafter contrary to the said sale and also to execute any deeds acts and assurances at the cost and expense of the said vandee and their aforewritten heirs if application is made upon reasonable grounds for better support of the title hereby given. 10

In witness whereof I the said vendor set my signature hereunto and to two others writings of the same tenor and date as these presents at Alutgama on this 22nd day of February, 1923. We the witness to this declare that we are well acquainted with the executant herein signed and know his proper name occupation and residence.

Sgd. D. D. SIRIWARDENA.

Sgd. In English. (This is the Signature of
 DON BRAMPY SIRIWARDENA).

Sgd. In English. 20
 (This is the Signature of
 DON PEDRICK SIRIWARDENA).

Sgd. G. B. SAMARANAYAKE,
Notary Public.

I, Gilbert Basil Samaranayake of Paiyagala Notary Public of the District of Kalutara do hereby truly certify and attest that the foregoing instrument having been duly read over and explained by me to the said Kathiriaratchige Don Pedrick Siriwardena Police Headman who is known to me in the presence of the witnesses Kathriaratchige Don Davith Siriwardena Appuhamy and ditto Don Brampy Siriwardena Appuhamy both of Kolahakoda both of whom are also known to me, the same was signed by the said vendor and the said two witnesses in my presence and in the presence of one another all being present at the same time at Alutgama on this 22nd day of February, 1923. 30

And I do hereby further truly certify and attest that it was declared in my presence that out of the consideration mentioned herein that a sum of Rupees Five hundred was accepted from the vendees hereof and that the balance was set off in lieu of the amount payable on Deed No. 12747 attested in this office, and that the duplicate hereof bears five stamps of the value of Rupees Thirty one and the original a rupee stamp which said stamps were supplied by me. 40

Attested on this 22nd day of February, 1923.

Seal. Sgd. G. B. SAMARANAYAKE,
Notary Public.

Exhibits.
 —
 No. P 16.
 Petition and
 Inventory
 in D. C.
 Kalutara
 Case
 No. 1584.
 31-7-23.
 —continued

10. DONA EMMIE NONA SIRIWARDENE and husband.
11. SAMARAWEERAMUDALIGE DON PETER WIJEGUNARATNE both of Katugahahena.
12. DON BRUMPY SIRIWARDENE of Kolehekada.
13. DONA ALICE NONA SIRIWARDENE and husband.
14. DON JOHANNES RANAWEERA both of Dodangoda. 10
15. DONA CICILIA SIRIWARDENE of Kolehekada.
16. DONA LILY SIRIWARDENE of Kolehekada. The minors 6th, 7th and 16th respondents by their guardian-ad-litem Don Brampy Kannangara.....*Respondents*.

On this 31st day of July, 1923.

The petition of the petitioner abovenamed appearing by D. J. K. Goonetilleke his Proctor states as follows:— 20

1. The abovenamed Kathiriaratchige Don Cornelis Siriwardene of Kolahekada died intestate and without making a last will on the 3rd day of May, 1923 at Kolahekada in Pasdun Korale within the jurisdiction of this court, leaving property in the District of Kalutara within the jurisdiction of this court.
2. The petitioner abovenamed is the eldest son of the said intestate.
3. To the best of the petitioner's knowledge the heirs of the said Kathiriaratchige Don Cornelis Siriwardene are the petitioner himself and the respondents abovenamed. 30
4. The said intestate first married Saprarnaduaratchige Saralat Hamine, who predeceased him leaving an only child, the petitioner abovenamed.
5. The said intestate next married Magodaaratchige Engo Nona, who also predeceased him leaving four children, namely, Dona Jane Nona, Don Welin 8th respondent, Don Davith 9th respondent and Dona Emmie Nona 10th respondent who is married to 11th respondent.

I do hereby certify that this a true copy supplied by affixing a stamp of the value of one rupee.

Attested on this 16th day of June, 1943.

Seal. Sgd. G. B. SAMARANAYAKE,
Notary Public.

Exhibits.
No. P 27.
Deed
No. 12748.
22-2-23.
—continued

Translated by me.

W. P. P. SIRIWARDENA,
Sworn Translator.

D. C. Colombo, 21-6-43.

10

**No. P 16. Petition and Inventory in D. C. Kalutara
Case No. 1584.**

P 16.

IN THE DISTRICT COURT OF KALUTARA.

In the matter of the Intestate Estate of the late Kathiriaratchige Don Carmels Siriwardene of Kolehekada.

Testy.
Jurisdiction
No. 1584.

KATHIRIARATCHIGE DON FREDE-
RICK SIRIWARDENE of Walagedera
.....*Petitioner.*

No. P 16.
Petition and
Inventory
in D. C.
Kalutara
Case
No. 1584.
31-7-23.

20

and

1. ELPI NONA WEERAKOON of Kolehekada.
2. DONA CICILIA NONA and husband.
3. DAVID HINTON VAN ROOVEN, GUNASEKERA both of C.G.R. Great Western, Nanu Oya.
4. DONA EMMI NONA and husband.
5. LIYANAARATCHIGE D. M. JAYASEKERA both of Iddagoda.
6. DONA ESSELIN NONA.
7. DONA ROSLINE NONA both of Uragaha.
8. DON WELIN SIRIWARDENE.
9. DON DAVITH SIRIWARDENE.

30

6. The said Dona Jane Nona married Don Brumpy Kanangara and she predeceased her father the said intestate leaving four children namely, Dona Cicilia Nona 2nd respondent; who is married to 3rd respondent, Dona Emmie Nona 4th respondent married to 5th respondent, Dona Essalin Nona 6th respondent and Dona Rosaline Nona 7th respondent.
7. The aforesaid 6th and 7th respondents are minors, being of the ages of about 8 and 6 years respectively.
8. The said intestate lastly married Elpi Nona Weerakoon the 1st respondent abovenamed by whom he had four children, viz. Don Brampy 12th respondent, Dona Alice Nona 13th respondent married to 14th respondent, Dona Cicilia 15th respondent and Dona Lily Nona 16th respondent who is a minor being of the age of about 20 years.
9. Full and true particulars of the property left by the deceased to the best of the petitioner's knowledge and so far as he has been able to ascertain the same, are contained in the schedule hereto annexed.
10. The said Don Brampy Kannangara is the father of the 6th and 7th minor respondents and brother-in-law of the 16th minor respondent and he is of sound mind and full age and he has no interest adverse to the said minors and he is further a fit and proper person to be appointed guardian-ad-litem over them for all the purposes of this application.
11. The petitioner claims to be appointed administrator of the estate of the said intestate as his eldest son.

Exhibits.
 No. P 16.
 Petition and
 Inventory
 in D. C.
 Kalutara
 Case
 No. 1584.
 31-7-23.
 —continued

Wherefore the petitioner prays :—

- (a) That the said Don Brampy Kannangara the father of the 6th and 7th minor respondents and brother-in-law of the 16th minor respondent may be appointed guardian-ad-litem over the said minors for all the purposes of this Testamentary action.
- (b) That he may be appointed administrator of the estate of the said intestate and that letters of administration be issued to him accordingly.

Sgd. D. J. K. GUNATILLEKE,
Proctor for Petitioner.

Exhibits.

No. P 16.
Petition and
Inventory
in D. C.
Kalutara
Case
No. 1584.
31-7-23.
—continued

Testamentary
Jurisdiction
No. 1584.

IN THE DISTRICT COURT OF KALUTARA.

In the matter of the Intestate Estate of the late
Kathriaratchige Don Cornelis Siriwardana of
Kolehekada.

KATHRIARATCHIGE DON FREDRICK
SIRIWARDANA of Walagedara.....*Petitioner.*

and

1. ELPI NONA WEERAKOON of
Kolehekada.
2. DONA CICILIA NONA and husband. 10
3. DAVID HINTON VAN ROYEN
GUNASEKERA both of C. G. R. Great
Western Nanu Oya.
4. DONA EMMIE NONA and husband.
5. LIYANAARATCHIGE D. M. JAYA-
SEKERA both of Iddagoda.
6. DONA ESSELIN NONA.
7. DONA ROSLINE NONA both of
Uragoda.
8. DON WELIS SIRIWARDENA. 20
9. DON DAVITH SIRIWARDENA.
10. DON EMMIE NONA SIRIWARDENA
and husband.
11. SAMARAWEERAMUDALIGE DON
PETER WIJEGUNARATNE both of
Katugahahena.
12. DON BRAMPY SIRIWARDANA of
Kolehekada.
13. DONA ALICE NONA SIRIWARDANA
and husband. 30
14. DON JOHANNES RANAWEERA both
of Dodangoda.
15. DONA CICILIA SIRIWARDENA of
Kolehekada.
16. DONA LILY SIRIWARDANA of
Kolehekada. The minors 6th, 7th and 16th
respondents by their guardian-at-litem Don
Brampy Kannangara.....*Respondents.*

Inventory.

MOVABLES.

		Rs. cts.	Exhibits. No. P 16. Petition and Inventory in D. C. Kalutara Case No. 1584. 31-7-23. <i>—continued</i>
	1. 2/3 of 1/2 × 1/2 or 1/6 share of the land called Paragahaowita alias Pahalakolehakada Cheenagahakattiya at Kolehakada in extent about 8 Bushels of Paddy Showing	75 00	
	2. 1/4 share of Malwatteowita at Kolehakada in extent about 8 Bushels of Paddy Sowing	200 00	
10	3. 1/4 share of Ihalaparagaha Owita at Kolehakada in extent about 12 Bushels	250 00	
	4. 1/3 share of Pahala Ranagalaowita at Kolehakada in extent about 10 Bushels of Paddy Sowing	300 00	
	5. 1/48 share of Pahala Ranagalaowita alias Cheenagahaowita Pitakattiya at Kolehakada in extent about 5 Bushels of Paddy Sowing	5 00	
	6. 1/48 plus 1/12 of Cheenagahaowita at Kolehakada in extent about 20 Bushels of Paddy Sowing	250 00	
	7. 1/3 of Hikgahaowita at Kolehakada in extent about 4 Bushels of Paddy Sowing	160 00	
20	8. 2/12 share of Duweowita at Kolehakada in extent about 6 Bushels of Paddy Sowing	100 00	
	9. 1/6 share of Puranayaowita at Kolehakada in extent about 6 Bushels of Paddy Sowing	100 00	
	10. 1/6 of Poramanowitekumbura at Kolehakada in extent about 1 amunam	100 00	
	11. 1/3 of Duwewalaowita at Kolehakada in extent 6 Bushels of Paddy	200 00	
	12. 6/12 share of Kekulamakumbura at Kolehakada in extent about 2 1/2 acres	400 00	
30	13. 6/12 share of Mulketiyawala owita together with the thatched boutique at Kolehakada in extent about 4 1/2	500 00	
	14. 1/8 of Kebellagahaowita at Kolehakada in extent 1 amunam	100 00	
	15. 1/4 of Ihalagollenawilakumbura at Pallegoda in extent about 5 Bushels of Paddy Sowing	130 00	
	16. 1/48 of Midellagahaowita alias Eliassekumbure at Kirantidiya in extent about 2 Bushels of Paddy Sowing	10 00	

Exhibits.		Rs. cts.		
No. P 16. Petition and Inventory in D. C. Kalutara Case No. 1584. 31-7-23. —continued	17.	1/144 plus 1/384 shares of Nagahaliyadde kumbure at Pallegoda in extent about 1 amunam	5 00	
	18.	1/12 of Ambagahawatte at Kirantidiya in extent about 20 acres	500 00	
	19.	1/4 of 7/8 shares of Kahatagahawatte alias Keta-kerallagahawatte at Kolehakada in extent about 8 acres	600 00	
	20.	1/3 of 2/3 of Madugahawatte at Kolehakada in extent about 5 acres	200 00	10
	21.	2/3 of Honpelawatte at Kolehakada in extent about 4 acres	1000 00	
	22.	The entirety of Owitaliadda adjoining Honpelawatte at Kolehakada in extent about 1/2 an acre	150 00	
	23.	2/6 of Doowewatte at Kolehakada in extent about 1/2 an acre	150 00	
	24.	1/3 of Kankananiyadde at Kolehakada Kirantidiya in extent about 1 acre	50 00	
	25.	1/144 plus 1/384 shares Maharambewatte at Pallegoda in extent about 20 acres	150 00	20
	26.	1/144 plus 1/384 shares of Millagahawatte at Akadamulla in extent about 4 acres	20 00	
	27.	1/44 plus 1/384 of Ambagahawatte at Kolehakada in extent about 1 acre	5 00	
	28.	2/72 of Magurugodawatte at Danwattogoda in extent about 10 acres	101 00	
	29.	Entirety of Galketiyeowitepitakattiya at Kolehakada in extent about 1 1/2 acres	400 00	
	30.	Entirety of Keenagahaowitebubulepitakattiyeowite deniya at Kolehakada in extent 1/4 an acre	100 00	30
	31.	1/4 of Netaugahalandawatta together with the first plantation on the North eastern portion on which Welis Siriwardena resides and the entirety of the plantation and the residing house on the south westesn portion at Kolehakada in extent about 21 acres and 1 rood	3525 00	
		Total	9866 00	

	Movables.	Rs. cts.	Exhibits.
	1 Almirah 15 00	No. P 16. Petition and Inventory in D. C. Kalutara Case No. 1584. 31-7-23. <i>—continued—</i>
	2 Tables	.... 10 00
	6 Chairs	.... 3 00
	4 Beds	.... 15 00
	2 Lounges	.... 2 00
	1 Couch	.... 4 00
	1 Calder Box	.... 4 00
	2 Brass Lamps	.... 5 00
10	2 Spittoons	.... 6 00
	1 Hanging Lamp	.... 2 50
	1 Silver Belt	.... 15 00
	Total	.... <u>81 50</u>
		81 50	
	Increased by official valuation	.... 179 50
		Rs. <u>261 00</u>	
		9866 00	
		<u>10127 00</u>	
	Less funeral expenses	.... 150 00
20	Total	.... <u>9977 00</u>

I Katriaratchige Don Frederick Siriwardene of Walagedera Administrator of the estate of the late Kathriaratchige Carnelis Siriwardene solemnly, sincerely and truly declare affirm and say as follows :—

To the best of my knowledge information and belief the above-written inventory contains a full, true and correct account of all the property movable and immovable and rights and credits of the said Kathriaratchige Don Carnelis Siriwardena deceased so far as I have been able with due diligence to ascertain the same.

30 I have made a careful estimate and valuation of all the property the particulars of which are set forth and contained in the said Inventory and to the best of my judgment and belief the several sums

Exhibits. respectively set opposite to the several items in the said Inventory full
 No. P 16. and fairly represents the present value of the items of which they are
 Petition and so respectively set opposite.
 Inventory
 in D. C.
 Kalutara.
 Case
 No. 1584.
 31-7-23.
 —continued

Affirmed to at Kalutara
 On this 11th day of April, 1924.

Sgd. D. F. SIRIWARDENE.

Explained by

Sgd.....

Intr.

Before me.

10

Sgd. W. H. D. CARBARY,
District Judge.

B. Wijyaratna A. Secretary of the District Court of Kalutara
 do hereby certify that the foregoing is a true copy of the Inventory
 filed in Case No. 1584 Testamentary of the District Court of
 Kalutara.

Sgd.....

Secy.

1-5-43.



No. R 37.
 Inventory
 filed in D C.
 Kalutara
 Case
 No. 1584.
 11-4-24.

No. R 37.

20

Inventory filed in D. C. Kalutara Case No. 1584.

IN THE DISTRICT COURT OF KALUTARA.

R 37.

In the matter of the intestate Estate of the
 late Kathriaratchige Don Cornelis Siriwardene
 of Kolahekada.

Inventory.

Rs. cts

- | | | |
|--|--|-----------|
| <ol style="list-style-type: none"> 1. 2/3 of 1/2 x 1/2 or 1/6 share of the land called Paragahaowita alias Pahala Kolehakada Cheenagahakattiya at Kolehekada in extent of about 8 bushels of paddy sowing 2. 1/4 share of Malwatteowita at Kolehakada in extent about 8 bushels paddy sowing 3. 1/4 share of Ihalaparagahaowita at Kolehakada in extent about 12 bushels of paddy sowing | <p>75 00</p> <p>200 00</p> <p>250 00</p> | <p>30</p> |
|--|--|-----------|

	4.	1/3 share of Pahala Ranagalaowite at Kolehakada in extent of about 10 bushels of paddy sowing	300 00	<u>Exhibits.</u> No. R 37. Inventory filed in D.C, Kalutara Case No. 1584 11-4-24. —continued
	5.	1/48 of Pahalaranagalaowita alias Cheenagahaowita Pitakattiya at Kolehakada in extent of about 5 bushels paddy sowing	5 00	
	6.	1/48 plus 1/12 Cheenagahaowite at Kolehakada in extent of about 20 bushels of paddy sowing	250 00	
	7.	1/3 of Hikgahaowite at Kolehakada in extent of about 4 bushels of paddy sowing	160 00	
10	8.	2/12 share of Duwewite at Kolehakada in extent about 6 bushels of paddy sowing	100 00	
	9.	1/6 share of Puranayaowita at Kolehakada in extent about 6 bushels of paddy sowing	100 00	
	10.	1/6 of Poramanowitekumbure at Kolehakada in extent about 1 amunam	100 00	
	11.	1/3 of Duwewalaowite at Kolehakada in extent about 6 bushels of paddy sowing	200 00	
	12.	6/12 share of Kekulamekumbura at Kolehakada in extent of 2½ acres	400 00	
20	13.	6/12 of Mulketjawalaowite together with the thatched boutique at Kolehakada in extent about 4½ acres	500 00	
	14.	1/8 of Kebellagahaowite at Kolehakada in extent about 1 amunam	100 00	
	15.	1/4 of Ihalagallenawilakumbura at Pallegoda in extent about 5 bushels of paddy sowing	150 00	
	16.	1/48 of Milellegahaowita alias Eliassekumbura at Kirantidiya in extent about 2 bushels of paddy sowing	10 00	
30	17.	1/44 plus 1/384 shares of Nagahaliyaddekumbura at Pallegoda in extent about 1 amunam	5 00	
	18.	1/2 of Ambagohawatta at Kirantidia in extent about 20 acres	500 00	
	19.	1/4 of 7/8 shares of Kahatagahawatta alias Ketakeral-ligahawatta at Kolehakada in extent about 8 acres	600 00	
	20.	1/3 of 2/3 of Madugahawatta at Kolehakada in extent about 3 acres	200 00	
	21.	2/3 of Honpalewatta at Kolehakada in extent about 4 acres	1000 00	
40	22.	The entirety of Owiteliyadde adjoining Honpalawatte at Kolehakada in extent about 1/2 an acre	150 00	

Exhibits. No. R 97. Inventory filed in D.C. Kalutara Case No. 1584. 11-4-24. ~continued	23. 2/6 of Duwewatta at Kolehakada in extent about 1/2 an acre	150 00	
	24. 1/3 of Kankananiyadde at Kirantidiya in extent about 1 acre	50 00	
	25. 1/44 plus 1/384 shares of Mahaarambawewatte at Pallegoda in extent about 20 acres	150 00	
	26. 1/44 plus 1/384 shares of Millagahawatta at Akada- mulla in extent about 4 acres	20 00	
	27. 1/144 plus 1/384 of Ambagahawatta at Kolehakada in extent about 1 acre	5 00	10
	28. 2/72 of Magurugodawatta at Danwattogoda in extent about 10 acres	101 00	
	29. Entirety of Galketiaowita at Kolehakada in extent about 1½ acres	400 00	
	30. Entirety of Keenagahaowitebubule Pitakattiya etc.	100 00	
	31. 1/4 of Netawgahalandewatte together with 1st plantation etc.	3525 00	
	Total	9866 00	

Movables.

	Rs.	cts.	
1 Almirah	....	15 00	20
2 Tables	....	10 00	
6 Chairs	....	3 00	
4 Beds	....	15 00	
2 Loungers	....	2 00	
1 Couch	....	4 00	
1 Calder box	....	4 00	
2 Brass Lamps	....	5 00	
2 Spittoons	....	6 00	
1 Hanging Lamp	....	2 50	
1 Silver Belt	....	15 00	30
	Total	81 50	
	Increase by Official valuation	179 50	
		261 00	
		9866 00	
		10127 00	
	Less funeral expenses	150 00	
	Total	9977 00	

I, Kathriaratchige Don Frederick Siriwardene of Walagedera Administrator of the estate of the late Kathriaratchige Don Cornelis Siriwardene solemnly, sincerely and truly declare affirm and say as follows :—

To the best of my knowledge information and belief the above written inventory contains a full, true and correct account of all the property movable and immovable and rights and credits of the said Kathriaratchige Don Cornelis Siriwardene deceased so far as I have been able with due diligence to ascertain the same.

Exhibits.
No. R 37.
Inventory
filed in D.C.
Kalutara.
Case
No. 1584.
11-4-24.
—continued

I have made a careful estimate and valuation of all the property the particulars of which are set forth and contained in the said inventory and to the best of my judgment and belief the several sums respectively set opposite to the several items in the said inventory fully and fairly represent the present values of the items to which they are so respectively set opposite.

Affirmed to at Kalutara
on this 11th April, 1924.

Sgd. D. F. SIRIWARDENE.

Before me.

Sgd. CARBERY,
District Judge.

1. The deceased was entitled to the inherited property of his father as follows:—

2. The said deceased father died leaving as his heirs wife and five children including the deceased, named:—

- | | | |
|-------------------------------|---|------------------|
| (1) Alpinona Weerakoon Hamine | — | (wife) |
| (2) Don Fredrick Siriwardena | — | (deceased) |
| (3) Don Velin Siriwardena | — | (1st respondent) |
| (4) Don Davith Siriwardena | — | (2nd respondent) |
| (5) Janenona Siriwardena | — | (daughter) |
| (6) Eminona Siriwardena | — | (do) |

3. Hereby the wife Alpinono was entitled to half share and others are entitled to the other half or 1/10 share each respectively.

4. According to the said shares the deceased of this case also entitled to one tenth share of his father's inherited property.

5. In consequence of the said fact the deceased was entitled only to the following shares of the inherited property which was mentioned in the inventory in case No. 1584 (Testy) D. C. Kalutara.

- | | |
|--|------------------|
| 6. (1) One tenth of one sixth or one sixtieth (1/60) share of the land called Paragahaowita alias Pahalakolehakada Keenagahakattiya at Kolahakada in extent about 5 bushels of paddy sowing | Rs. cts.
7 50 |
| (2) One tenth of one fourth or 1/40 share of Malwatte owita at Kolahakada in extent 8 bushels of paddy sowing | 20 00 |

Exhibits.
 No. R 37.
 Inventory
 filed in D.C.
 Kalutara.
 Case
 No. 1584.
 11-4-24.
 —continued

	Rs.	cts.
(3) 1/10 of 1/3 or 1/30 share of Pahala ranagalaowita at Kolahakada in extent of about ten bushels of paddy sowing ...	30	00
(4) 1/10 of 1/48 or 1/480 of Pahalaranagalowita alias Keenagahaowita pitakattiya at Kolahakada in extent about 5 bushels of paddy sowing	50	
(5) 1/10 of 2/10 or 1/60 share of Duweowita at Kolahakada in extent about 6 bushels of paddy sowing ...	10	00
(6) 1/10 of 6/12 or 1/20 share of Kumbura at Kolahakada in extent about 2 1/2 acres ...	40	00
(7) 1/10 of 6/12 or 1/20 share of Muketiyawalaowita at Kolahakada in extent about 4 1/2 acres (The thatched house stated in the inventory of the said land has been destroyed) ...	50	00
(8) 1/10 of 1/8 or 1/80 share of Kebellagahaowitta at Kolahakada in extent about 1 amunu ...	10	00
(9) 1/10 of 1/4 or 1/40 share of Ihalagalenavila kumbura at Pallagoda in extent about 5 bushels paddy sowing ...	15	00
(10) 1/10 of 1/48 or 1/480 share of Midelgahaowita alias Eliessekumbura at Keerantidiya in extent about 2 bushels of paddy sowing ...	1	00
(11) 1/10 of 1/144 and 1/384 share of Nagahaliyedda kumbura at Pallagoda in extent about 1 amunu ...	50	
(12) 1/10 of 1/12 or 1/120 share of the Ambagahawatta at Keerantidiya in extent about 20 acres ...	50	00
(13) 1/10 of 1/4 of 7/8 or 70/320 shares of Kahatagahaowita alias Ketakerellagahawatta at Kolahakade in extent about 8 acres ...	60	00
(14) 1/10 of 1/3 of 2/3 or 20/90 shares of Madugahawatta at Kolahakada in extent about 3 acres ...	20	00
(15) 1/10 of 2/3 or 1/15 share of Homepalawatta at Kolahakada in extent about 4 acres ...	100	00
(16) 1/10 share of Owitelyedda adjoining to Homepolewatta at Kolahakada in extent about 1/2 an acre ...	15	00

		Exhibits.
	(17) 1/10 of 2/6 or 1/30 share of Duwewatte at Kolahakada in extent about 1/2 acre ...	15 00
	(18) 1/10 of 1/3 or 1/30 share of Kankanamliyedda at Keerantidiya in extent about 1 acre ...	5 00
	(19) 1/10 or 1/144 and 1/384 shares of Maharabewatta at Pallegoda in extent about 20 acres ...	15 00
	(20) 1/10 of 1/144 and 1/384 shares of Millagahawatta at Akadamulla in extent about 4 acres...	2 00
10	(21) 1/10 of 1/144 and 1/384 shares of Ambagahawatte at Akadamulla in extent about 1 acre...	1 00
	(22) 1/10 of 2/72 or 1/360 share of Magurugodawatta at Danwattagoda in extent about 10 acres ...	10 00
	(23) 1/10 share of Galketiyaowita Pitakettiya at Kolahakada in extent about 1 1/2 acres ...	40 00
	(24) 1/10 share of Keenagahaowite Bubula Pitakattiya at Kolahakade in extent about 1/4 an acre ...	10 00
20	(25) 1/10 share of 1/4 or 1/40 share of Netawgahalandawatta at Kolahakade and the residing house in extent about 21 acres and 1 rood ...	352 50
TOTAL ...		880 00

7. The following lands which were mentioned in the inventory in case No. 1584 (Testy) are excluded as they are out of possession and not known :—

- (1) 1/10 of 1/4 or 1/40 share of Ihalaparagahaowita at Kolahakada in extent about 12 bushels of paddy sowing.
- (2) 1/10 of 1/48 and 1/12 share of Keenagahaowita at Kolahakada in extent of about 20 bushels of paddy sowing.
- 30 (3) 1/10 of 1/3 or 1/30 share of Higgahaowita at Kolahakada in extent 4 bushels of paddy sowing.
- (4) 1/10 of 1/6 or 1/60 share of Puraneyaowita at Kolahakada in extent about 6 bushels of paddy sowing.
- (5) 1/10 of 1/6 or 1/60 share of Porumankumbura at Kolahakada in extent about 1 amuna.
- (6) 1/10 of 1/3 share of 1/30 share of Duwewalaowite at Kolahakada in extent about 6 bushels of paddy sowing.

Exhibits.
No. R 37.
Inventory
filed in D C.
Kalutara
Case
No 1584.
 —continued

8. The valuation of the inherited property according to the total value of the inventory filed in court in case No. 1584 (Testy) D. C. Kalutara by the deceased in this case about his father's estate shown some Rs. 9,866.00.

9. He was entitled only to 1/10 share of the said amount as aforesaid that was Rs. 986.60.

10. When this amount of Rs. 986.60 divided among the deceased's brothers and sisters each shall get only some of Rs. 246.50 from the inherited property.

No. P 38.
Marriage
Certificate
of Cecilia
Siriwardena.
 6 2-25.

No. P 38.

10

Marriage Certificate of Cecilia Siriwardene.

CERTIFICATE OF MARRIAGE.

WESTERN PROVINCE KALUTARA DISTRICT, IDDAGODA PATTU
DIVISION MARRIAGE REGISTER.

	Male Party	Female Party	
1. Full Names	Badde Vidanelage Don Louis	Katri Aratchige Dona Cecilia Siriwardena Hamine	
2. Age	37	23	
3. Condition	Bachelor	Spinster	20
4. Position or Occupation & Nationality	Native Doctor Sinhalese	Sinhalese	
5. Residence	Kommala	Kolehekade	
6. Father's Name	Badde Vidanelage Don James dead	Katri Aratchige Don Karneris dead	
7. Occupation of father	Cultivator	Police Vidane	
8. Name & Div. of Registrar who issued the Certificate	G. A. A. Gunawardene, Regr. Bentara Walalwiti Korle	D. G. Gunaratne Regr. of Iddagoda Pattu	30
9. Place where marriage solemnized	At the office of Registrar at Bondupitiya in the Iddagoda Pattu		

The marriage solemnized by me on this 6th day of February 1925.

Sgd. DON GEORGE GUNARATNE,
Registrar.

This marriage was solemnized between us in the presence of the undermentioned witnesses.

Sgd. B. D. LOUIS
Sgd. DONA CECILIA

Exhibits.
No. P 38.
Marriage
Certificate
of Cecilia
Siriwardene
6-2-25.
—continued

Signature of witness: Sgd. S. D. P. WIJEGUNARATNE

Full Name etc.: Samaraweera Mudalige Don Peter Wijegunaratne,
Vidane Aratchi, Matugama.

Signature of witness: Sgd. D. V. SIRIWARDENA

Full Name etc.: Katri Aratchige Don Velin Siriwardena, Trader,
Kolehakade.

10

Signed in my presence.

Sgd. DON GEORGE GUNARATNE
Registrar.

No. P 17.

**Plaint, Proceedings and Judgment in D. C. Kalutara
Case No. 13560.**

P 17.

IN THE DISTRICT COURT OF KALUTARA.

No. P 17.
Plaint,
Proceedings
and
Judgment
in D. C.
Kalutara
Case
No. 13560.
1926 to 1929

20

1. DONA ELPI NONA WEERAKOON
HAMINE of Walagedera
2. DONA CILICIA NONA SIRIWARDENE
HAMINE and husband
3. B. D. LEWIS APPUHAMY
4. KATHIRIARATCHIGE ARANERIS SIRI-
WARDENE of Kolehekada
5. KATHRIARATCHIGE DON FREDERICK
SIRIWARDENE of Walagedea.....*Plaintiffs.*

No. 13560
Nature: Partition
Value Rs. 8000/-

vs.

30

1. KATHIRIARATCHIGE DON WELIN
SIRIWARDENE of Kolehekada
2. KATHIRIARATCHIGE DAVITH SIRI-
WARDENE of Kolehekada

Exhibits.
 No. P 17.
 Plaintiff,
 Proceedings
 and
 Judgment
 in D. C.
 Kalutara
 Case
 No. 19560
 1926 to 1929
 —continued

3. KATHIRIARATCHIGE DONA EMI
NONA SIRIWARDENE and husband
4. DON PETER WIJEGUNARATNE both of
Katugahena
5. DONA CICILIA NONA KANNANGARA
and husband
6. DAVID HINTON VAN ROYAN GUNA-
SEKERA both of Nanu-oya
7. DONA EMI NONA KANNANGARA and
husband 10
8. L. D. M. JAYASEKERA both of Iddagoda
9. DONA ESSELIN NONA KANNANGARA
10. DONA ROSALIN NONA KANNANGARA
(9th and 10th defendants minors by their
guardian-ad-litem the 23rd defendant)
11. KATHIRIARATCHIGE DON BRAMPY
SIRIWARDENE of Kolehekada
12. KATHIRIARATCHIGE DONA ALICE
NONA SIRIWARDENE and husband
13. D. J. RANAWEERA both of Dodangoda 20
14. KATHIRIARATCHIGE DONA LILY
NONA SIRIWARDENE of Walagedera
15. DODANGODALIYANAGEY JAMES of
Kolehekada
16. KATHIRIARATCHIGE DON KOVIS
SIRIWARDENE of Kolehekada
- (dead) 17. DODANGODALIYANAGE PEDRICK *alias*
BEMPI SINGHO of Kolehekada
18. DODANGODALIYANAGE PILECK SIN-
GHO of Kolehekada 30
19. DODANGODALIYANAGE CHARLES
APPU of Kolehekada
- (dead) 20. DODANGODALIYANAGE LEWIS APPU
of Kolehekada
21. DODANGODALIYANAGE SOPI NONA
of Owitigala

22. DODANGODALIYANAGE DOTCHI NO- Exhibits.
NA of Henpita No. P 17.
Plaint,
23. DON BRAMPY KANNANGARA of Proceedings
Uragoda..... *Defendants.* and
Judgment
in D. C.
Kalutara
Case
No. 13560.
1926 to 1929
—continued
24. DON CHARLES SIRIWARDENE of
Owitigala
25. KATHIRIARATCHIGE DONA SOPI
NONA of Owitigala
26. GAMLASSAGE DON ABRAHAM SENE-
VIRATNE P. V. of Kalavile
27. PATHIRAGE NONO HAMY of Talawile
28. MAHAWATTAGE SOPI NONA of
Kolehekada
29. DODANGODALIYANAGE HENDRICK of
Kolehekada (minors) by his G-A-L the 28th
defendant. (28 and 29 defendants substituted
in place of the 17th defendant (deceased)
30. The heirs of 20th defendant deceased are the 18,
19, 21, 22, 28 and 29th defendants....*Defendants.*

10

20 On this 30th day of September, 1926.

The Plaintiff of the plaintiff abovenamed appearing by D. J. K. Goonetilleke their Proctor state as follows :—

30

1. The person called Kathiriaratchige Don Karnelis, Galassage Punchi Appu, Busabaduge Metheias Fernando and Dodangoda Liyanage Don Simon were by right of purchase from the Crown (upon a grant which is not in the possession of the plaintiffs) and by right of long possession the owners in the proportion of a 1/4 share each of the land called Netaugahalandewatta situated at Kolehekada in Pasdun Korale within the jurisdiction of this Court and bounded on the North by land appearing in T. P. 134495 east by land appearing in T. P. 200075, south by land appearing in T. P. 139117 and private lands and west by land appearing in T.Ps. 139117 and 168255 and containing in extent A 20. R 3. P 36.

2. The said K. Don Karnelis owner of 1/4 share first married Separamaduaratchige Saralath Hamy, in community of property who predeceased him, leaving an only child Don Pedrick Siriwardene the 5th plaintiff abovenamed, whereby the said 5th plaintiff became entitled to 1/2 of 1/4 or 1/8 share of the said land.

Exhibits.
 No. P 17.
 Plaint,
 Proceedings
 and
 Judgment
 in D. C.
 Kalutara
 Case
 No. 13560.
 1926 to 1929
 —continued

3. The said K. Don Karnelis next married Magodaaratchige Engo Nona who also predeceased him leaving four children viz., Dona Jane Nona Siriwardene, Don Welis Siriwardene the 1st defendant, Don Davith Siriwardene 2nd defendant, and Dona Emi Nona Siriwardene 3rd defendant who is married to Samaraweeramudalige Don Peter Wijegunaratne 4th defendant.

4. The said Dona Jane Nona Siriwardene predeceased her father the said K. Don Karnelis leaving four children namely Dona Cicilia Nona 5th defendant who is married to the 6th defendant, Dona Emi Nona 7th defendant, who is married to Liyanaaratchige D. M. Jayasekera 8th defendant, Dona Esselin Nona 9th defendant, and Dona Rosalin Nona 10th defendant.

10

5. The said K. Don Karnelis lastly married Dona Elpi Nona Weerakoon the 1st plaintiff and he died seized and possessed of the 1/8 share of the said land that remained to him surviving as his only heirs and next of kin his widow the 1st plaintiff and his children by the three beds and the said children of his daughter Jane Nona by representation namely; Child by the 1st bed Don Frederick Siriwardene the 5th plaintiff, children by the 2nd bed Don Welis 1st defendant, Don Davith 2nd defendant, Dona Emi Nona 3rd defendant who is married to B. Don Peter Wijegunaratne 4th defendant, children of his daughter Jane Nona by representation Dona Cicilis Kannangara 5th defendant who is married to David Hinton Van Royan Gunasekera the 6th defendant Dona Emi Nona Kannangara 7th defendant who is married to L. D. M. Jayasekera 8th defendant Dona Esselin Nona Kannangara 9th defendant and Dona Rosaline Nona Kannangara 10th defendant of whom the said 9 and 10th defendants are minors appearing by their guardian-ad-litem Dona Emi Nona Kannangara the 7th defendant, children by the 3rd bed namely; Don Brampy Siriwardene 11th defendant, Dona Alice Nona Siriwardene 12th defendant who is married to Dona Johanes Ranaweera 13th defendant Dona Cicilia Siriwardene 2nd plaintiff who is married to B. D. Lewis Appuhamy 3rd plaintiff and Dona Lily Nona Siriwardene 14th defendant whereby the said widow the 1st plaintiff became entitled to 1/2 of 1/8 or 1/16 share of the said land and each of the said eight children of the three beds who survived their father became entitled to 1/9 of 1/2 of 1/8 or 1/144 share and each of the said grand children (children of Jane Nona) became entitled to 1/4 of 1/9 of 1/2 of 1/8 or 1/576 share of the said land.

20

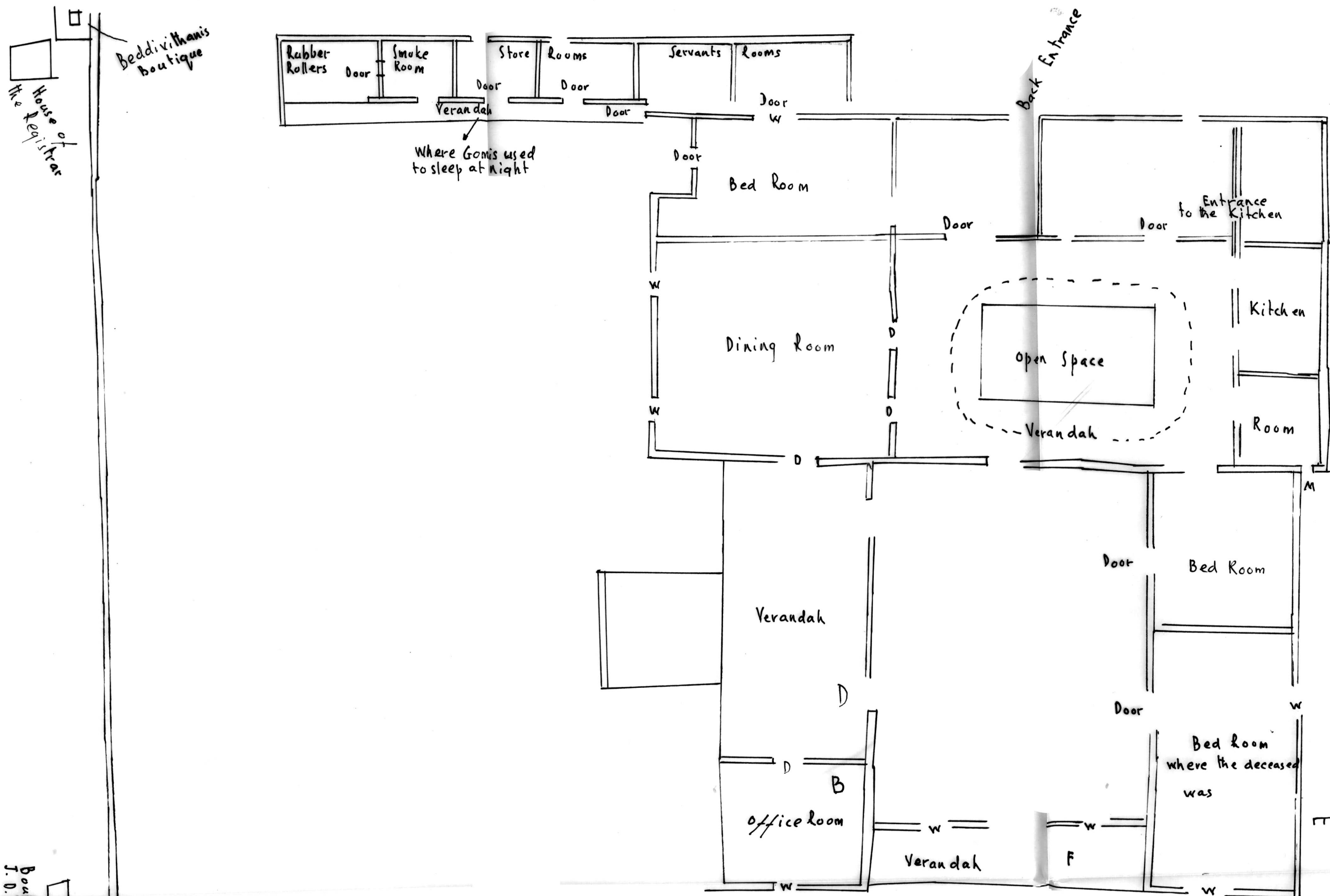
30

6. The said Galassage Punchi Appu referred to para (1) hereof owner of 1/4 share died leaving as his only heirs and next of kin three children namely Appu Singho, Aron and Podi Sinno whereby each of them became entitled to 1/3 of 1/4 or 1/12 share of the said land.

40

7. The said Appu Sinno, Aron Sinno and Podi Sinno referred to in the para immediately preceeding the owners of 3/12 share are said to have sold the same to D. James the 15th defendant.

No. R. 40
Sketch of House



P.W.D. Main Road Leading to Matugama

Beddivithanis Boutique
House of the Registrar

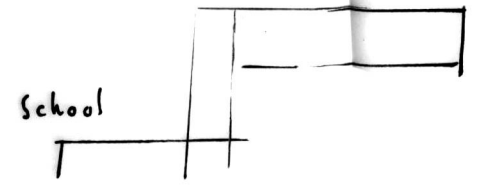
Boutique of J. D. Wickramis

Gate Entrance

D.R.C. Road leading to Pallagoda Estate and Medegedara Estate

Galwatta Junction Walagedera

Jamis Vedasinghis House



School

8. The said Busabaduge Methias Fernando owner of 1/4 share referred to in para (1) hereof is said to have sold 1/2 of 1/4 or 1/8 share to K. Don Kavis Appu 16th defendant and K. Don Araneris Siriwardene the 4th plaintiff in the proportion of a 1/16 share each and to have sold the remaining 1/8 share in equal shares to K. Welis Siriwardene 1st defendant and K. Don Kovis Appu 16th defendant.

Exhibits.
No. P 17.
Plaint,
Proceedings
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—continued

10 9. The said Dodangodaliyanage Don Siman owner of 1/4 share referred to in para (1) hereof sold the same to Kottachchikankanange Allis Appu and Kottachchikankanange Appu Singho and the heirs of these two grantees are said to have sold the said 1/4 share in equal shares to K. Welis Siriwardene the 1st defendant and to D. Pedrick alias Bempi Singho 17th defendant.

10. The said land is thus held and possessed in the following shares:—

	1st plaintiff	....	1/16
	2nd „	....	1/144
	4th „	....	1/16
	5th „	....	1/8 plus 1/144
	1st defendant	....	1/144 plus 1/16 plus 1/8
20	2nd & 3rd „	....	1/144 each
	5, 7, 9 & 10 „	....	1/576 „
	11, 12 & 14 „	....	1/144 „
	15th defendant	....	1/4
	16th „	....	1/16 plus 1/16
	17th „	....	1/8

11. There are the following houses on the said land which belong to the following parties:—

The house on the north western side was built by K. Don Karnelis Siriwardene and now belongs to his heirs.

30 The house and boutique on the north eastern side belong to Don Welis Siriwardene the 1st defendant.

One house belongs to K. Don Kovis Appu the 16th defendant.

The two houses on the south eastern side belong to D. James, D. Pedrick, D. Pilek, D. Charles, D. Lewis, Don Sopi Nona and D. Dotchi Nona the 15th, 17th, 18th, 19th, 20th, 21st and 22nd defendants.

12. There are the following plantations on the said land which belong as herein below set out.

40 (a) The plantations of coconut, rubber and jak on the north western were all made by K. Don Karnelis and now belong to his heirs.

Exhibits.
 No. P 17.
 Plaint,
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 in D. C.
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 No. 13560.
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 —continued

- (b) The planter's half share of the 1st plantation of coconut and jak on the south western side belong to the 15, 17 and 18th to 22nd defendants by right of inheritance from their father H. James who made the said plantation.
- (c) The first plantation of coconut and jak standing on the north eastern side was made by K. Don Karnelis and the same now belongs to his heirs.
- (d) The 2nd plantation on the north eastern side was made by Don Welis the 1st defendant.
- (e) The plantations of coconut and jak standing towards the middle of the said land were made by Arneris Siriwardene 4th plaintiff and Kovis Siriwardene 16th defendant. 10
- (f) The rubber plantation standing towards the middle of the said land was made by Kovis Siriwardene 16th defendant and Welis Siriwardene the 1st defendant.
- The rubber plantation on the south eastern side was made by Welis Siriwardene the 1st defendant.
- (g) The planter's share of the 1st plantation of coconut and jak standing on the south eastern side is possessed by Welis Siriwardene the 1st defendant and D. Pedrick alias Bempy Singho the 17th defendant. 20

13. The plaintiffs and their predecessors in title have been in the undisturbed and uninterrupted possession of their shares and interests in the said land for a period of over ten years by a title adverse to and independent of all others whereby they have acquired a title thereto by prescription.

14. The said land is reasonably worth Rs. 8000/-.

15. The possession in common of the said land is inconvenient and impracticable and a partition of the same is therefore become necessary. 30

Wherefore the plaintiffs pray :—

- (a) That a partition of the said land may be decreed.
- (b) That the plaintiffs may be held entitled to and allotted their several shares and interests at such partition.
- (c) For costs.
- (d) For such other and further relief as to this Court may seem meet.

Sgd. DONALD J. K. GOONETILLEKE,
Proctor for Plaintiffs.

IN THE DISTRICT COURT OF KALUTARA.

No. 13560	1. DONA ALPI NONA WEERAKOON HAMINE and others..... <i>Plaintiffs.</i>	Exhibits. No. P 17. Plaint, Proceedings and Judgment in D. C. Kalutara Case No. 13560. 1926 to 1929 — <i>continued</i>
	<i>vs.</i>	
	1. KATHIRIARATCHIGE WELIS SIRI- WARDENE..... <i>Defendant.</i>	

On this 26th day of September, 1927.

10 The statement of claim of the 1st defendant abovenamed appearing by Edgar Aelian Harper Ebert and J. A. W. Kannangara Proctors practising in partnership under the name style and firm of Ebert and Kannangara states as follows:—

1. Upon Crown Grant No. 2276 dated 20th April 1885 (1) Kattiriaratchige Don Karnelis (2) Galassage Punchi Appu (3) Boosabaduge Methias Fernando and (4) Dodangodaliyanage Don Simon became the owners of the land sought to be partitioned in equal shares.

2. The said Kattiriaratchige Don Karnelis married three times and he died leaving as his heirs his widow Alpi Nona Weerakoon the 1st plaintiff and 5 children to wit:—

- 20
- (1) Pedrick Siriwardene the 5th plaintiff
 - (2) Jane Nona
 - (3) Welis the 1st defendant
 - (4) Don Davith the 2nd defendant and
 - (5) Emi Nona the 3rd defendant

whereupon the said widow became entitled to 1/8 and each of the said children to 1/40 of the said premises.

30 3. This defendant whilst admitting that Pedrick Siriwardene the 5th plaintiff is a son of the said Kattiriaratchige Don Karnelis by his first wife Saralath Hamy who was married in community of property denies that on the death of the said Saralath Hamy her son the said 5th plaintiff became entitled to a share of this land.

4. The said Boosabaduge Methias Fernando referred to in paragraph 1 hereof upon Deed No. 3491 dated 17th May 1904 sold a 1/8 share of the said premises to Boosabaduge Andris Fernando who upon Deed No. 8484 dated 13th September 1909 sold and transferred the said 1/8 share to Kattiriaratchige Govis Appu and Don Welis Siriwardene the 1st defendant in equal shares.

Exhibits.
 No. P 17.
 Plaint,
 Proceedings
 and
 Judgment
 in D. C.
 Kalutara
 Case
 No. 13560.
 1916 to 1929
 —continued

5. The said Dodangodaliyanage Don Simon referred to in paragraph 1 hereof upon Deed No. 2248 dated 22nd August 1886 sold his 1/4 share to the following five persons to wit :—

- (1) Allis
- (2) Sinno Appu
- (3) Bunjo Appu
- (4) Hendrick and
- (5) Aberan

in the proportion of 1/8 to the said Allis and each of the others a 1/32 share of the said premises.

10

6. At the death of the said Allis a 1/16 share of the said premises devolved on his widow Sanchihamy who upon Deed No. 2707 dated 14th December 1918 sold a 1/20 share to Welis the 1st defendant.

7. The said Sinno Appu and Bunjo Appu upon Deed No. 4574 dated 4th January 1917 sold their 1/16 share to Welis the 1st defendant.

8. The said Hendrick upon Deed No. 10918 dated 27th March 1917 sold his 1/32 share to Welis 1st defendant.

9. At the death of the said Aberan referred to in paragraph 5 hereof 1/64 devolved on his widow Alpi Nona who upon Deed No. 11091 dated 13th June 1917 sold his 1/64 share to Welis the 1st defendant.

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10. On Lot 1 in plan filed of record the following plantations were made by the 1st defendant to wit :—

- 65 Rubber trees 12 years old
- 12 Jak trees 15 years old
- 22 Coconut trees 15 years
- 1 Breadfruit tree 15 years old.

On lot 3 the 1st defendant has made a plantation of 40 coconut plants 3 years old.

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On lot 4 the 1st defendant has made the following plantations to wit :—

- 67 Coconut trees 20 to 6 years
- 3 Jak trees 15 years old
- 2 Breadfruit trees 10 years old.

On this lot there is a plantation of 13 coconut and 3 jak trees 30 years old made by Kattiriaratchige Karnelis and the 1st defendant is entitled to 1/10 of this plantation.

On lot 7 there is a plantation of 1028 rubber trees from 15 to 10 years old and 6 coconut trees 10 years old made by the 1st defendant.

On lot 8 there is a plantation of 16 coconut trees and 11 jak trees 30 years old made by Dodangoda Liyanage Siman an original 1/4 owner and of this plantation 3/5 belongs to 1st defendant by right of purchase.

11. The 1st defendant is entitled to house on lot 4 and boutique on lot 3 and is also entitled to a 1/10 share of the house on lot 1 the said house having been built by the said Kattiriaratchige Karnelis his father.

12. This defendant and his predecessors in title have been in the undisturbed and uninterrupted possession of the interests set out above for a period of over ten years by a title adverse to and independent of the plaintiffs and all others.

Wherefore this defendant prays that he be declared entitled to 1/16 plus 1/20 plus 1/16 plus 1/32 plus 1/64 plus 1/40 shares of the soil and the plantations and buildings described above and in the event of a partition he be allotted the same for costs and for such other and further relief as to this court shall seem meet.

Sgd. EBERT & KANNANGARA,
Proctors for 1st Defendant.

D. C. 13560

26-4-29.

MR. SAMARAKKODY instructed by MR. GOONETILLEKE for plaintiff.

MR. SILVA instructed by MESSRS EBERT & KANNANGARA for 1st defendant and by MESSRS WIJEMANNE & ISMAIL for 2nd defendant.

MESSRS DE ABREW & JAYASUNDERA for 16, 15 and 17 and 24th, 25th defendants.

MR. DE ALMEIDA for 26th defendant.

Points in dispute.

1. Did Carnelis leave four children by his third marriage with the 1st plaintiff viz :—11th, 12th defendants, 2nd plaintiff and 14th defendant?

(MR. PARANAGAMA appears for 11th, 12th and 14th defendants).

This contest is given up by the plaintiff and by Mr. Paranagama.

Only dispute is about plantations.

Exhibits.
No. P 17.
Plaint,
Proceedings
and
Judgment
in D. C.
Kalutara.
Case
No. 13560.
1926 to 1929
—continued

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20

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Exhibits.
 No. P 17.
 Plaintiff,
 Proceedings
 and
 Judgment
 in D. C.
 Kalutara.
 Case
 No. 13560.
 1926 to 1929
 —continued

Mr. Samarakkody now admits that property was acquired by Carnelis after the death of his first wife the mother of the 5th plaintiff.

Pedrick Siriwardene, Affirmed.

I am the 5th plaintiff. Land sought to be partitioned appears in plan and report P 1. On Crown Grant 2276 of 20th April 1885 P 2 Don Carnelis, G. Punchi Appu, Methias Fernando and Don Simon were the original owners of this land. The plaint and pedigree are correct except in these respects viz:—(1) 11th, 12th defendants 2nd plaintiff and 14th defendant are not the children of Carthelis and (2) The property was acquired after the death of the 5th plaintiff's mother. My father lived in house "D" on lot 1 till he died on 1923. I was administrator in case 1584. I produce letters of administration P 2 and P 3 and inventory P 3. This land is land No. 31. I have entered all the plantations on this lot as belonging to my deceased father. 1st and 2nd defendants were 8th and 9th respondents, in 1584. The rubber coupons were obtained in the name of the 11th defendant. The 1st one being in 1925. I produce three assessments certificates P 4 to P 6, 1923, 1925 and 1926. The last two gives the name of the 11th defendant. P 4 was obtained when Carnelis was alive. He died in May 1923. 1st and 2nd defendants were allowed to take coupons for the other portions of the land after P 6 was obtained in 1926. 1st and 2nd defendants disputed the other members of the family and I file this case. Till then 1st and 2nd defendants did not claim exclusively any plantations on this lot No. 1. Mr. Goonetilleke was my proctor in the testy case. 1st and 2nd defendants and I went together to the proctor for the start and gave instructions to the proctor. I am aware that my father made plantations on this lot. I give up the contest re plantations on lot 4.

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Cross examined.

Since 1912 I am living at Walagedera. Before that I was living in a boutique in this village. I used to come to this house. My step-mother and her children are living with me. The 2nd defendant lived with my father till he married about 5 years ago. 1st defendant left his father's house 25 years ago. He worked in the boutique with me and used to stay in this house. The 1st defendant built a house on the land about 15 or 20 years ago I have made no plantations on this land. The coconut trees in dispute are about 20 to 25 years old. Brampy use to take the produce with Davith and I got my share in cash and I spent all the Testy case. The rubber trees in dispute are 15 years old and the other trees 20 years. I am a dismissed Headman. A priest petitioned against me about a land. I was asked to bring a civil case and I refused and I was dismissed. I had several cases. I was asked to pay double stamp duty in one case.

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Re-examined.

I resigned on request by the A. G. A.

Sgd. N. M. BARUCHA,
District Judge.
 26-4-29.

Exhibits.
 No. P17.
 Plaint,
 Proceedings
 and
 Judgment
 in D. C.
 Kalutara.
 Case
 No. 13560.
 1926 to 1929
 —continued

Velis, affirmed.

I am the 1st defendant, 46th Kolahakade, Trader. Simon 1/4
 on deed No. 2248 of 22nd August 1886 1D1 sold his 1/4 to 5 persons
 (1) 1/8 Allis, (2) 1/32 to Singho, (3) Bunjo Appu, (4) Hendrick and
 10 (5) Abraham. Allis' widow with leave of court in case 1094 Galle
 sold 1/8 share on deed 2707 of 14th December 1918 1D2 to three
 persons Bastian 1/40, Jamis 2/40 myself 2/40. Bastian on deed 633 of
 4th March 1922 sold his 1/40 to Pedrick 17th defendant. 17D1. and
 Pichiris, Singho appu and Bunjo appu on deed 4474 of 4th January
 1917 sold to me. Hendrick on deed 10918 of 27th March 1917 1D4.
 sold to me. Abraham's widow Elpi deed 11091 of 13th June 1917
 sold 1D5 her 1/64 share to me. The other 1/64 share has devolved
 on 17 defendant. Deed 15194 of 12 October 1925 17 D2. Methies
 1/4 owner on deed 3491 of 17 May 1904 sold 1/8 to Andiris 1D6.
 20 Andiris on deed No. 8484 of 13 September 1909 1D7 sold 1/8 share
 to Kovis Appu 16 defendant and myself. Kovis Appu on deed 303
 of 1st July 1913 17 D3, sold 1/32 to Nona added defendant. The
 remaining 1/8 of Methias goes to 4th plaintiff and 16th defendant by
 deed 16056 of 28th January 1895 P7.

My father has planted coconuts 1st plantation near his house
 which is about 25 years old. There is also a younger plantation of
 coconut made by 2nd defendant. It is about 12 or 15 years old.
 There are about 50 trees. I have planted 20 coconut trees about
 20 years old the second defendant's plantation is partly in bearing.
 30 2nd defendant alone possessed. My father has planted rubber near
 his house about 12 or 15 years ago. I also planted rubber 65 trees
 about 12 years old. That plantation was made subsequently. I also
 planted rubber about 1000 odd trees on another portion of the land.
 I planted about 15 jak trees. I possessed my rubber trees. I got
 coupons for all my trees. I got coupons.

Cross examined.

Punchi Appu was entitled to 1/4. He sold that to Appusingho
 Aron, Podisingho, Haramanis and Emalishamy on deed 6809 of 23
 January 1909 (17D4) Aron on (17 D5) deed 17420 of 4th August 1916
 40 sold to Liveris, Enter Siriwardene and Jamis 15th defendant Podi-
 singho on deed 9414 of 26th July 1915 (17D6) sold to 15 and 18
 defendants. Haramanis on 2100 of 29 June 1905 (17D7) sold to 15th
 defendant. Emalis Hamy on deed 7686 of 25 July 1915 (17D8) sold to
 Isan who left leaving 7 children who are parties 15, 17, 18, 19, 20, 21

Exhibits. and 22 defendants. I lived in the house on lot 4 for 18 years. I made
 No. P 17. the second plantation on that lot. Before that I lived with my father.
 Plaintiff, I put up the house on lot 4, 18 years ago. But I went to live there in
 Proceedings 1914 after my marriage. I do not know if I and 2nd defendant were
 and respondents in testy case. I took no interest in that case. I left it to
 Judgment the second plaintiff. I did not know if Brampy was getting coupons.
 in D. C. I planted rubber 2 years after my father.
 Kalutara.
 Case
 No. 13560.
 1926 to 1929
 —continued

Re-examined. Nil.

Sgd. N. M. BARUCHA,

D. J. 10

D. C. 13560. JUDGMENT.

The principal points in contest have been given up by the plain-
 tiffs in view of certain facts elicited at the commencement of the trial.
 The only dispute is now as regards the plantations on lot 1 in plan
 P1. On this lot Caraneris, the father of the 5th plaintiff and 1st and
 2nd defendants lived till his death which took place in 1923. The
 plaintiff's case is that all the plantations on this lot were made by
 Caraneris. The 1st and 2nd defendants claimed exclusively. Certain
 plantations on this lot as having been made by them. For details see
 report attached to plan P1. In the testy case relating to Caraneris' 20
 estate the 5th plaintiff was the administrator and 1st and 2nd defen-
 dants some of the respondents. In the inventory filed in that case
 the entirety of the plantations have been mentioned as the property of
 Caraneris (land 31 in P3). The 1st and 2nd defendants raised no
 objection at that time. It may be assumed that they were aware of
 the filing of the inventory and would have applied to exclude their
 plantations, if they had made them. Karaneris has planted both
 rubber and coconut which is more or less of the same age as the plan-
 tations exclusively claimed by the 1st and 2nd defendants. It is true 30
 that the 1st and 2nd defendants have claimed plantations on other lots
 of the land which are more or less of the same age as the plantations
 in dispute. It may be that they helped their father to fill up vacan-
 cies at the time they made these plantations. But on the whole the
 probabilities of the case show that the plantations in their entirety
 on this lot were made by Caraneris. The contention of the 1st and
 2nd defendant is therefore dismissed. There will be no order as to
 costs of contest. Remaining costs pro rata.

Sgd. N. M. BARUCHA,

District Judge.

21-5-29.

No. P 3.

**Plaint, Answer, Decree and List of Witnesses in
D. C. Kalutara Case No. 14318.**

IN THE DISTRICT COURT OF KALUTARA.

P 3.

Partition
Value Rs. 5000/-.

KATHRIARATCHIGE DON DAVITH
SIRIWARDENE of Katugahahena, Matu-
gama.....*Plaintiff.*

vs.

10 No. 14318. KATHIRIARATCHIGE DON PEDRICK
SIRIWARDENE Police Vidane of Wala-
gedera.....*Defendant.*

2 Vide over leaf for added defendants.

On this 21st day of September, 1927.

The plaintiff of the plaintiff abovenamed appearing by Ukwatte A. Jayasundera, Cyril de Zoysa and Barnes de Silva Wijesekera, Proctors of the Supreme Court practising in partnership under the name style and firm of "De Abrew & Jayasundera" his Proctors states as follows;—

20 1. The defendant is the owner and proprietor of the land called Galketiyaaswedduma situated at Kolehekada within the jurisdiction of this Court and bounded on the north by Gobbaddamullewatta and wela East by Crown land south by Jungle and Galketiyawatta west by a portion of Galketiyaaswedduma in extent 8 acres 1 rood and 15 perches.

2. The plaintiff has planted on the said land about 300 rubber trees of over 8 years and he is now in possession of the same.

3. The plaintiff has found it inconvenient to possess the said plantation in common.

30 4. The said land and plantations are worth Rs. 5000/-.

Wherefore the plaintiff prays that the defendant be ordered to purchase the plaintiff's right upon a just appraisal made by a commissioner appointed by court in terms of Ordinance No. 10 of 1863 for costs and for such other relief as to this Court may seem meet.

Sgd. DE ABREW & JAYASUNDERA,
Proctors for Plaintiff.

Exhibits.

No. P 3.
Plaint,
Answer,
Decree and
Lists of
Witnesses
in D. C.
Kalntara
Case
No. 14318.
21-9-27 to
24-8-28.

Exhibits.
 No. P 3.
 Plaintiff,
 Answer;
 Decree and
 Lists of
 Witnesses
 in D. C.
 Kalutara
 Case
 No. 14348.
 21-9-27 to
 24-8-28.
 —continued

List of Added Defendants.

2. Hewagey Baron of Kolehekada.
3. Hewagey Arnelis of Kirantidiya.
4. Hewagey Aron Appu of Kolehekada.
5. Kathiriarachige Thomis Singho of Kolehekada.

IN THE DISTRICT COURT OF KALUTARA.

KATHIRIARATCHIGE DON DAVITH
 SIRIWARDENE.....*Plaintiff.*

No. 14318.

vs.

KATHIRIARATCHIGE DON FREDE-
 RICK SIRIWARDENE P. V. of Wala-
 geder.....*Defendant.*

10

On this 30th day of March, 1928.

The answer of the defendant abovenamed appearing by O. G. D' Alwis his Proctor states as follows :—

1. The defendant denies the truth of the averments made in the plaint save and except of those that may hereinafter admitted.

2. That by virtue of purchase on Deed No. 14506 dated the 19th day of September, 1891 the two persons called Mahabaduge Francis Fernando and Kathiriaratchige Don Karnelis Siriwardene were the owners in equal shares of the field described in the plaint and the said Francis Fernando by Deed No. 3300 dated the 29th February, 1904 sold and transferred his 1/2 share to this defendant whereby he became entitled to a 1/2 share of the said field.

20

3. That the said Karnelis Siriwardene and the defendant made a small plantation of rubber consisting of about 150 trees and there are also on the said field about 150 trees spring from seeds washed down from the neighbouring rubber estate and the said Karnelis and the defendant became entitled to the same.

4. That the said Karnelis Siriwardene by Deed No. 12747 dated the 22nd February, 1922 sold and transferred his half share of the said field and all the plantations to the defendant who therefore became entitled to the entirety of the said field and the plantations thereon.

30

5. That the defendant gave to the plaintiff on lease the said rubber plantation on an informal lease which expired in the month of October, 1925 and the plaintiff has now no further interest in the said field but the plaintiff by fraud and misrepresentation continued to obtain coupons for the said rubber trees till the month of November, 1927.

40

5. That the defendant has right or interest in the said rubber trees and as a matter of law the plaintiff is not entitled to have or maintain this suit.

Exhibits.
No. P 3.
Plaint,
Answer,
Decree and
Lists of
Witnesses
in D. C.
Kalutara
Case
No. 14348.
21-9-27 to
24-8-28
—continued

Wherefore the defendant prays:—

1. That he be declared entitled to the entire rubber plantations.
2. That the plaintiff's action be dismissed with costs and for such other and further relief as to this court may seem meet.

Sgd. OLIVER G. D' ALWIS,
Proctor for Defendant.

10 Settled by
Sgd. M. J. MOLLIGODA,
Advocate.

DECREE.

No. 14318.

IN THE DISTRICT COURT OF KALUTARA.

KATHIRIARATCHIGE DON DAVITH
SIRIWARDENE.....*Plaintiff.*

20

1. KATHIRIARATCHIGE DON PED-
RICK SIRIWARDENE P. V. of Wala-
gedera.
2. HEWAGE BARON.
3. HEWAGE ARNELIS.
4. HEWAGE ARON APPU.
5. KATHIRIARATCHIGE THOMIS
SINGHO.....*Defendants.*

1. MAHAKUMARAGE AUWNERIS
APPUHAMY.
2. HEWAGE NORIS HAMY.
3. H. SIMAN APPUHAMY.
- 30 4. H. CHARLES.....*Intervenients.*

This action coming on for final disposal before N. M. Bharucha Esq. District Judge of Kalutara on this 24th day of August, 1928 in the presence of Mr. H. A. de Silva Advocate intructed by Messrs. de Abrew & Jayasundera Proctors for the plaintiff and of Mr. J. H. Molligoda Advocate with Mr. A. C. Z. Wijeratne Advocate instructed by

Exhibits.
 No. P 3.
 Plaintiff,
 Answer,
 Decree and
 Lists of
 Witnesses
 in D. C.
 Kalutara
 Case
 No. 14348.
 21-9-27 to
 34-8-28.
 —continued

Mr. O. G. D' Alwis Proctor for the 1st defendant, Mr. H. O. W. Obeysekera Proctor for the 2nd to 5th defendants and Messrs. Ebert & Kannangara Proctors for the Interveniants.

It is ordered and decreed that the said plaintiff's action be and the same is hereby dismissed.

It is further ordered and decreed that there be no order as to costs.

(This dismissal not to effect the said plaintiff's right to seek his remedy in appropriate proceedings).

Sgd. N. M. BHARUCHA,
District Judge.

10

This 24th day of August, 1928.

DISTRICT COURT

Kalutara.....No. 14318

The Plaintiff's List of Witnesses.

1. Don Agos Sinno Gunatilleke Vidane Aratchi of Horawala.
2. James Siriwardena Police Vidane of Keerantidiya.
3. Don Noris Wijesinghe Gunatilleke Police Vidane of Kolehekada.
4. Don Suderis Siriwardene of Keerantidiya.
5. Don Cornelis of Keerantidiya.
6. D. P. Wijegunaratne Vidane Aratchi of Matugama.
7. D. V. Siriwardene of Kolehekada.
8. The Assistant Government Agent, Kalutara to cause to be produced the file relating to coupon No. 2895 w, copies of petition sent to the Rubber Controller and A. G. A.

20

Kalutara, 10th July, 1928.

Sgd. DE ABREW & JAYASUNDERA,
Proctors for Plaintiff.

Received notice.

30

Sgd. OLIVER G. D' ALWIS,
Proctor for Defendant.

DISTRICT COURT

Kalutara,.....No. 14318.

Defendant's list of witnesses and Documents.

1. G. B. Samaranayake, Notary Public of Alutgama.
2. D. B. Siriwardena of Walagedara.
3. Don Elpi Siriwardana of Keerantidiya.
4. James Siriwardena of Kolehekada.
5. Auneris Siriwardana of Kolehekada.
6. Bill of Sale No. 12747 dated 22nd February 1923.
7. Fiscal's Transfer No. 7964 dated 9th May 1916.
8. Deed of Confirmation No. 595 dated 24th December 1924.
9. Letter addressed to the Rubber Controller dated 2nd November 1925 by the Plaintiff.
10. Receipt dated 2nd November 1925.
11. Return forwarded to the Asst. Government Agent, Kalutara by the Plaintiff dated 18th January 1923.
12. Return dated January 1925 to the Asst. Government Agent by the Plaintiff in respect of the subject matter of this action.
13. Petition dated 23rd June 1928 addressed to Asst. Government Agent by the defendant and reply therein.
14. Petition dated 15th July 1928 to the Asst. Government Agent Kalutara by the defendant and the reply therein.
15. Petition dated 12th July 1928 and the reply therein.
16. Petition dated 15th July 1928 and the reply therein.
17. Letters dated 2nd November 1925, Letter dated 18th March 1926, Letter dated 27th January 1926, Letter dated 17th May 1926 and Petition dated 22nd December 1925 together with his replies.
18. Memorandum dated 5th December 1927.
19. Memorandum dated 11th November 1927.
20. Petition dated 2nd December 1927, Letter dated 20th January 1928, Letter dated 17th May 1926, Petition dated 27th April 1926, Letter dated 19th day of July 1926, Letter dated 8th April 1926, Letter dated 26th April 1926, Memorandum dated 16th December 1925 together with their replies and Letter No. 2895/W dated 16th July 1928 addressed to the Defendant by the Asst. Government Agent of Kalutara.

Sgd. OLIVER G. D' ALWIS,

Proctor for Defendant.

Received Notice.

Sgd. DE ABRES & JAYASUNDARA.

Proctors for Plaintiff.

Exhibits.

No. P 3.
 Plaint,
 Answer,
 Decree and
 Lists of
 Witnesses
 in D C.
 Kalutara
 Case
 No. 14343.
 21-9-27 to
 24-8-28.
 —continued

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No. P 8 B.

Exhibits.
 No. P 8 B.
 Plaint and
 Answer in
 D. C. Kalu-
 tara Case
 No. 22817
 and Journal
 Entries and
 Plaint
 in D. C.
 Kalutara
 Case
 No. 18944.
 1934 to 1942

**Plaint and Answer in D. C. Kalutara Case No. 22817 and
 Journal Entries and Plaint in D. C. Kalutara Case No. 18944.**

IN THE DISTRICT COURT OF KALUTARA.

P 8 b.

KATHIRIARATCHIGE DON PEDRICK
 SIRIWARDENE of Walagedera.....*Plaintiff.*

No. 22817
 Rs. 4000/-.

vs.

RICHARD HINTON DE ALWIS SENE-
 VIRATNE of Leuwanduwa.....*Defendant.*

10

On this 22nd day of December, 1941.

The plaintiff of the plaintiff abovenamed appearing by Wilson de
 Silva, his Proctor, states as follows :—

1. The defendant resides at Leuwanduwa within the jurisdiction
 of this court and the lands in respect of which this action is brought
 are situated at Pallegoda within its jurisdiction.

2. The plaintiff on bond No. 20261 dated 28th November, 1928
 was indebted to one Cornelia de Alwis Seneviratne, the mother of the
 defendant, in a sum of Rs. 2500/- with interest thereon at the rate of
 16 per cent per annum till payment of the said sum in full.

20

3. For the purpose paying off the said bond the said plaintiff
 borrowed from the defendant and the defendant lent and advanced to
 the plaintiff a sum of Rs. 4000/- on or about the 24th day of June,
 1935.

4. As security for the repayment of the said sum by the plaintiff
 to the defendant the plaintiff by Deed No. 24919 of 24th June, 1935
 transferred to the defendant the premises more fully described in the
 schedule hereto annexed on the understanding that the defendant
 would re-transfer the premises to the plaintiff on repayment of the said
 sum of by the plaintiff within one year and six months of the date of
 the said transfer.

30

5. The plaintiff states that the beneficial interest in the said
 premises remained in the plaintiff in spite of the said transfer and that
 the plaintiff is entitled in law to a retransfer of the said premises on
 repayment of the said sum of Rs. 4000/-.

6. The plaintiff states that he tendered the said sum of Rs. 4000/-
 to the defendant but the defendant refused and neglected to re-transfer
 the said premises to the plaintiff.

7. The plaintiff is ready and willing to pay the said sum of Rs. 4000/- to the defendant.

8. A cause of action has therefore accrued to the plaintiff to sue the defendant for a retransfer of the said premises on payment of the said sum of Rs. 4000/-.

Wherefore the plaintiff prays:—

1. that the defendant be ordered to retransfer the said premises to the plaintiff on payment of the said sum of Rs. 4000/-.
2. that in the event of the defendant refusing to retransfer the said premises the Court be pleased to execute the necessary deed of conveyance.
3. for costs
4. for such other and further relief as to this Court may seem meet.

Sgd. WILSON DE SILVA,
Proctor for Plaintiff.

Settled by

Sgd. E. B. WICKRAMANAYAKE,
Advocate.

The Schedule above referred to

1. The entirety of the soil and trees and of the buildings together with the rubber plantations registered at the Rubber Controller's Office under No. 798 S 3 K 1 4 standing thereon of an allotment of land called Gallindawiladuwa situated at Pallegoda in Iddagoda Pattu of Pasdun Korale West Kalutara District Western Province and bounded according to Title Plan No. 253702 on the North by Crown land and land in Title Plan No. 55265 East by land in Title Plan No. 55265 and the land claimed by natives South by reservation for a path and West by Lot 19790 in P. P. 12969 containing in extent Five acres two roods and sixteen perches.

2. The entirety of the soil and trees and of the buildings together with the rubber plantations registered at the Rubber Controller's Office under No. 798 S 3 K 1 4 standing thereon of an allotment of land called Gallindawiladuwa situated at Pallegoda aforesaid and bounded according to Title Plan 253701 on the North by Crown land East by Lot 19792 reservation for a path and land claimed by natives South and West by land claimed by natives containing in extent Three acres one rood and twenty seven perches (exclusive of the road running through the land.)

Exhibits.
No. P 8 B.
Plaint and
Answer in
D. C, Kalu-
tara Case
No 22817
and Journal
Entries and
Plaint
in D. C.
Kalutara
Case
No. 13944.
1934 to 1942
—continued

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Exhibits.
 No. P 8 B.
 Plaint and
 Answer in
 D. C. Kalu-
 tara Case
 No. 22817
 and Journal
 Entries and
 Plaint
 in D. C.
 Kalutara
 Case
 No. 18944.
 1984 to 1942
 —continued

3. The entirety of the soil and trees together with the rubber plantations registered at the Rubber Controller's Office under No 798 S 3 K 1 4 standing thereon of an allotment of land Uggalkandapabodadeniya situated at Pallegoda and bounded according to Title Plan No. 273717 on the North by Lot 26260 in T. P. 14095 East by land in Title Plan No. 55265 South by lands in T. P's Nos. 253702 and 253701 and Crown land and West by Crown land containing in extent Two acres two roods and 31 perches.

4. All that allotment of land called Mulketiyeowitepitakattiya situated at Kolahakade in Iddagoda Pattuwe aforesaid and bounded according to Title Plan 196806 on the North by Kaduruwawela and Kaduruwattewela East by land in Title Plan No. 139117 South by land claimed by natives and Kaduruwattewela and West by Kaduruwattewela containing in extent Two acres and 34 perches.

10

5. All that allotment of land called Elamulleowita situated at Ritiketiya in Iddagoda Pattu aforesaid and bounded according to Title Plan No. 379703 on the North by reservation along the Ritiketiyeela East and South by Elamulleowita claimed by Crown and West by Embiliyeowita claimed by U. Don Endoris containing in extent one acre two roods and 24 perches.

20

Sgd. WILSON DE SILVA,
Proctor for Plaintiff.

IN THE DISTRICT COURT OF KALUTARA

DON PEDRIC SIRIWARDENE of Wala-
gedera*Plaintiff.*

No. 22817

vs.

RICHARD HINTON DE ALWIS SENE-
VIRATNE of Gallindagoda Walauwa, Leun-
wanduwa.....*Defendant.*

On this 1st day of April 1942.

30

The answer of the defendant abovenamed appearing by Obeysekera & De Silva states as follows:—

1. The defendant admits the averments in paras 1 and 2 of the plaint and denies all and singular the averments in the para 8 thereof.

2. Answering to paras 3, 4, 5 and 6 of the plaint the defendant denies all and singular the averments therein save as hereinafter excepted.

3. Further answering the defendant says that by the said deed No. 24919 dated 24th June 1935 the plaintiff sold and conveyed to the

defendant in consideration of a sum of Rs. 4000/- paid by the defendant the land and premises stated in the said deed subject only to the condition that in the event of the plaintiff paying back to the defendant within one year and six months the said sum of Rs. 4000/- the defendant was to reconvey the said land and premises to the plaintiff.

Exhibits.
No. P 8 B.
Plaint and
Answer in
D. C. Kalu-
tara Case
No. 22817
and Journal
Entries and
Plaint
in D. C.
Kalutara
Case
No. 13944.
1934 to 1942
—continued

10 4. The defendant says that the plaintiff failed and neglected to pay the said sum of Rs. 4000/- and obtain a reconveyance within the stipulated time and that the plaintiff has now no cause of action against the defendant and that the defendant as he lawfully may is in possession of the said land and premises.

5. The defendant also says that at the time of the said transfer to the defendant the rubber trees on the said land had been very badly and seriously damaged that the defendant rested the treated the said trees and obtained an increase in the assessment for coupons by the Rubber Controller and that the plaintiff who is a litigant has brought this speculative action in view of the improvement in the condition of the said property and the better market condition.

20 6. As a matter of law the defendant says that plaintiff's cause of action if any is prescribed.

6B. The plaintiff cannot in law contradict or lead oral evidence to contradict the terms of the said deed No. 24919.

Wherefore the defendant prays:—

1. That plaintiff's action be dismissed with costs.
2. That the defendant be declared entitled to the said lands.
3. And for such or further relief as to this Court seems meet.

Sgd. OBEYSEKERA & DE SILVA,
Proctors for Defendant.

IN THE DISTRICT COURT OF KALUTARA.

30 Mrs. CORNELIS DE ALWIS SENEWIRATNE of Leuwanduwa.....*Plaintiff.*

Case No. 18944

vs

Class Rs. 9/-

Amount Rs. 4,850/-

Nature Money

KATHRIARACHIGE DON PEDRICK
SIRIWARDENA of Walagedera.....*Defendant.*

JOURNAL

The 12th day of October 1934.

Mr. D. J. K. Goonetilleke, Proctor files appointment and plaint together with documents marked.

<p>Exhibits. No. P 8 B. Plaint and Answer in D. C. Kalu- tara Case No. 22817 and Journal Entries and Plaint in D. C. Kalutara Case No. 13944. 1934 to 1942 —continued</p>	Plaint accepted and summons ordered for 27th November '34.		
27-11-34.	Summons. not issued, Issue now for 22/1/35.	Intld. N. M. B. <i>D. J.</i>	
22-1-35.	Summons not issued. issue now for 26/2/35.	Intld. N. M. B. <i>D. J.</i>	
26-2-35.	Defendant not found. Re-issue for 16/4.	Intld. N. M. B. <i>D. J.</i>	10
16-4-35.	Summons served personally on defendant. Proxy filed by Messrs Fernando & Goonetilleke. Answer on 21/5.	Intld. N. M. B. <i>D. J.</i>	
21-5-35.	Answer for 18/6.	Intld. N. M. B. <i>D. J.</i>	20
18-6-35.	Answer not filed for 25/6.	Intld. N. M. B. <i>D. J.</i>	
25-6-35.	Mr. D. Goonetilleke for plaintiff. Messrs Fernando & Goonetilleke for defendant. Answer. <i>Vide</i> motion. Case settled. Claim and costs have been paid.	Intld. N. M. B. <i>D. J.</i>	30
		<i>District Judge.</i>	

Motion referred to:

The plaintiff's claim and costs in the above case having been settled, I move that satisfaction of same may be entered of record.

Sgd. D. J. K. GOONETILLEKE,
Proctor for Plaintiff.

25th June 1935,
Kalutara.

Plaint.

MRS. CORNELIS DE ALWIS SENEWI-
RATNE of Leunwanduwa.....*Plaintiff.*

vs.

KATHRIARATCHIGE DON FEDRICK
SIRIWARDENE of Walagedera.....*Defendant.*

Exhibits.

No. P 8 B.
Plaint and
Answer in
D. C. Kalu-
tara Case
No. 22817
and Journal
Entries and
Plaint
in D. C.
Kalutara
Case
No. 18944.
1934 to 1942
—continued

On this 12th day of October 1924.

The plaintiff of the plaintiff abovenamed appearing by D. J. K. Goonetilleke her proctor states as follows:—

10 1. The defendant abovenamed resides at Walagedera within the jurisdiction of this Court.

2. By a writing obligatory or mortgage bond No. 20261 dated 28th November 1928 executed at Alutgama within the jurisdiction of this Court which is herewith filed and pleaded as part and parcel of this plaintiff the defendant abovenamed bound himself his heirs, executors, administrators, and assigns to pay to the plaintiff who is the mortgagee on the said bond her heirs, executors, administrators or assigns the principal sum of Rs. 2,500/- with interest thereon at the rate of 16 per cent. per annum from the date of the said bond till payment in full
20 on demand.

3. For securing the payment of the said principal and interest the defendant mortgaged to and with the plaintiff as a first and primary mortgage the property morefully described in the schedule attached hereto.

4. There is now due and owing from the defendant to the plaintiff upon the said bond as principal and interest a sum of Rs. 4,850/- which sum or any part the defendant although thereto often requested has failed and neglected to pay.

30 Wherefore the plaintiff prays that the defendant may be cited before this Court and decreed to pay to plaintiff the sum of Rs. 4,850/- with further interest on Rs, 2,500/- at 16 per cent. per annum from date hereof till date of decree and thereafter at 9 per cent. per annum on the aggregate sum till payment in full and that the property specially mortgaged may be declared bound and executable in satisfaction of the decree on the footing of the hereinbefore recited mortgage and that the same may be sold by Leo C. Abeysinghe, Auctioneer, Kalutara together with the right, title and interest of the defendant in and to the same as at the aforesaid mortgage thereof and if such proceeds shall not be sufficient for the payment in full of such
40 amount the defendant do pay to the plaintiff the amount of the deficiency and for costs and for such other relief as to this Court may seem meet.

Sgd. D. J. K. GOONETILLEKE,
Proctor for Plaintiff.

Exhibits.
 No. P 8 B.
 Plaint and
 Answer in
 D C, Kalu-
 tara Case
 No. 22817
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 1934 to 1942
 —continued

Memo of documents filed with the plaint.

1. Mortgage Bond No. 20261 dated 28-11-1928.

Sgd. D. J. K. GOONETILLEKE.

Proctor for Plaintiff.

The Schedule above referred to

1. The entire soil and all the rubber plantation and other plantations and the buildings thereon of land called GALLINDA-WILADUWA situated at Palligoda in Iddagoda Pattu, Pasdun Korale West, Kalutara District, Western Province and bounded as per Title Plan No. 253702, North by Crown land and land in Title Plan No. 55265, east by land in Title Plan No. 55265, and land claimed by natives, South by reservation along the road, West by Lot No. 19790 in preliminary plan No. 12969 and in extent of 5 acres and 2 roods and 16 perches.

10

2. The entire soil and rubber plantation and all the other plantation and buildings thereon of land called Gallindawiladuwa situated at Palligoda aforesaid bounded on the North by Crown Land East by Lot No. 19792 in P. Plan No. 12969, reservation along the road and land claimed by natives, South and West by land claimed by natives and excluding the road running through the Land and reservation along the two sides of the road in extent of 3 acres 1 rood and 24 perches.

20

3. The entire soil and rubber plantations and the other plantations of land called Uggagalkandapabodadeniya situated at Palligoda in Iddagoda Pattu and bounded as per Title Plan No. 273717 on the North by Lot No. 26260 in P. Plan No. 14095 East by land in Title Plan No. 55265 South by lands in Title Plans No. 253702 and 253701 and Crown Land and West by Crown land in extent of 2 acres 2 roods and 31 perches.

Sgd. D. J. K. GOONETILLEKE,

Proctor for Plaintiff.

30

Registered C 64/288-290.
 Kalutara, 29th November 1928.
 Mortgage Bond Rs. 2,500/-
 Lands 3.

No. 20261

KNOW ALL MEN BY THESE PRESENTS I, Kathri-aratchige Don Pedrick Siriwardene of Walagedera Iddagoda Pattuwa, Pasdun Korale West, do hereby acknowledge to have received and borrowed from Cornelia de Alwis Seneviratne Walawwe Mahatmaya of Leuwanduwa a sum of Rupees Two thousand and five hundred (Rs. 2,500/-) of lawful money of Ceylon.

40

Therefore renouncing the benefit of saying that the said principal was not counted and received it is hereby agreed to pay and settle the same with interest thereon at the rate of sixteen per cent. per annum from the date hereof till payment unto the creditor or to his heirs and assigns on demand and for the safety of the said principal and interest I the said debtor do hereby declare that I have the full power and authority to mortgage the said premises and I shall not in any way alienate the same until this bond is in force and for the due payment hereof I do hereby bind my heirs and assigns hereto.

10

IN WITNESS WHEREOF this deed was caused to be written and signed by me the said Kathriaratchige Don Pedrick Siriwardena on this 28th day of November, 1928 at Alutgama.

Exhibits.
No. P 8 B.
Plaint and
Answer in
D. C. Kalu-
tara Case
No. 22817
and Journal
Entries and
Plaint
in D. C.
Kalutara
Case
No 18944.
1934 to 1942
—continued

Schedule.

20

1. The entire soil and all the rubber plantations and other plantations and the buildings thereon of land called Gallindawiladoowa situated at Palligoda in Iddagoda Pattuwa Pasdun Korale West, Kalutara District, Western Province and belonging to me the debtor upon and by virtue of Crown Grant No. 46498 dated 27th August, 1908 granted by His Excellency the Governor and bounded as per Title Plan No. 252702, North by Crown land and Title Plan No. 55265 East by land in Title Plan No. 55265 and land claimed by natives South by reservation along the road, West by Lot No. 19790 in Preliminary Plan No. 12969 and in extent 5 acres 2 roods and 16 perches.

30

2. The entire soil and rubber plantation and all the other plantations and the buildings thereon of land called Gallindawiladoowa situated at Palligoda aforesaid and belonging to me the debtor upon and by virtue of Crown Grant No. 46497 dated 27th August, 1908 granted by His Excellency the Governor and as per Title Plan No. 253701, bounded on the North by Crown land, East by Lot No. 19792 in P. Plan No. 12969, reservation along the road and land claimed by natives, South and West by land claimed by natives, and excluding the road running through the land and reservation along the two sides of the road in extent 3 acres 1 rood and 24 perches.

40

3. The entire soil and rubber plantations and the other plantations of land called Uggalkandapabodadeniya situated at Palligoda in Iddagoda Pattuwa and belonging to upon and by virtue of Crown Grant No. 50351/1124 dated 27th January, 1911 granted by His Excellency the Governor and bounded as per Title Plan No. 273717 on the North by Lot No. 26260 in P. Plan No. 14095 East by land in Title Plan No. 55265 South by lands in Title Plan Nos. 253702 and 253701 and Crown land, West by Crown land and in extent of 2 acres 2 roods and 3 perches.

Sgd. D. T. SIRIWARDENA.

Witnesses: Sgd. G. H. SILVA.

Sgd. D. P. RANAWEERA.

Exhibits.
No. P 8 B.
Plaint and
Answer in
D. C. Kalu-
tara Case
No. 22817.
and Journal
Entries and
Plaint
in D. C.
Kalutara
Case
No. 18944.
1934 to 1942
—continued

The foregoing instrument was read over and explained by me Gilbert Basil Samaranayake of Alutgama, N. P. in presence of subscribing witnesses Gamalathge Henry de Silva of Warapitiya and Kamburawalakankanange Don Pileck Ranaweera of Dodangoda who are known to me the said debtor Kathiriaratchige Don. Pedrick Siriwardena who is known to me and thereafter he and witnesses signed in my presence on the 28th November, 1928 at Alutgama.

The consideration was paid in my presence and in the original 2 page 26 line struck off. The duplicate bears stamps of Rs. 24/- and original Rs. 1/- supplied by me.

10

Which I attest,

Attested on the 28th November, 1928.

Sgd. G. B. SAMARANAYAKE,
N. P.

I, M. A. Fernando, Acting Secretary D. C. Kalutara do hereby certify that the foregoing is a true copy of the journal entries, motion, plaint, and translation of Deed No. 20261 of 28-11-1928 filed in D. C. Kalutara Money Case No. 18944.

Sgd. M. A. FERNANDO,
Secretary, D. C. 20
10-11-41.

Prior Registration :—C 27/189,—190.64/289—290.67/273.

Copy.

Transfer

No. 24919

Lands 5.

On the 24th June, 1935.

KNOW ALL MEN BY THESE PRESENTS I, Katriaratchige Don Pedrick Siriwardene of Walagedera Iddagoda Pattuwa, Pasdun Korale West do hereby declare that for and in consideration of the sum of Rupees Four Thousand Rs. 4000/- of lawful money of Ceylon well and truly paid to me by Mr. Richard Hinton de Alwis Seneviratne of Leuwanduwa Wallalwiti Pattu in the said Korale (the receipt whereof I do hereby acknowledge) do hereby sell and transfer over unto the said Richard Hinton de Alwis Seneviratne the following properties described in the schedule hereto annexed.

30

Therefore that all the right title and interest that I the vendor have in and to the said premises thus sold shall from this day belong to the said vendee Richard Hinton de Alwis Seneviratne and he and his heirs and assigns shall possess and do whatever they please with the same, and I the vendor do hereby declare that I have full authority to transfer over the said premises and I have not in any way prior to this alienated the same or a part thereof and the same are free from encumbrances and I do hereby bind my heirs and assigns to warrant and defend the said sale at all times and to make or cause to be made all such deeds and writings to perfect the said title at the costs and expense of said vendee and his aforewritten.

Exhibits.
No. P 8 B.
Plaint and
Answer in
D. C. Kalu-
tara Case
No. 22817.
and Journal
Entries and
Plaint
in D. C.
Kalutara.
Case
No. 18944.
1984 to 1942
—continued

And I the vendee do hereby promise and agree that if the vendor or his heirs and assigns were to pay to me or to my heirs and assigns the said consideration Rs. 4000/- on any date within one year and six months from the date hereof of the properties sold herein to be retransferred over on a deed of transfer executed at the expense of said payee.

Schedule.

1. The entire soil and the rubber plantations thereon registered No. 798 S 3 K.L. 4 in Rubber Control Department and all the other plantations and the buildings thereon and all the other appurtenances of an allotment of land called Gallindawiladoowa situated at Palligoda in Iddagoda Pattu, Pasdun Korale West, Kalutara District Western Province and held and possessed upon and by virtue of Crown Grant No. 46498 dated 27th August 1908 granted by His Excellency the Governor and bounded as per P. Title Plan No. 253702 on North by Crown land and land in Title Plan No. 55265, East by land in Title Plan No. 55265 and land claimed by villagers, South by reservation along the road, West by Lot No. 19790 in P. Plan No. 12969 and in extent of 5 acres 2 roods and 16 perches.

2. The entire soil and the rubber plantations registered No. 798 S 3 K.L. 4 in Rubber Control Department and all the other plantations and buildings thereon of land called Gallindawiladoowa situated at Palligoda aforesaid and held and possessed upon and by virtue of Crown Grant No. 46497 of 27th August, 1908 granted by His Excellency the Governor and bounded as per title plan No. 253701 on the North by Crown land East by Lot No. 19792 in P Plan No. 12969 reservation along the road and land claimed by villagers, South and West by land claimed by villagers and in extent 3 acres 1 rood and 24 perches excluding the road running the middle of land and reservation along both sides of road.

3. The entire soil and rubber plantation thereon registered No. 798 S 3 K.L. 4 and all the other plantations of land called Uggalkandapabodadeniya situated at Palligoda alias Pallegoda aforesaid and held and possessed upon Crown Grant No. 50351/1124 dated 27th January, 1911 granted by His Excellency the Governor and bounded

Exhibits.
 No. P 8 B
 Plaintiff and
 Answer in
 D. C. Kalu-
 tara Case
 No. 22817
 and Journal
 Entries and
 Plaintiff
 in D. C.
 Kalutara
 Case
 No. 18944.
 1934 to 1942
 —continued

as per Title Plan No. 273717 on North by Lot No. 26260 in P. Plan No. 14095 East by land in Title Plan No. 55265 South by lands in Title Plans No. 253702 and 253701, West by Crown land and in extent of 2 acres 2 roods 31 perches.

4. The entire land called Katiyeowitepitakattiya situated at Kolahakada in Iddagoda Pattu held and possessed upon Crown Grant No. 36511 of 25th October, 1903 granted by His Excellency the Governor and bounded as per Title Plan No. 196806 on North by Kaduruwatte ela and Kaduruwatte wela, East by land in Title Plan No- 139117 South by land claimed by villagers and Kaduruwatte ela West by Kaduruwatte ela and in extent of 2 acres and 24 perches.

10

5. The entire land called Elamulleowita situated at Ritiketiya in Iddagoda Pattu and held and possessed upon Crown Grant dated 26th October, 1926 granted by His Excellency the Governor and bounded as per Title Plan No. 379703 on North by reservation along the Ritiketiya ela East and South by Crown land Elamulle owita, and West by Embiliyeowita claimed by U. Don Endoris and in extent 1 acre 1 rood and 20 perches.

In witness whereof this deed was caused to be written and signed by me the Vendor Katriaratchige Don Pedrick Siriwardena and Vendee Richard Hinton de Alwis Seneviratne on the 24th June, 1935 at Alutgama.

20

We do hereby declare that they are known to us by their names residence and occupations.

Sgd. D. P. SIRIWARDENE.

Sgd. HINTON SENEVIRATNE.

Sgd. M. K. D. UPARIS KUMARARATNE.

Sgd. W. F. SENEVIRATNE.

The foregoing instrument was read and explained by me Gilbert Basil Samaranayake of Alutgama Notary Public in Presence of subscribing witnesses Maddumakankanange Don Uparis Kumararatne of Pitaarambe in Bentota who signed as "M. K. D. Kumararatne" and William Floris de Seneviratne of Leuwanduwa who are known to me to the said parties Katriaratchige Don Pedrick Siriwardena and Richard Hinton de Alwis Seneviratne and thereafter they and witnesses signed in my presence and in presence of one another on the 24th June, 1935 at Alutgama.

30

The vendee hereof kept with him the consideration for the purpose of settling the principal and interest excepting the costs in Case No. 18944 D. C. Kalutara.

40

The duplicate bears stamps of Rs. 67/- and original Rs. 1/1 Exhibits.
supplied by me.

Attested on 24th June, 1935,

Which I attest.

Sgd. G. B. SAMARANAYAKE,

N. P.

This true copy was issued by me on a stamp of Rs. 1/00 supplied
by me.

Sgd. G. B. SAMARANAYAKE,

N. P.

10

Attested on the 19th January, 1937.

No. R 1.

Proceedings in D. C. Kalutara Case No. 13560.

IN THE DISTRICT COURT OF KALUTARA.

R 1.

1. DONA ELPINONA WEERAKOON HAMINE of Walagedera
2. DONA CECILIA NONA SIRIWARDENE HAMINE and husband
3. B. D. LEWIS APPUHAMY of Bentota
4. KATRIARATCHIGE ARANERIS SIRIWARDENE of Kolehekada
5. KATRIARATCHIGE DON FREDERICK SIRIWARDENE of Walagedera.....*Plaintiffs.*

vs.

No. 13560
Nature Partition
Value Rs. 8000/-

1. KATRIARATCHIGE DON VELIS SIRIWARDENE of Kolehekada
2. KATRIARATCHIGE DON DAVITH SIRIWARDENE of Kolehekada
3. KATHIRIARATCHIGE DONA EMI NONA SIRIWARDENE and husband
4. DON PETER WIJEGUNARATNE both of Katugahahena

20

30

No. R 1.
Proceedings
in D. C.
Kalutara
Case
No. 13560.
1936.

No. P 8 B.
Plaint and
Answer in
D. C. Kalu-
tara Case
No. 22817
and Journal
Entries and
Plaint
in D. C.
Kalutara
Case
No. 18944.
1934 to 1942
—continued

Exhibits.
 —
 No. R 1,
 Proceedings
 in D. C.
 Kalutara
 Case
 No. 18560.
 1986.
 —continued

5. DONA CICILIS NONA KANNANGARA
and husband
6. DAVID HINTON VAN ROYAN GUNA-
SEKERA both of Nanu-oya
7. DONA EMINONA KANNANGARA and
husband
8. L. D. M. JAYASEKERA both of Iddagoda
9. DONA ESSELIN NONA KANNANGARA
10. DONA ROSALIN NONA KANNANGARA
(9th and 10th defendants minors by their
guardian-ad-litem the 23rd defendant) 10
11. KATHIRIARATCHIGE DON BRAMPY
SIRIWARDENE of Kolehekada
12. KATHIRIARATCHIGE DONA ALICE
NONA SIRIWARDENE and husband
13. D. J. RANAWEERA both of Dodangoda
14. KATHIRIARATCHIGE DONA LILY
NONA SIRIWARDENE of Walagedera
15. DODANGODALIYANAGEY JAMES of
Kolehekada 20
16. KATHIRIARATCHIGE DON KOVIS
SIRIWARDENE of Kolehekada
- (dead) 17. DODANGODALIYANAGE PEDRICK *alias*
BEMPI SINGHO of Kolehekada
18. DODANGODALIYANAGE PILECK SIN-
GHO of Kolehekada
19. DODANGODALIYANAGE CHARLES
APPU of Kolehekada
20. DODANGODALIYANAGE LEWIS APPU
of Kolehekada 30
21. DODANGODALIYANAGE SOPI NONA
of Owitigala
22. DODANGODALIYANAGE DOTCHI NO-
NA of Henpita
23. DON BRAMPY KANNANGARA of
Uragoda

- | | | |
|----|---|--|
| | 24. DON CHARLES SIRIWARDENE of Owitigala | of Exhibits.
No. R 1.
Proceedings
in D. C
Kalutara.
Case
No. 13560.
1936.
—continued |
| | 25. KATHIRIARATCHIGE DONA SOPI NONA of Owitigala | |
| | 26. GAMLAKSAGE ABRAHAM SENEVI-RATNE P. V. of Kalamulla | |
| | 27. PATHIRAGE NONO HAMY of Talawile | |
| | 28. MAHAWATTAGE SOPI NONA of Kolehekada | |
| 10 | 29. DODANGODALIYANAGE HENDRICK of Kolehekada (minors) by his G-A-L the 28th defendant. (28 and 29 defendants substituted in place of the 17th defendant (deceased)) | |

The heirs of 20th defendant deceased are the 18, 19, 21, 22, 28 and 29th defendants....*Defendants.*

On this 30th day of September, 1936.

The plaint of the plaintiffs abovenamed appearing by D. J. K. Goonetilleke their Proctor states as follows :—

20 1. The persons called Katriaratchige Don Cornelis, Galassage Punchiappu, Boosabaduge Methias Fernando and Dodangoda Liyanage Don Siman were by right of purchase from the Crown (upon a Grant which is not in the possession of the plaintiffs) and by right of long possession the owners in the proportion of 1/4 share each of the land called Netawgahalandawatta situated at Kolehekada in Pasdun Korale within the jurisdiction of this court and bounded on the north by land appearing in T.P. 134495, East by land appearing in T.P. 200075, South by land appearing in T.P. 139117 and private lands and west by land appearing in T.Ps. 139117 and 168255 and containing in extent A 20. R 2. P 36.

30 2. The said K. Don Cornelis owner of 1/4 share first married Sepramaduaratchige Saralathamy in community of property who predeceased him leaving an only child Don Frederick Siriwardena the 5th plaintiff abovenamed whereby the said 5th defendant became entitled to 1/2 of 1/4 or 1/8 share of the said land.

40 3. The said K. Don Cornelis next married Magodaaratchige Engonona who also predeceased him leaving 4 children viz: Dona Jane Nona Siriwardena, Don Welis Siriwardena the 1st defendant, Don Davith Siriwardena the 2nd defendant and Dona Eminona Siriwardena the 3rd defendant who is married to Samaraweera-mudalige Don Peter Wijegooneratne 4th defendant.

Exhibits.
 No. R.1.
 Proceedings
 in D. C.
 Kalutara.
 Case
 No. 13560.
 1936.
 —continued

4. The said Dona Jane Nona Siriwardena predeceased her father the said K. Don Cornelis leaving 4 children namely Dona Cicilia Nona 5th defendant who is married to the 6th defendant Dona Eminona 7th defendant who is married to Liyanaaratchige D. M. Jayasekera 8th defendant, Dona Esselyn Nona 9th defendant and Dona Rosaline Nona 10th defendant.

5. The said K. Don Cornelis lastly married Dona Elpinona Weerakoon the 1st plaintiff and he died seized and possessed of the 1/8 share of the said land that remained to him surviving as his only heirs and next of kin his widow the 1st plaintiff and his children by the three beds and the children of his daughter Jane Nona by representation namely child by the 1st bed Don Frederick Siriwardena the 5th plaintiff, children by the 2nd bed Don Welis 1st defendant, Don Davith 2nd defendant, Dona Eminona 3rd defendant who is married to S. Don Peter Wijegoonaratne 4th defendant children of his daughter Jane Nona by representation Dona Cecilia Kannangara 5th defendant who is married to David Hinton Vanrooyen Goonasekera the 6th defendant Dona Eminona Kannangara the 7th defendant who is married to L. D. M. Jayasekera 8th defendant Dona Esselyn Nona Kannangara 9th defendant and Dona Rosalyn Nona Kannangara 10th defendant of whom the said 9th and 10th defendants are minors appearing by their guardian-ad-litem Dona Eminona Kannangara the 7th defendant, children by the 3rd bed namely Don Brampy Siriwardena 11th defendant, Dona Alice Nona Siriwardena the 12th defendant who is married to Don Johannes Ranaweera 13th defendant, Dona Cicilia Siriwardene 2nd plaintiff who is married to B. D. Lewis Appuhamy 3rd plaintiff and Dona Lily Nona Siriwardena 14th defendant whereby the said widow the 1st plaintiff became entitled to 1/2 of 1/8 or 1/16 share of the said land and each of the said 8 children of the three beds who survived their father became entitled to 1/9 of 1/2 of 1/8 or 1/144 share and each of the said grandchildren to (children of Jane Nona) became entitled to 1/4 of 1/9 of 1/2 of 1/8 or 1/576 shares of the said land.

6. The said Galassage Punchiappu referred to in para 1 hereof owner of 1/4 share died leaving as his heirs and next of kin three children namely Appusinno Aron and Podisinno whereby each of them became entitled to 1/3 of 1/4 or 1/12 share of the said land.

7. The said Appu Sinno, Aron Sinno and Podisinno referred to in the para immediately preceding the owners of 3/12 shares are said to have sold the same to D. James the 15th defendant.

8. The said Busabaduge Methias Fernando owner of 1/4 share referred to in para 1 hereof is said to have sold 1/2 of 1/4 or 1/8 share to K. Don Kovis Appu 16th defendant and K. Don Arneris Siriwardene the 4th plaintiff in the proportion of a 1/16 share each and to have sold the remaining 1/8 share in equal shares to K. Welis Siriwardena the 1st defendant and K. Don Kovis Appu the 16th defendant.

9. The said Dodangoda Liyanage Don Siman owner of 1/4 share referred to in para 1 hereof sold the same to Kottatchikankanange Allis Appu and Kottatchikankanange Appu Sinno and the heirs of these two grantees are said to have sold the said 1/4 share in equal shares to K. Welis Siriwardena 1st defendant and to Pedrick alias Bempy Sinno the 17th defendant.

Exhibits.
No. R 1.
Proceedings
in D C.
Kalutara
Case
No. 13560.
1936.
—continued

10. The said land is thus held and possessed in the following shares.

	1st plaintiff	....	1/16
10	2nd plaintiff	....	1/144
	4th plaintiff	....	1/16
	5th plaintiff	....	1/18 plus 1/144
	1st defendant	....	1/144 plus 1/16 plus 1/8
	2nd & 3rd defendants	....	1/144
	5, 7, 9 & 10 defendants	....	1/576
	11, 12 and 14 defendants	....	1/144
	15th defendant	....	1/4
	16th defendant	....	1/16 plus 1/16
	17th defendant	....	1/8

20 11. There are the following houses on the said land which belong to the following parties :—

The house on the North Western side was built by K. Don Karnelis Siriwardena and now belongs to his heirs.

The house and the boutique on the North Western side belong to Don Welis Siriwardena the 1st defendant.

One house belongs to K. Don Kavis Appu the 16th defendant.

30 The two houses on the South Eastern side belong to D. James, D. Pedrick, D. Pilik, D. Charlis, D. Lewis, Dona Sopinona and D. Dotchinona the 15th, 17th, 18th, 19th, 20th, 21st and 22nd defendants.

12. There are the following plantations on the said land which belong as herein below set out :—

(a) The plantations of coconut rubber and jak on the North Western were all made by K. Don Karnelis and now belong to his heirs.

(b) The planter's half share of the first plantation of coconut and jak of the South Western side belong to the 15, 17 and 18 to 22 defendants by right of inheritance from their father D. James who made the said plantations.

Exhibts.
 No. R 1.
 Proceedings
 in D. C.
 Kalutara
 Case
 No. 18560.
 1936.
 —continued

(c) The 1st plantation of coconut and jak standing on the North Eastern side was made by K. Don Carnelis and the same now belongs to his heirs.

(d) The 2nd plantation on the North Eastern side was made by Don Welis the 1st defendant.

(e) The plantations of coconut and jak standing towards the middle of the said land were made by Araneris Siriwardena 4th plaintiff and Kovis Siriwardena 16th defendant.

(f) The rubber plantations standing towards the middle of the said land was made by Kovis Siriwardena 16th defendant and Welis Siriwardena the 1st defendant.

10

The rubber plantation on the South Eastern side was made by Welis Siriwardena the 1st defendant.

(g) The planter's share of the first plantation of the coconut and jak standing on the South Eastern side is possessed by Welis Siriwardena the 1st defendant and D. Pedrick alias Bampy Sinno the 17th defendant.

13. The plaintiffs and their predecessors in title have been in the undisturbed and uninterrupted possession of their shares and interests in the said land for a period of over ten years by a title adverse to and independent of all others whereby they have acquired a title thereto by prescription.

20

14. The said land is reasonably worth Rs. 8000/-.

15. The possession of the said land in common is inconvenient and impracticable and a partition of the same is therefore become necessary.

Wherefore the plaintiffs pray :—

(a) That a partition of the said land may be decreed.

(b) That the plaintiffs may be held and entitled to and allotted their several shares and interests at such partition

30

(c) For costs

(d) For such other and further relief as to this court may seem meet.

Sgd. DONALD GOONATILLEKA,
Proctor for Plaintiffs.

Pedrick Siriwardena, affirmed.

Exhibits.

No. R 1.
 Proceedings
 in D C.
 Kalutara
 Case
 No 13560.
 1936.

—continued

I am the 5th plaintiff. Land sought to be partitioned appears in plan and report. On Crown Grant 2276 of 20th April 1885 Don Cornelis G. Punchiappu, Mathias Fernando and Don Seiman were the original owners of this land. The plaint and pedigree are correct except in these respects viz. (1) 11th and 12th defendants 2nd plaintiff and 14th defendants are not the children of Cornelis and (2) The property was acquired after the death of the 5th plaintiff's mother. My father lived in house D on lot 1. till he died in 1923. I was
 10 administrator in Case No. 1584. I produce letters of administration P 2 and Inventory P 3. This land is land No. 31. I have entered all the plantations on this lot as belonging to my deceased father. 1st and 2nd D were 8th and 9th respondents in 1584. The rubber coupons were obtained in the name of the 11th defendant. The first one being in 1923. I produce three assessment certificates 1923, 1925 and 1926. The last two give the name of the 11th defendant. P 4 was obtained when Cornelis was alive. He died in May 1923. 1st and 2nd defendants were allowed to take coupons for the other
 20 portions of the land. After P 6 was obtained in 1926 1st and 2nd defendants disputed the other members of the family and I filed this case. Till then 1st and 2nd defendants did not claim exclusively any plantations on this lot No. 1 Mr. Goonetilleke was my proctor in Test case. 1st and 2nd defendants and I went together to the Proctor from the start and gave instructions to the proctor. I am aware that my father made plantations on this lot. I give up the contest re plantations on lot 4.

Cross-examined.

Since 1912 I am living at Walagedera. Before that I was living in boutique in this village. I used to come to this house. My step
 30 mother and her children are living with me. The 2nd defendant lived with my father till he married about five years ago. 1st defendant left his father's house 25 years ago. He worked in the boutique with me and used to stay in this house. The 1st defendant built a house on the land about 15 or 20 years ago. I have made no plantations on this land. The coconut trees in dispute are about 20 to 25 years old. Brampy used to take the produce with Davith and I got my share in cash and I spent for the Test case. The rubber trees in dispute are 15 years old and the other trees 20 years. I am a dismissed headman. A priest petitioned against me about a land. I was asked to bring a
 40 civil case and I refused and I was dismissed. I had several cases. I was asked to pay double stamp duty in one case.

Re-examined.

I resigned on request by the A. G. A.

Sgd. N. M. BARUCHA,
District Judge.

Exhibits.
 No. P 20.
 Marriage
 Certificate
 of Lily
 Siriwardene.
 15-2-37.

No. P 20.

Marriage Certificate of Lily Siriwardene.

P 20.

TRANSLATION.

CERTIFICATE OF MARRIAGE OF PASDUN KORALE WEST
DIVISION IN KALUTARA DISTRICT W. P.

	Male Party	Female Party	
1. Names of both parties	Kannangara Korallalage Don William Singho	Katriaratchige Dona Lily Nona Siriwardene	
2. Age	42 years	35 years	10
3. State	Widower	Widow	
4. Occupation & race	Physician Sinhalese	Sinhalese	
5. Residence	Haburugala	Walagedera	
6. Father's full name	Kannangara Korallalage Don Podiappuhamy	Kathriaratchige Don Karnelis Siriwardana	
7. Father's Occupation	Cultivator dead	Police Vidane dead	
8. Name & Division of the Registrar who gave certificate	Don Cornelis Guna- wardene Bentota Walallawiti Korale	Don Johanis Jaya- netti Pasdun Korale West	20
9. Place where marriage was solemnized	Registrar's Office at Lewwanduwa		

This marriage was solemnized by me on this 15th day of February, 1937.

Sgd. D. J. JAYANETTI,
Registrar.

This marriage was solemnized between us in the presence of the witnesses mentioned below. 30

Sgd. K. K. WILLIAM SINGHO.

Sgd. DONA LILY SIRIWARDANA.

Signature of Witnesses. Sgd. B. D. LEWIS.
Beddividanage Don Lewis Appuhamy,
Physician, Bentota.

Signature of Witnesses. Sgd. SUDARIS.
Kannangara Korallalage Sudaris Appu-
hamy, Trader, Bentota.

Signed in my presence. 40

Sgd. D. J. JAYANETTI,
Registrar.

No. R 36.

Decree in D. C. Kalutara Case No. 13560.

R 36.

FINAL DECREE.

No. 13560.

Exhibits.
 ———
 No. R 36.
 Decree in
 D. C. Kalu-
 tara Case
 No. 13560.
 28-7-37

IN THE DISTRICT COURT OF KALUTARA.

1. DONA ALPI NONA WEERAKOON of
Walagedera
2. DONA CECILINONA SIRIWARDENE
HAMINE and husband
- 10 3. D. D. LEWIS APPUHAMY both of Bentota
4. KATHRIARATCHIGE ARANERIS SIRI-
WARDENE of Kohellakada
5. KATHRIARATCHIGE DON PEDRICK
SIRIWARDENE of Walagedera.....*Plaintiffs*

vs.

1. KATHTHIRIARATCHIGE DON VELIS
SIRIWARDENE of Kolahekada
2. KATHTHIRIARATCHIGE DAVITH SIRI-
WARDENE
- 20 3. KATHTHIRIARATCHIGE DONA EMI-
NONA SIRIWARDENE and husband
4. DON PETER WIJEGUNARATNE both of
Katugahahena
5. DONA CECILIA NONA KANNANGARA
and husband
6. DAVID HINTON VAN ROYAN GUNA-
SEKERA both of Nanu Oya
7. DONA EMINONA KANNANGARA and
husband
- 30 8. L. D. F. JAYASEKERA
9. DONA ESALIN NONA KANNANGARA
10. DONA ROSALIN NONA KANNANGARA
9th and 10th defendants minors by their
G. A. L. 23rd defendant.

Exhibits.
 —
 No. R 36.
 Decree in
 D. C. Kalu-
 tara Case
 No. 13560.
 28-7-37.
 —*continued*

11. KATHTHIRIARATCHIGE DON BRAMPY
SIRIWARDENE of Kolahakada
12. KATHTHIRIARATCHIGE DONA ALICE
NONA SIRIWARDENE and husband
13. D. J. RANAWEERA
14. KATHTHRI ARATCHIGE DONA LILI
NONA SIRIWARDENE of Walagedera
15. DODANGODA LIYANAGE JAMES of
Kolahakada
16. KATHTHIRI ARATCHIGE DON KOVIS 10
SIRIWARDENA
17. DODANGODA LIYANAGE PEDRICK
alias BEMPI SINGHO both of Kolahakada
18. DODANGODA LIYANAGE PILECK
SINGHO of Kolahakada
19. DODANGODA LIYANAGE CHARLIS
APPU of Kolahakada
20. DODANGODA LIYANAGE LEWIS APPU
of Kolahakada
21. DODANGODA LIYANAGE SOPI NONA 20
of Witigala
22. DODANGODA LIYANAGE DOTCHI
NONA of Henspita
23. DON BRAMPY KANNANGARA of Uragala
24. DON CHARLES SIRIWARDENE of
Owitigala
25. KATHIRI ARATCHIGE DONA SOPI
NONA of Owitigala
26. GANLAKSAGE ABRAHAM SIRIWAR- 30
DENE P. V. of Kalwila
27. PATIRAGE NONAHAMY of Kalwila
28. MAHAWATTEGE SOPI NONA of Kola-
hakada

29. DODANGODA LIYANAGE HENDRICK of Kolahakada minor by his G. A. L. the 28th defendant. 28th and 29th are substituted in place of 17th defendant deceased.
- Heirs of 20th defendant are the 18, 19, 21, 22, 28 and 29 defendants.

Exhibits.
No. R 36.
Decree in
D. C. Kalu-
tara Case
No. 13560.
28-7-37.
—continued

30. PITCHORIS

31. G. LIVERIS SENEVIRATNE

32. G. EUSTER SENEVIRATNE....*Defendants.*

10 This action coming on for final disposal before Waldo Sansoni Esq. District Judge of Kalutara on the 28th day of July, 1937 in the presence of Mr. D. J. K. Goonetilleke Proctor for the plaintiffs Messrs. Ebert and Kannangara Proctors for 1st defendant Messrs. Wijemanne & Ismail Proctors for 2nd defendant, Mr. K. B. de S. Wijesekera Proctor for 15, 16, 24 & 25 defendants, Mr. de Almeida Proctor for 26th defendant.

20 It is ordered and decreed that the parties hereinafter mentioned be and they are hereby declared entitled to the following lots of the land called Natawgalhalanda situated at Kolahakada in Iddagoda Pattu of Pasdun Korale West in the District of Kalutara Western Province and more fully described in the schedule hereto attached.

Lot	Extent			To whom allotted
	A.	R.	P.	
1	0	1	19)	1st defendant
2	1	0	33)	
3	3	2	3.6)	
4	1	1	6.5	4th plaintiff
5	1	3	29.7	16th defendant
6	0	2	23.5	24th defendant
30 7	0	2	2.7	26th defendant
11	0	2	2.7	27th defendant
8	0	2	36.5	Heirs of 17th defendant
9	0	1	1.3	Pitchoris
10	0	0	30	125/204 to 15th defendant 27/204 to 18th defendant 6/204 to 19th defendant 6/204 to 20th defendant heirs
12	4	3	12	6/204 to 21st defendant 6/204 to 22 defendant 14/204 to G. L. Seneviratne 14/204 to G. E. Seneviratne
40				40 coconut trees and 237 rubber trees to 15th defendant.
				Buildings to the heirs of Esan appu.

Exhibits.	Lot	A.	R.	P.	
No. R 36:	13	2	2	13	1st plaintiff
Decree in	14	2	0	10½	1/4 to 5th plaintiff 1/4 to 2nd defendant
D. C. Kalu-					1/4 to 3rd defendant 1/4 to 5.7.9. and
tara Case					10 defendants.
No 13560.					
28-7-37.					

—continued

And in equalising and apportioning the valuations of the foregoing lots it is ordered and decreed that					Rs. cts.	
1st plaintiff do pay 1st defendant	do	do	do	do	....	13 50
do do 5th plaintiff and 2, 3, 5, 7, 9, 10 defendants	do	do	do	do	....	5 70
1st defendant do 15th defendant	do	do	do	do	....	78 50
4th plaintiff do 1st defendant	do	do	do	do	....	11 00
16th defendant do 4th plaintiff	do	do	do	do	....	9 00
24th defendant do 16th defendant	do	do	do	do	....	62 00
do do 1st defendant	do	do	do	do	....	32 00
26th defendant do 1st defendant	do	do	do	do	....	128 50
17th defendant's heirs do do	do	do	do	do	....	12 50
do do Pitchoris	do	do	do	do	....	35 00
15th defendant do do	do	do	do	do	....	19 75
do do 17th defendant's heirs	do	do	do	do	....	42 50
27th defendant do 1st defendant	do	do	do	do	....	132 00
5th plaintiff do 1st plaintiff	do	do	do	do	....	18 75
do do 1st defendant	do	do	do	do	....	3 75
2nd defendant do 1st plaintiff	do	do	do	do	....	18 75
2nd defendant do 1st defendant	do	do	do	do	....	3 75
3rd defendant do 1st plaintiff	do	do	do	do	....	18 75
do do 1st defendant	do	do	do	do	....	3 75
5, 7, 9, and 10 deft's do 1st plaintiffs	do	do	do	do	....	18 75
do do 1st defendant	do	do	do	do	....	3 75
26th defendant do 1st defendant	do	do	do	do	....	38 85
27th defendant do do	do	do	do	do	....	38 84
do do 4th plaintiff	do	do	do	do	....	28 54
24th defendant do 16th defendant	do	do	do	do	....	50 31
Pitchoris do 1st plaintiff	do	do	do	do	....	27 09
17th defdt's heirs do 5th plaintiffs and 2, 3, 5, and 10th defendants	do	do	do	do	....	25 19
26th defendant do 15, 18, 19, 20, 21, 22 defendants	do	do	do	do	....	55 91
do do Liveris & Euster Seneviratne	do	do	do	do	....	17 92
do do 1st plaintiff	do	do	do	do	....	38 08
27th defendant do 5th plaintiffs and 2, 3, 5 and 10th defendants	do	do	do	do	....	34 08
do do 1st plaintiffs	do	do	do	do	....	34 08

And it is further ordered and decreed that the costs other than the costs of contest be borne by the parties pro rata.

The Schedule above referred to :—

The land called Natawgalhalanda situated at Kolehekada aforesaid and bounded on the North by T. P. No. 134495 and Wellaboda-kumbura, East by T. P. No. 200075 and Crown land presently purchased by the natives, South by Usdugahawatte and T. P. 185614, 260029 and 139177; West by T. P.'s 139117 and 168255, and containing in extent Twenty acres two roods and four perches (20 A. R 2 P 4.) as shown in the figure of survey No. 6580 of 5th June, 1937 made by Mr. H. O. Scherenguivel Licensed Surveyor.

Exhibits.
No. R 36.
Decree in
D. C. Kalutara Case
No. 13560
28 7-37.
—continued

10

Sgd. W. SANSONI,
District Judge.

This 28th day of July, 1937.

I, B. J. Arasaratnam, Secretary of the District Court of Kalutara, do hereby certify that the foregoing is a true copy of the Final Decree entered in D. C. Kalutara Partition Case No. 13560.

Sgd.....
Secretary, D. C.
6-7-38.

No. R 2.

20

Petitioner's Evidence in D. C. Kalutara Case No. 20947.

No. R 2.
Petitioner's
Evidence
in D. C.
Kalutara
Case
No. 20947.
20-3-39.

PROCEEDINGS.

20-3-39.

MR. GOONERATNE instructed by MR. D. GOONETILLEKE for the plaintiff.

MR. DE ZOYSA for the defendant instructed by MR. WIJESKERA.

ISSUES.

30

1. Did the defendant take a contract from Matugama Estate, the work of preparing a 64 acre block from a plantation.

2. Was it agreed between the plaintiff and defendant that the plaintiff should supply all the expenses for working the contract and that the defendant should repay the same together with a half share of the profits.

3. If so what amount if any is now due from the defendant to the plaintiff on account of the said agreement.

(The plaintiff admits having recovered Rs. 1462/75).

MR. DE ZOYSA admits the contract.

Exhibits. MR. GOONERATNE calls :

No. R 2.
Petitioner's
Evidence
in D. C
Kalutara.
Case
No. 20947.
20-3-39.
—continued

A. D. Karthelis, Affirmed. 26, Estate Conductor, Galmatta.

I work under the plaintiff. I know the defendant. I know a contract taken by the defendant in Matugama Estate. The plaintiff and the defendant did that contract work in partnership. I was present when they discussed the terms. No writing was entered into in my presence. It was agreed that the plaintiff should finance, that the defendant should manage the business; the plaintiff to take a half share of the profits and the money spent by him; the plaintiff was to get his money from the contract money. It was also arranged that I should keep account for the defendant and Simon to help in the supervision. The plaintiff established a boutique to supply provisions for the coolies and for those engaged in the contract. The defendant and I lived there. This contract work lasted six months. The monthly rent for the boutique was Rs. 5/-. My salary was Rs. 20/-. I had my meals in the boutique. The defendant purchases the provisions. I was not paid my salary for the six months. I had only my meals at the defendant's expense.

10

The work of the contract began on 10-11-37. The work ended in April, 1938.

20

I produce the check roll P 1 from November, 1937—April, 1938. I also kept a book P 2, the entries of which are taken from P 3 which also I produce. When the defendant paid the coolies I entered the payments in P 3. P 3 shows moneys paid by the defendant and moneys received by the defendant. Moneys received by the defendant would include money received from the plaintiff and from the estate. It also shows provisions received by the defendant from the plaintiff.

I had instructions from the defendant himself in regard to the payments made by the plaintiff. There were occasions when I went to the plaintiff and obtained money for the defendant.

30

The greater portion of P 3 was filled up by the defendant. The entries in P 3 are taken to two other books P 4 and P 5. P 4 shows the accounts in regard to provisions. P 5 shows the accounts in regard to cash.

The accounts in P 2, are from P 4, P 5 and P 1.

In P 2 pages 4, 11, 12, 13, 14, deal with the account in regard to the digging of holes. The amount due from the estate for that work is Rs. 1088/-; the amount spent is Rs. 793/50 on that account.

For uprooting trees and for trenches the amount due was Rs. 1897/- (Vide pages 14 and 28 of P 2) and the amount spent is Rs. 1793/65.

40

Pages 15, 18, 21 show the amount spent by the plaintiff and the amount received by him from the defendant. The amount spent is Rs. 1755/82 and the amount received by him is Rs. 1462/75. There is the Rs. 30/- to be added on account of the house rent.

The rubber trees uprooted were the property of the contractor and were sold.

The account appears on pages 17, 20, 23, 26 and 27. By the sale a profit of Rs. 355/67 realised.

10 On account of the unsold timber there was a sum of Rs. 574/30 as profits.

The amount due to the defendant from the estate was Rs. 3533/-. The total expenses Rs. 2515/86. Profits would therefore be Rs. 1017/14.

There are in addition to the two items Rs. 355/67 and Rs. 574/30. The total profit Rs. 1946/11. The plaintiff was entitled to half. He had given defendant Rs. 1755/82 and Rs. 30/- as house rent. He was entitled to Rs. 2758/87. He had already received Rs. 1462/75.

Cross-examined.

20 I am 12 years in the service of the plaintiff. I have been living in his house for that period of time. I am a man from Gampaha, a distance of 75 miles. I was a boy when I came to the plaintiff. Before me my brother was employed.

From P 3 I transferred the accounts to P 4 and P 5 and from P 4 and P 5 I made P 2.

P 3 I began about a month after the contract began. There were pass books prior to that (Pass Books shown P 6 and P 7).

The boutique was opened on the 19th of November.

30 The boutique sold things to others also. Some of the items in P 6 refer to such sales. The defendant and I were in charge of the boutique. In the defendant's absence I was in charge. The boutique was taken on rent for six months. It was on a deed. It might have been for three months.

I left the boutique at the end of April. I do not know whether the business continued. I went back to the plaintiff's house taking with me the books.

All the books were written out before 30th April, 1930. The plaintiff was prepared from the books. I gave a statement to the plaintiff.

40 There is a difference between the amount claimed and the amount due to the plaintiff as seen from the books. I cannot account for the difference.

Exhibits.
No. R 2.
Petitioner's
Evidence
in D. C.
Kalutara
Case
No. 20947.
20-3-37.
—continued

Exhibits.
 No. R 2.
 Petitioner's
 Evidence
 in D. C.
 Kalutara
 Case
 No. 20947.
 20-3-37.
 —continued

I have not been to the Superintendent of this estate. The plaintiff went one day to the Superintendent in regard to this contract. He went there more than once.

The plaintiff went once or twice to supervise the work. I also went to the estate in connection with this contract. The Superintendent visits the spot whenever he likes.

I was not paid by the defendant Rs. 5/- a month. The work of the contract was finished by April, 30. I obtained information about the timber from the overseer. On certain dates the defendant also gave me information.

10

P 1 was written in English so that the Superintendent may be able to read it. P I was in the boutique till I left. It was not taken to the estate.

Re-examined.

Page 8 in P 2 is my account.

Intd. E. O. C. V.

Don Pedrick Siriwardene, Affirmed. 53, Landed Proprietor.

I am the plaintiff. I have land. I have had litigation too.

I know the defendant well. All his property has been mortgaged with me.

20

In 1937 October the defendant had a contract with Matugama Estate. He invited me to share. I reluctantly joined him.

It was agreed that I should finance and open a boutique to supply provisions. I also agreed to provide him with two men.

I was to get back all my money and to get a half share of the profits. The defendant was also to pay himself a salary. I cannot remember the salary. I think it was -/75 cents a day.

I rented out a boutique on a deed for 4 or 5 years. I paid rent at Rs. 5/- a month. for six months.

The defendant failed to pay me my share of the profits. The contract came to an end in April and I closed up the boutique.

30

I filed the action about 21 days later.

I spent Rs. 1755/82 and thirty rupees. I have received Rs. 1462/75 and I now claim Rs. 788/-. I waive the rest. The defendant paid me from time to time various sums of money.

In November and December the defendant as he drew money from the Estate. In January also he paid. In February he made default.

I complained to the Superintendent. The Superintendent sent for this defendant. The defendant undertook before the Superintendent to pay me my money regularly.

Exhibits.
No R 2.
Petitioner's
Evidence
in D. C.
Kalutara
Case
No. 20947.
20-3-37.
—continued

In March the defendant paid me in the Superintendent's presence Rs. 300/-. The clerk was also there.

I produce a letter of 8-12-37; also a letter of 20-12-37; also a letter of mine with an endorsement by the defendant of 4-4-37. P 8, P 9, P 10.

Cross-examined.

10 I told the Superintendent what the terms were between me and the defendant in the matter of the contract. I complained to him that the defendant was making default. The defendant undertook before the Superintendent to pay me in the future.

I had a number of cases in this Court which I lost. I sued my cousin for a reconveyance of a certain property. I got the conveyance but I was asked to pay half costs. In a partition action I had to pay double stamp duty.

20 The defendant was paid a salary for supervising the work. My clerk knew that the defendant was to get a salary. There was no boutique after April. There was no rice and sundries after April in the boutique. The boutique was run for only the persons employed in the contract. I know that nothing was sold to others. At the end of April the contract was finished. I lent the defendant once Rs. 30/- and took a bond from the defendant—a mortgage bond. That bond was executed shortly before this contract. A contract of this nature requires; 2,000/- to meet necessary expenses. I took no writing. When I lent Rs. 30/- I was in friendly terms with him.

Re-examined.

30 I did not supervise the sales. I know it very well that no goods were sold to outsiders.

Intd.....

Exhibits.
 No. R 8.
 Deed
 No. 425.
 17-9-40.

No. R 8.**Deed No. 425.****R 8.**

No. 425.

Deed of Lease

Lands 1.

Consideration Rs. 400/-.

THIS INDENTURE of lease made and entered into at Kalutara on this 17th day of September, 1940.

Between Don Frederick Siriwardana of Walagedera hereinafter called and referred to as the Lessor of the one part and Aratchiappuhamillage Don Karthelis Appuhamy of Galmatta (hereinafter called and referred to as the Lessee) of the other part.

10

WITNESSETH :

That for and in consideration of the sum of Rupees One hundred (Rs. 100/-) paid in advance at the execution of these presents being rent for the first nine months and the covenants and conditions hereinafter contained on the part of the said Lessee to be observed and performed the said Lessor doth hereby demise and lease unto the said Lessee the premises in the schedule hereto more fully described.

To have and to hold the said premises unto the said Lessee for a term of three years commencing from the first day of October, 1940 yielding and paying the balance sum of Rupees Three Hundred (Rs. 300/-) by three instalments of Rupees one Hundred (Rs. 100/-) each payable on the first day of July, 1941 first day of April, 1942 and first day of January, 1943 respectively.

20

And the said Lessee doth hereby covenant and agree with the said lessor that the said Lessee shall and will pay the said rent in the manner aforesaid and keep the said premises in a good and tenantable condition and at the expiration or other sooner determination of the said term peacefully and quietly deliver up and surrender the said premises unto the said Lessor.

30

That the said Lessee shall tap the trees without injuring them and shall use only one cut in tapping the said rubber trees.

And the said Lessor doth covenant and agree with the said Lessee that the said Lessee duly paying the said rent and observing and performing the covenants and conditions herein on the part of the said Lessee to be observed and performed shall and may peaceably and quietly possess and enjoy the said premises during the said term without any interruption from or by the said Lessor or any person claiming under the said Lessor.

40

In witness whereof the said Lessor and Lessee set their hands hereunto and to two others of the same tenor and date as these presents at Kalutara on this 17th day of September, 1940.

Exhibits.
No. R 8,
Deed
No. 425.
17-9-40.
—continued

Schedule above referred to :

10 All that allotment of land appearing in Title Plan No. 264035 called Kirimetiyeudumulla deniya situated at Walagedera in Iddagoda Pattu of Pasdun Korale West Kalutara District Western Province and bounded on the North by land appearing in P. P. No. 264033 East by land appearing in T. P. No. 134916 and trenches South by land in T. P. No. 134916 and fields and West by Lot No. 797 in P. P. No. 6853 and trenches containing in extent Five acres three roods and twenty three perches (A 5. R 3. P 23) together with the rubber plantations thereon registered under No. 773 E 3 KL 6.

Witness who do hereby declare that the executants are well known to them by their proper names occupations and residence.

Sgd. D. F. SIRIWARDENE.

Sgd. A. D. KARTHELIS.

Sgd. V. L. WIJEMANNE,

20 Sgd. H. W. PERERA.

N. P.

Sgd. D. W. BRAMPY.

30 I, Vincent Leonard Wijemanne of Kalutara in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said Lessor and lessee who have signed as "D. F. Siriwardene" and "A. D. Karthelis" respectively who are known to me in the presence of Hidella Aratchige William Perera of Kalutara North who has signed as "H. W. Perera" and Don Brampy Wijegooneratne of Kalutara who has signed "D. W. Brampy" the subscribing witnesses thereto both of whom are known to me the same was signed by the said Lessor and Lessee and by me the said Notary and also by the said witnesses in my presence and in the presence of one another all being present at the same time at Kalutara on this seventeenth day of September, 1940.

And I further certify and attest that a sum of Rupees hundred (Rs. 100/) was acknowledged to have been received previously that before the foregoing instrument was read and explained as aforesaid in the original in page 2 line 20 "appearing" in page 3 line 1 "land" and in the duplicate in page 1 line 12 "advanced" line 13 "nine

Exhibits. months" line 22 "of" page 3 line 5 "together" were typed over erasure
No. R 8. the duplicate bears one stamp of the value of Rupees Five.
Deed
No. 425. Date of Attestation
17-9-40. 17th September, 1940. Which I attest.
—continued

Seal Sgd. V. L. WIJEMANNE,
Notary Public.

I, Vincent Leonald Wijemanne of Kalutara Notary Public do hereby certify that the foregoing is a true copy of Deed No. 426 dated 17th September, 1940 attested by me and supplied on the application of Don Velis Siriwardena, copied same from the file of protocol.

10

Sgd. V. L. WIJEMANNE,
Notary Public.

No. P 1.
Bill Head.
8-4-41.

No. P 1.

Bill Head.

P 1.

Habakkala,
 MAHA INDURUWA 8-4-1941.

F. S. & A. D. CARTHELIS APPUHAMY
 GENERAL MERCHANTS
 HABAKKALA, MAHA INDURUWA.

No. P 46.

20

No. P 46.
Letter from
the Res-
pondent's
Proctor
to the
Petitioner's
Proctor.
5-1-42.

P 46. **Letter from the Respondent's Proctor to the**
Petitioner's Proctor.

Kalutara, 5th January, 1942.

J. S. PARANA VITHANA ESQ.
 Proctor S. C.
 Colombo.

D. C. COLOMBO No. 10238.

Dear Sir,

In reply to your letter dated 16-12-42 I am instructed to inform you that the will produced by your client is a forgery and I have instructions to take all necessary steps to prove that the document is not the act and deed of the late Don Frederick Siriwardena. Your client was the Testator's servant and he is man of straw and he is not an heir, and I am unable to advise my client to give up the management of the estate pending the grant of the probate. As regards the allegations you make in your letter against my client, I am instructed by my client to deny them.

30

Yours faithfully,
 Sgd. J. A. W. KANNANGARA,

No. P 43.

Householder's List.

HOUSEHOLDERS' LISTS No. 55.

7-6-1942.

Exhibits.
No. P 43.
House-
holders'
List.
7-6-42.

Occu- pants.	Full names of persons actually living in the house.	Sex	Age		Occu- pation. if any.	Relationship to Chief Occupant.	Class	Old Ration Book No.	New Ration Book No.
			Yrs—M.						
Chief	Francis Amarasingha Arachchi	M	36	—	Trader	—	O	E 56075	D 874176
Others	Orlina Karunaratna	F	34	—	—	Wife	O	B 254450	D 874177
"	Margret Mallika Amarasingha Arachchi	F	7	—	—	Daughter	C	B 254447	B 450853
"	Iyranganie do do	F	5	—	—	"	C	B 254449	B 450854

D. R. O's Division W. B. Pattu Village Headman's Division or Town No. 59 A. Hikkaduwa East.

Village or Ward. Patana. Name of Authorised Distributor. H. R. Wilson, No. 113.

I, Francis Amarasingha Arachchi the Chief Occupant, do hereby declare that the information furnished herein is true and accurate, and that I have not filled in any other form.

Sgd. (In Sinhalese..)

Patana, 7th June, 1942.

No. R 5.

Exhibits.
No. R 5.
Obituary
Notice of
Don Davith
Siriwardene.
18-6-42.

Obituary Notice of Don Davith Siriwardene.

BEREAVEMENT NOTICE.

This is to inform with great sorrow that Don Davith Siriwardene Mudalali Mahatanan of Kolehekada, the brother of me the undersigned, who was ailing for some time and having had no effect from the English and Sinhalese treatment did on Thursday, the 18th instant at about 7 a.m. expire and the remains will be cremated at the family burial ground on Saturday the 20th instant at about 3 p.m.

10

To this effect,

Sorrowful

Sgd. D. F. SIRIWARDENA.

18-6-42.

Kolehekada.

Exhibits.
 No. P 42.
 Check Roll
 of Galmatte
 Estate.
 Sept. & Oct.
 1942.
 —continued

No.	NAMES	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Number of Days Worked	At the rate of Rs. cts.	Total Pay Rs. cts.	Weekly goods and Cash	Total sum Rs. cts.	Balance Rs. cts.	Debts Rs. cts.	REMARKS
-----	-------	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	--------------------------------	-------------------------------	--------------------------	--------------------------	--------------------------	---------------------	-------------------	---------

No. P. 8.**Envelope.**Exhibits,
No. P 8.
Envelope.**P. 8.**

WILSON DE SILVA ESQR.,
Proctor & Notary Public,
KALUTARA.

No. P 8 A.**Letter from Mr. N. Nadarajah to Mr. Wilson de Silva.**No. P 8A.
Letter from
Mr. N.
Nadarajah
to Mr.
Wilson de
Silva.
2-10-42.**P 8a.**

17, Alfred Place,
Colpetty,
Colombo,
2-10-1942.

10

Dear Mr. Wilson,

I am herewith sending you the papers you left with me and my opinion. I am afraid your client's case is bad in law.

I am sorry for delaying this matter owing to pressure of work.

Yours truly,

Sgd. N. NADARAJAH.

No. P 8 C.

20

P 8c.**Opinion of Mr. N. Nadarajah.**No. P 8C.
Opinion of
Mr. N.
Nadarajah.
2-10-42.

30

The plaintiff transferred to the defendant the lands set out in the schedule to the plaint by Deed No. 24919 of 24-6-1935. It is provided in the deed that the defendant should re-transfer the lands to the plaintiff on the latter paying the former the sum of Rs. 4,000/-, "on any date within one year and six months from the date of the deed." It is alleged by the plaintiff that the beneficial interests in the said lands remain with him in spite of this transfer and that he is entitled to a re-transfer on repayment of the sum of Rs. 4,000/-. There does not appear to be a notarial or non-notarial document wherein the beneficial interests is reserved in favour of the plaintiff. In the case of *De Silva v. De Silva* (39 N.L.R. 109) Mr. Justice Hearne said the following in regard to a similar deed—"It may be that the parties intended to effect a pledge and not a sale. Considerations pointing to this being the case are that while the transaction was on the face of it a *fractum de Retrovendendo* attached to a contract of sale the

Exhibits
 No. P 8C.
 Opinion of
 Mr. N.
 Nadarajah.
 2-10-42.
 —continued

stipulation for re-conveyance was created in favour of a vendor who retained the beneficial interests apart from a collateral agreement and who was indebted to the purchaser in the exact amount of the purchase price." Still the vendor's action for re-transfer failed. Again the case of *Wijewardene vs. Peiris* (37 N.L.R. 179) is against the plaintiff. The plaintiff is attempting to show that a transfer is really a mortgage. I am afraid this cannot be done (22 N.L.R. 417). The agreement to re-transfer has lapsed. It is not stated that the price was tendered within the stipulated time and that the vendor refused to transfer. Time is of the essence of the contract. Considering all the facts and law applicable, I am afraid the plaintiff will not succeed.

10

Sgd. N. NADARAJAH.
 2-10-42.

No. R 7.
 Draft of the
 Last Will.

No. R 7.

Draft of the Last Will.

No. R 7.

WORSHIP BUDDHA.

THE LAST WILL WRITTEN AND GRANTED.

The following, I declare, is the Last Will of me Kathiri Aratchige Don Fredrick Siriwardana of Walagedera in the Iddagoda Pattu of Pasdun Korale West, in the District of Kalutara, to wit :—

20

(1) Excepting the high and low lands and the plantations therein inherited by me from my father.

(2) I do hereby devise unto the War Fund till the present War is over the income of the rubber land called Katu Kuthugodalanda situated at Wanntuduwa in the Korale and district aforesaid, being one of the properties acquired by me, and thereafter such income shall vest in the British Government for the purpose of spending the same for feeding poor patients in Ceylon.

(3) To Galpotta Vihare at Bentara I devise, Millagahawatta alias Labuwelgoda Idama, together with all the plantations thereon situated at Walagedera aforesaid, being one of the properties mentioned in the second item, in terms of the promise made by me some time ago with B. Saranankara Nayaka Thero, the Incumbent of the said Vihare.

30

(4) I also do devise all the remaining movable and immovable property as follows :—(1) My first servant A. D. Cornelis Appuhamy who has served me continuously and very obediently whilst being resident in my house for over 20 years, to my two poor sisters (2) Cecilia Siriwardana who is residing in my house who has rendered me

great service by nursing me during my illness and attending to my personal, common and domestic affairs and (3) Lily Siriwardena of Haburugala Tutuwa to be divided equally amongst the said three persons and to be possessed by them and their children, and grandchildren out of the income of the property devised by me to the said three persons—a sum of Rs. 500/- should be paid in my behalf for the expenses of the Preaching Hall at Walagedera Vihara and also spend for giving alms to over 50 priests in my house annually.

Exhibits.
No. R 7.
Draft of the
Last Will.
—continued

May the British Government accept this.

10 This was signed with pleasure in the presence of the five witnesses herein signed.

Translated by:

Sgd. Illegibly.

S. T.

18/6/43.

No. R 3.

Telegram from Petitioner's to Respondent.

R 3. CEYLON TELEGRAPHS.

D. V. SIRIWARDANA
Kalasakada,
Welipenna.

20

Frederick Siriwardana expired taking corps Galmatta.

KARTHELIS.

No. R 3.
Telegram
from
Petitioner
to Res-
pondent.
12-10-42.

No, R 4.

Post Office Memo.

R 4. CEYLON TELEGRAPHS.

Memo No. A/56/12.

30 I have the honour to inform you that your telegram handed in on the 12th instant addressed to D. V. Siriwardana, Kalahakade, Welipenna cannot be delivered for reasons given below:—

No such place.

Posting Message to Kolahakada, Katugahahena.

Sgd. Illegibly.

Chief Telegraph Master.

No. R 4.
Post Office
Memo.
13-10-42.

Exhibits.
No. R 12.
List of
Funeral
Expenses.
15-10-42.

No. R 12.

List of Funeral Expenses.

Borne by Mr. D. V. Siriwardena.

15-10-42.

List of expenses incurred in connection with the cremation of Mr. D. F. Siriwardena.

	Rs.	cts.	
Publication in Dinamina and Daily News	21	
Printing 500 funeral chits	8	
To Sitti Mahatmaya to go to Kalutara	3	10
16 Candles	64	
For distributing letters, for 2 persons	1	
15 Telegrams	9	
4 Stamps	24	
Cloth and nails for pandal	12	
Again 1/2 nails	75	
„ for telegrams	2	
3 Yards good cloth for pandal	3	
2 Balls thread	20	
Colours and cardboard	4	20
1 Bundle cigars	10	
1/8 Small nails	25	
1/2 Sugar	14	
For pieces of long cloth etc.	109	
To the artist	15	
6 Nails of 6 inches	48	
Needles	10	
For card board for pandal again	1	
Advance for photograph	2	
For perfumes	20	30
Printing flags	3	
To the clerk who wrote 4 telegrams	25	
To the clerk who wrote 4 telegrams	2	
For tea	08	
To train for wreaths	25	
Atapirikara "offerings	31	
Travelling expenses	3	
To Hikkaduwa Amarasinghe	1	
To Tom Tom beaters	26	
13 Yards long cloth to tom tom beaters	13	40
For the Band	40	
For Photo	45	
For Dhoby	30	
For Cars	20	
Cart hire and bus fare to bring Bhikkus	21	
Expenses for Pandal	40	

	Rs. cts.	Exhibits.
4 Gallons Kerosine Oil	.... 4 00	No. R 12.
1 Bottle Scent	.... 65	List of
Hire for making the pire	.... 15 00	Funeral
Offering for the bana preaching	.... 5 00	Expenses.
Excess priests who attended the almsgiving	.... 5 00	15-10-42.
Tom Tom beaters of day of almsgiving	.... 15 00	—continued
Again for the Car	.... 20 00	
For Drinks etc. for the people who worked regarding the 10 cremation	.... 30 00	
Cool drinks etc.	.... 30 00	
	600 67	

Sgd. D. S. JAYASINGHE.

,, F. AMARASINGHE.

No. R 15.

No. R 15.
Inventory.

R 15.

Inventory.

20 The Inspector of Welipenna Police and Village Headman of Walagedera held an inquiry into the properties belonging to Don Frederick Siriwardena who died at the General Hospital on 12th October, 1942 in the presence of the undersigned persons and the following is the list of properties.

	Rs. Cts.
1 Glass Almirah made of Tamarind Plank	.... 150 00
1 Teakwood Toilet Table	.... 50 00
1 Nedun Writing Table	.... 25 00
A Pair of Ivory with studs	.... 100 00
1 Gramophone and.....18	.... 25 00
2 Jakwood Teapoy	.... 5 00
1 Wall Watch	.... 10 00
30 3 Jakwood Loungers	.... 15 00
1 Lamp with Globe	.... 10 00
1 Setty with 3 Chairs	.... 75 00
2 Jakwood Glass Almirahs	.... 100 00
3 Jakwood Sofas	.... 30 00
2 Beds	.... 10 00
24 chairs	.... 36 00
2 Jakwood Tables	.... 10 00
9 Pieces Dining Tables	.... 40 00
23 Picture Frames	.... 27 00
40 3 Brackets	.... 3 00
2 Pairs of Deer Horns	.... 5 00

Exhibits.		Rs. Cts.	
No. R 15.	1 „ Stag „	.... 2 50	
Inventory.	2 Brass Spitoons	.... 10 00	
—continued	1 „ Stand	.... 2 00	
	1 Table Lamp	.... 3 00	
	2 Hurricane Lamps	.... 5 00	
	3 Big Dishes, 12 Plates, 12 Plates, 7 Tea Cups, 6 Curry Dishes, 5 Spoons, 3 Tumblers, 1 Tea Pot, 1 Jug, 3 Wine Glasses, 12 Small Dishes	.... 25 00	
	1 Buggy Cart with Bull	.... 125 00	10
	1 Half Bullock Cart with Bull	.... 50 00	
	1 Hand Cart	.... 7 50	
	1 Diamond Roll, 1 Rubber Roller	....
	1 Roll 1 Special	....
	1 W. T. Avery Balance	....
	Enamel Rubber Sheets—24	....
	Rubber Sheets Box	....
	5 Cart Bulls	....
	1 heap of Plumbago	....
	50 Bags of Paddy	....	20
	In the Cash Rs. 25/15	....

We do hereby declare that the above is a true list.

1. Sgd. DON VELIN SIRIWARDENE
 2. „ DONA CICILIA SIRIWARDENA
 3. „ DONA LILY SIRIWARDENA
 4. „ B. D. LEWIS APPUHAMY
 5. „ B. P. LIYANAARATCHI
 6. „ D. M. JAYASINGHE
 7. „ ALPINONA WEERAKOON
- B. LEWIS APPUHAMY
D. P. LIYANAARATCHI
JAYASEKERA.

No. P 18,

Exhibits.

P 18. Affidavit of the Witnesses to the Last Will.

No. P 18.
Affidavit
of the
Witnesses
to the
Last Will.
20-10-42.

We, Don Sammy Jayasinghe, (2) Kamburawala Kankanange Alvis alias Thomas, (3) Don Peter Jayasingha, (4) Galatarage Don Hendy Singho and (5) Induruwage Don Parlis Gunatilaka not being Christians do solemnly sincerely and truly affirm and state as follows:—

10 That we knew and were well acquainted with Kathri Arachchige Don Pedrick Siriwardana late of Galmatta in Walagedera in Iddagoda Pattu of Pasdun Korale West in Kalutara District.

That I the first affirmant who was one of the clerks of the said Kathri Arachchige Don Pedrick Siriwardana was asked by him to prepare a writing by way of a Last Will according to his directions on the 5th of October, 1942.

That he gave all instructions for the writing and the same was written in my handwriting to be taken as the Last Will of the said Siriwardana.

20 That he desired to have this Last Will written as he was unwell and as the Doctors had advised him to enter the General Hospital in Colombo.

That although he was unwell he was quite conscious his strength of mind was quite good and he was then able to give directions as regards the disposal of his property after his death, so much so that he was able to give full directions for the will without the help of anybody else.

That the will having thus been prepared, the same was signed on the 5th of October, 1942 at his house by the said Kathri Arachchige Don Pedrick Siriwardana in the presence of all of us the five affirmants, and we signed as witnesses all being present at the same time.

30 That the testator was at the time of signing the will quite conscious and it was at his request that we signed as witnesses to the will.

That the 2nd affirmant is further aware of the fact that at the request of the testator himself the will so signed was put in the suit case which he took with him to Colombo when he went to enter the Hospital.

Exhibits. That we the affirmants are not aware where the will is now, but
 No. P 18. such a will was signed with all of us as witnesses.

Affidavit
 of the
 Witnesses
 to the
 Last Will.
 20-10-42.
 —continued

The foregoing affidavit having been read and explained by me in the Sinhalese language to the affirmants and they having appeared to understand the contents thereof the same was affirmed to and signed by them on this 20th day of October, 1942 at Bentota before me.....

Sgd. D. S. JAYASINGHE
 „ K. D. THOMAS
 (In Sinhalese)
 „ D. P. JAYASINGHE
 „ G. D. HANDY SINGHO
 (In Sinhalese)
 „ I. D. P. GUNATILAKA
 (In Sinhalese)

10

Sgd. N. DE ALWIS,
 J.P., U.M.

No. R 16.

No. R 16.
 Notice from
 the Assistant
 Government
 Agent, Kalu-
 tara, to the
 Respondent.
 26-10-42.

**R 16 Notice from the Assistant Government Agent,
 Kalutara to the Respondent.**

To DON WELIN SIRIWARDENA,
 Galmatta, Welipenna.

Take notice that unless, in terms of section 542 of the Civil Procedure Code, you report to the District Court of Kalutara within one month from the receipt of this notice the death of Don Pedric Siriwardena of Walagedera who died intestate on 12th October 1942, leaving property over the value of Rs. 2,500/-, you will be liable to prosecution, and to a fine not exceeding Rs. 1,000/- under section 543 of the Civil Procedure Code.

20

Issued under my hand this 26th day of October 1942 at Kalutara.

Sgd. Illegibly
 for Asst. Govt. Agent, Kalutara.

No. P 22.

No. P 22.
 Extract
 from the
 Register
 of Advertisements
 in the
 "Dinamina"
 4-11-42.

**Extract from the Register of Advertisements
 in the "Dinamina",**

Dinamina & Silumina classified advertising for the month of November, 1942.

30

Date:—	4-11-42.
Order No.—	8738.
Name:—	A. D. Carthelis Appuhamy.
Address:—	Induruwa.
Classifications:—	Lost.
Paper:—	Dinamina.
Date of insertion:—	6th & 7th.
Charge:—	Rs. 4/30.

I certify that this is a true extract from the "Dinamina" and Exhibits.
 "Silumina" classified Register of advertisements.

Colombo, 25-11-42.

Sgd. Illegibly

Manager.

No. P 22.
 Extract
 from the
 Register of
 Advertisements in the
 "Dinamina"
 4-11-42.
 —continued

No. P 4.

Extract from "The Ceylon Daily News".

P 4.

(The Ceylon Daily News, Thursday, November 5, 1942.)

No. P 4.
 Extract
 from "The
 Ceylon
 Daily
 News."
 5-11-42.

LOST

10 Lost on 7th Oct. between Colpetty and General Hospital important documents enclosed in cover bearing name Wilson de Silva, Proctor, Kalutara. Reward Rs. 50/- to finder.—J8634, c/o "Daily News".

No. P 5.

Extract from "The Dinamina".

P 5 A. 6-11-42.

No. P 5.
 Extract
 from "The
 Dinamina"
 6-11-42.

LOST

20 On the 7th of last month several valuable documents enclosed in an envelope bearing the name of Mr. Wilson de Silva, Proctor of Kalutara were lost between Kollupitiya and the General Hospital *via* Fort. To any person who finds the same or give a proper clue shall be given Rs. 50/- as a reward. Apply 8738, c/o Dinamina.

No. P 6.

Letter from D. A. John Perera to "The Dinamina".

P 6.

Maliban Hotel,
 85, Norris Road,
 12th, Nov., 1942.

No P 6.
 Letter from
 D. A. John
 Perera
 to "The
 Dinamina".
 12-11-42.

Adv. 8738.
 C/o Dinamina,
 Colombo.

40

Sir,

RE:—ADV. 8738 OF THE 6TH NOV.

With reference to your above advertisement in "Dinamina" I beg your honour to inform you that I have got found the Documents with the envelope addressed to Mr. Wilson de Silva, Proctor and Notary Public, Kalutara. Now the documents are safe with me.

Exhibits.
 No. P 6.
 Letter from
 D. A. John
 Perera
 to "The
 Dinamina".
 12-11-42.
 —continued

Therefore will you kindly arrange the party to see me at the above place.

Thanking you in anticipation.

Yours faithfully,

Sgd. D. A. JOHN PERERA.

No. P 6A.
 Envelope.
P 6a.

No. P 6 A.
Envelope.

Adv. 8738.
 C/o Dinamina,
 Lake House,
 Colombo.

10

No. P 6B.
 Envelope.
P 6b.

No. P 6 B.
Envelope.

Mr. A. D. Carthelis Appuhamy,
 62, Maha Induruwa,
 Junction Boutique,
 Induruwa.

No. P 23.
 Extract
 from the
 Register of
 Replies to
 Advertisements in
 the "Dinamina".
 16th & 18th
 Nov 1942.

Extract from the Register of Replies to Advertisements in the "Dinamina".

20

P 23. PAPER—DINAMINA.
 Replies to Box number
 Advertisements

Classification	Nov. 1942.		
	Number of Replies received on		
	16	17	18
Situations wanted	16	17	18
.....	1	5	nil
" Vacant	46	27	26
Personal ..	nil	nil	nil
Professional	nil	nil	nil
Educational	1	6	nil
Cars, Lorries, Cycles	nil	nil	nil
House & Property	5	4	nil
Board & Apartments	nil	nil	nil
Articles lost & found	1	—	1

30

I certify that this is a correct extract from our register of replies to Box Number advertisements on the 16th and 18th November, 1942.

Colombo, 25-11-42.

Sgd.....
 Manager.

No. P 24.

Extract from the Postage Book of the "Dinamina".

DINAMINA, LAKE HOUSE, COLOMBO

Telephone
No. 5301
P. O. Box, 248.

Exhibits.
—
No. P 24.
Extract
from the
Postage
Book of
the "Dina-
mina".
16th & 18th
Nov. 1942.

POSTAGE BOOK.

10	P 24. P 127. Date 16-11-42 A. D. Carthelis Appuhamy, Induruwa 06	Rs. cts.
20	P 24 A. P 141. Date 18-11-42. A. D. Carthelis Appuhamy, Induruwa 06	

This is a true extract from the postage book of the Company.

Colombo, 25th October, 1943. Sgd.....
Manager.

No. P 7.

Letter from D. A. John Perera to "The Dinamina".

30	P 7. Adv. 8738 c/o Dinamina, Colombo.	Maliban Hotel, 85, Norris Road, Colombo, 17th Nov. 1942.
----	---	---

No. P 7.
Letter from
D. A. John
Perera to
"The Dina-
mina".
17-11-42.

Sir, RE:—ADV. 8738.

It is very much regrettable to inform you that I have no reply for my letter made on the 12th inst., The said documents are quite safe with me, and I want to see the party and hand over the documents to the party.

Therefore kindly write to him to come and see me at the above place.

Thanking you,
Yours faithfully,
Sgd. D. A. JOHN PERERA.

Exhibits.
No. P 7 A.
Envelope. **P 7a.**

No. P 7A.
Envelope.

REGISTERED.

Petah
No. 675.

Adv. 8738,
C/o. The Dinamina,
Lake House,
Colombo.

D. A. John Perera,
85, Norris Road,
Colombo.

10

No. P 7 B.
Envelope.

No. P 7 B.
Envelope.

P 7 b.
Colombo.

Mr. A. D. Carthelis Appuhamy,
62, Maha Induruwa,
Junction Boutique,
Induruwa.

No. R 35.
Notice to
Respondent
in D. C.
Kalutara
Case
No. 776.
19-11-42

No. R 35.

20

Notice to Respondent in D. C. Kalutara Case No. 776.

R 35. NOTICE TO ADMINISTRATOR.
IN THE DISTRICT COURT OF KALUTARA.

In the matter of the estate of D. F. Siriwardene.

To the Fiscal of the District of Kalutara.

Testamentary No. 776.

To Don Velin Siriwardene of Galmatta, Welipenna.
(Administrator)

You are hereby required to appear before this Court on 9th
December, 1942 and file in Court the papers to administer the
above estate.

30

Herein fail not.

By order of Court.

Sgd. Illegibly.

Secretary.

This 19th day of November, 1942.

No. P 21.**P 21.****Receipt.**

Exhibits.

No. P 21.
Receipt.
20-11-42.Maliban Hotel,
Colombo,
20th November, 1942.

Received from A. D. Karthelis Appuhamy Induruwa a some of
(Rs. 50/00) Fifty only the gift of advertisement No. 8738 of the
7th inst.

Yours faithfully,

Sgd. D. A. JOHN PERERA.

10

No. P 2.**Order Nisi in D. C. Balapitiya Case No. 25.****P 2.**

IN THE DISTRICT COURT OF GALLE, HOLDING
SESSIONS AT BALAPITIYA.

No P 2.
Order Nisi
in D. C.
Balapitiya
Case No. 25.
12-12-42.

ORDER 'NISI'

In the matter of the Intestate Estate of the late
KANNANGARA KORALALAGE DON
WILLIAM SINGHO of Haburugala in Ben-
tota.....*Deceased.*

20

Testamentary
Jurisdiction
No. 25.

KASTRI ARACHCHIGE DONA LILY
SIRIWARDENA of Haburugala afore-
said.....*Petitioner.*

vs.

1. DON ABAYAWEEERA KANNANGARA
2. DON AMARATUNGA KANNANGARA
3. DONA YASAWATHIE KANNANGARA
4. DON AMARASIRI KANNANGARA
5. DON AMARAWANSA KANNANGARA
6. DONA MILLIE KANNANGARA
7. DONA NELLIE KANNANGARA all of
Haburugala aforesaid and all of whom are
minors appearing by their Guardian-ad-
Litem the 8th Respondent.
8. KASTRI ARACHCHIGE DON FRED-
ERICK SIRIWARDENE of Walagedera
aforesaid.

30

Exhibits
No. P 2.
Order Nisi
in D. C,
Balapitiya
Case No. 25.
12-12-42.
—continued

This matter coming on for disposal before S. Rajaratnam, Esq., Additional District Judge, Galle, sitting at Balapitiya on December 12, 1940, in the presence of Mr. W. A. C. Sirisena, Proctor on the part of the petitioner aforesaid : and the affidavit of the said Petitioner dated November 12, 1940 having been read.

It is ordered that the Petitioner be and she is hereby declared entitled, as widow of the abovenamed deceased, to have letters of Administration to his estate issued to her accordingly, and that the 8th respondent be and he is hereby appointed guardian-ad-litem of the 1st to 7th minors Respondents for the purpose of these proceedings; unless the respondents abovenamed or any other person or persons, shall on or before February 21, 1941, show sufficient cause to the satisfaction of this court to the contrary.

10

Sgd. S. RAJARATNAM,
Additional District Judge.

The 12th December, 1942.

x x x x
x x x x

6-3-41. Consent of guardian.
Guardian is present and consents.
Petitioner is appointed administratrix.
Order Nisi is made absolute.
Oath and bond on 3-4-41.

20

Sgd. S. RAJARATNAM,
A. D. J.

No. P 39.
Proceedings
in M. C.
Kalutara
Case
No 20233.
1942-1943.

No. P 39.

Proceedings in M. C. Kalutara Case No. 20233.

P 39.

IN THE MAGISTRATE'S COURT OF KALUTARA.

DON VELIN SIRIWARDENA of Kolehekade

30

No. 20233.

vs.

D. PETER JAYASINGHE

LOUIS BEDDEVIDANE both of Wala-
gedera.....*Accused.*

On this 28th December, 1942.

The complainant abovenamed complains to this court that the accused abovenamed did at Walagedera on the 5th December, 1942

commit theft of a bull bearing brand marks K. P. P. on the right side and B 774 on the left side belonging to the estate of the late D. F. Siriwardena and of the value of Rs. 75/- and thereby committed an offence punishable under Sec. 367/368 (a) of the Penal Code. Ch. 15.

Sgd. D. V. SIRIWARDENA,

Complainant. —continued

Witnesses :

1. D. N. SIRIWARDENA.
2. S. PETER both of Walagedera.
3. V. H. WALAGEDERA.
4. S. I. BANDA of Welipenna.

Drawn by

Sgd. H. A. DE ABREW,

Proctor S. C.

28-12-42. Issue ss. for 4-1-43 to appear at Matugama.

Intld. C. X. M.

Magistrate.

4-1-43. Accd. 1. D. Peter Jayasinghe.
2. Louis Beddevidane.

20 No return to ss. Since received.
Accd. present. Charged from ss.
Each states I am not guilty.
Trial 1/2.

Intld. C. X. M.

Magistrate.

1-2-43. Accd. 1. D. Peter Jayasinge.
2. Louis Beddevitane.

Accd. present.

Complt. is not ready.

30 Final date for trial 3-3-43.

Intld. F. C. P.

3-3-43. Accd. 1. D. Peter Jayasinghe.
2. Louis Beddevitane.

Accd. present.

No time.

Trial refixed for 31-3-43.

Intld. C. X. M.

Magistrate.

Exhibits.
No. P 39.
Proceedings
in M. C.
Kalutara
Case
No 20233.
1942-1943.

Exhibits
 No. P 39.
 Proceedings
 in M. C.
 Kalutara
 Case
 No. 20233.
 1942-1943.
 —continued

- 31-3-43. Accd. 1. D. Peter Jayasinghe.
 2. Louis Beddevidane.
 Accd. present.
 I have had several military cases and some rubber theft cases.
 Refix trial for 3-5-43.
 Intld. C. X. M.
Magistrate.
- 3-5-43. Accd. 1. D. Peter Jayasinghe.
 2. Louis Beddevidane. 10
 Accd. present.
 Refix trial for 7/6 as accused is not ready.
 Witnesses warned.
 Intld. C. X. M.
Magistrate.
- 7-6-43. Accd. 1. D. Peter Jayasinghe.
 2. Louis Beddevidane.
 Accd. present.
 Complainant not ready as a material witness D. M. Siriwardena is present in Court but not fit to give evidence. 20
 Refix trial for 13/7.
 Intld. C. X. M.
Magistrate.
- 13-7-43. Accd. 1. D. Peter Jayasinghe.
 2. Louis Beddevidane
 Accd. present.

MR. DE ZOYSA for accused.

MR. E. S. FERNANDO with MR. ABREW for complainant.

Don Velin Siriwardena, Affirmed, 55, Trader, Kolahakade.

I had a brother called D. F. Siriwardena. He was unmarried. He died in the General Hospital on 12-10-42. He had a number of cattle, carts and other movable property. Of the cattle one was a white barren animal. On 18-10-42 I took charge of my brother's movable properties and his house. I placed my two sons D. M. Siriwardena and D. H. Siriwardena and my servant boy Peter in charge. The barren animal had brand marks K.P.P. on the right side and B. 774 on the left side. This animal was in the garden till 5-12-42. D. M. Siriwardena told me that on 5-12-42 that 1st accused took the 30

animal away. Two days later Police recovered the animal from the possession of the 1st accused. The animal was produced in Court and the 1st accused removed the animal on giving security.

Exhibits.
—
No. P 39.
Proceedings
in M. C.
Kalutara
Case
No. 20233.
1942-1943.
—continued

Cross-examined.

(Shown D 1) Cattle voucher dated 21-10-34. It is in the name of Karthelis. Karthelis was not a clerk under my deceased brother. He was working under my deceased brother. He was living with my brother for about ten years. At the time of my brother's death he was not living with my brother. Karthelis had filed in court a last will purporting to have been executed by my deceased brother. According to that last will Karthelis, the 2nd accused's wife, and Lily Siriwardena were the beneficiaries. The last will was filed in court in December. In the inventory I deny I mentioned only four bulls. I cannot remember what valuation I put there. I cannot remember whether I put the valuation at Rs. 70/-. Karthelis sold on D 2 the bull described in D 1 to the 1st accused. I have no document in my possession to prove that this animal belonged to my deceased brother. The 1st accused is a witness to the contested last will.

Re-examined.

Karthelis is about 35 years old.

At this stage Mr. Fernando moves to withdraw this case as there is a civil element in the case. The withdrawal of this case not to affect complainant's civil rights.

Accused are discharged.

Intld. C. X. M.
Magistrate.

No. P 47.

Letter from the Petitioner's Proctor to the Petitioner.

P 47.

January 8, 1943.

A. D. CARTHELIS APPUHAMY,
62, Galle Road, Induruwa.

Dear Sir,

D. C. Colombo 10277 Testy.

Your opponents are contesting the will on the ground that the deceased's signature is a forgery. You must see me at once. Bring the documents the Hand-Writing expert requires for his report—also the numbers of the cases filed by the deceased in Kalutara Court.

I shall require Rs. 200/- immediately. See me on Monday with or without the money.

Yours faithfully.

No. P 47.
Letter
from the
Petitioner's
Proctor
to the
Petitioner.
8-1-43.

Exhibits.

No. R 9.
Deed
No. 3740.
23-8-43.

No. R 9.**Deed No. 3740.****R 9.**

Assignment of Lease

Rs. 600/-

Lands 1.

No. 3470.

TO ALL TO WHOM THESE PRESENTS SHALL COME
I, Aratchy Appuhamillage Don Carthelis Appuhamy of Galmatta in
Welipenna presently of Induruwa (hereinafter called the Assignor).

Sends Greetings :—

10

WHEREAS by virtue of Lease Bond No. 425 dated 17th
September, 1940 attested by V. L. Wijemanne N. P. Don Frederick
Siriwardena of Walagedera leased to the Assignor the rubber land
called Kirimetiya Udumulla Deniya fully described in the schedule
below for a term of three years commencing from 1st day of October,
1940 and ending on the First day of October, 1943.

AND WHEREAS the said Assignor has agreed with Uragoda
Appuhamillage Don Peeris of Uragoda (hereinafter called the
Assignee) to assign to him the said remaining period of the lease of
six months commencing from the 1st day of April, 1943 for and in
consideration of the sum of Rs. 600/-.

20

NOW KNOW YE AND THESE PRESENTS WITNESS
that the said Assignor doth hereby assign transfer set over and assure
unto him the said assignee the said Lease Bond No. 425 in respect of
the unexpired period of six months as aforesaid for and in considera-
tion of the sum of Rs. 600/- the lawful money of Ceylon (the receipt
whereof the assignor doth hereby admit according to the terms below
set out) together with all the right title claim and demand and the
right to possess and tap the said rubber land and appropriate all the
income thereof and further subject to the covenants that the assignee
shall tap in a husbandlike manner without injuring the trees but
subject to the restriction that the assignee shall not cut more than two
tapping creases for each tree.

30

Yielding and paying a monthly rental of Rs. 100/- payable every
month in advance on the first day of each month and the first of which
instalment is to be paid at the execution of these presents as rent for
the month of April, 1943 in advance.

The assignee covenants with the assignor that he shall during the
said period treat the tapped portion of the bark of the trees every three

months by the application of clay mixed with necessary ingredients of chemicals for the treatment and curing of the barks of rubber trees.

IN WITNESS WHEREOF the assignor and assignee set their hands at Welipenna to these presents and to two others of the same tenor and date on this 23rd day of March, 1943.

Exhibits.
No. R 9,
Deed
No. 3740.
23-3-42.
—continued

The Schedule above referred to :

10 All that allotment of land called Kirimetiye Udumulla Deniya appearing in Title Plan No. 264035 situated at Walagedera in Iddagoda Pattu in Pasdun Korale West in Kalutara District Western Province and bounded on the North by land appearing in T. P. No. 264038 East by land appearing in T. P. No. 134916 and trenches South by land by T. P. No. 134916 and fields and West by Lot 797 in T. P. 6853 and trenches containing in extent five acres three roods and twenty three perches (A 5. R 3. P 23.) together with the plantation thereon registered as No. 733 E 3 KL 6.

Witnesses :

1. Sgd. In Tamil. Sgd. A. D. CARTHELIS.

2. Sgd. U. L. EDWIN SINGHO. Sgd. (In Sinhalese).

20 Sgd. W. F. B. PERERA.
Notary Public.

30 I, Walter Felix Bandaranayake Perera of Kalutara in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing instrument having been duly read over and explained by me the said Notary to the said assignor and assignee who are known to me, assignor Arachchi Appuhamillage Don Karthelis Appuhamy signed as "U. D. Karthelis" and assignee Urugoda Appuhamillage Don Peiris signed in Sinhalese in the presence of Ismail Lebbe Icile Marikar who signed in Tamil and Uruliyana Edwin Singho who signed as "U. L. Edwin Singho" and both of Welipenne the subscribing witnesses hereto both of whom are known to me, the same was signed by the said executants and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present at the same time at Welipenne on this twenty third day of March, One thousand nine hundred and forty three.

40 And I further certify and attest that out of the consideration Rupees Hundred was paid in my presence and the balance to be paid as mentioned in the body of the deed. The duplicate of this instrument bears two stamps of the value of Rs. 15/- and the original bears a rupee stamp.

23rd March, 1943.

Sgd. W. F. B. PERERA,
Notary Public.

Exhibits.
 No. R 11.
 Deed
 No. 3441.
 6-5-43.

R 11.**No. R 11.****Deed No. 3441.**

REGISTERED.

True Copy issued on a stamp of Re. 1/-.

Sgd. GOONETILLEKE,

Notary Public.

Prior Registration :—C 89/69 & 71.

No. 3441.

TRANSFER RS. 750/-.

Lands 2.

10

KNOW ALL MEN BY THESE PRESENTS that I, Aratchi Appuhamillage Don Karthelis Appuhamy of Walagedera (hereinafter called and referred to as the vendor) for and in consideration of the sum of Rupees Seven hundred and fifty (750/-) of lawful money of Ceylon well and truly paid to me by Kathriaratchige Don Peter Siriwardene of Hiriweddala (hereinafter called and referred to as the vendee)—the receipt whereof I do hereby admit and acknowledge—have granted, bargained, sold, assigned, transferred set over and assured and do by these presents, grant bargain, sell, assign, transfer, set over, and assure unto the said vendee his heirs, executors, administrators and assigns. The premises in the Schedule hereto fully described together with all and singular the rights, ways easements, advantages, servitudes and appurtenances, whatsoever thereto belonging or in any wise appertaining or usually held occupied, used, or enjoyed therewith or reputed or known as part or parcel thereof together with all the estate, right, title, interest, property, claim and demand whatsoever of the said Vendor in, to upon or out of the said premises and every part thereof together with all the title deeds vouchers and other writings therewith held or relating thereto which said premises have been held and possessed by the said Vendor in the manner hereinafter mentioned.

20

30

TO HAVE AND TO HOLD the said premises hereby sold and conveyed with the rights and appurtenances thereto belonging unto the said Vendee and his aforewritten absolutely for ever.

And I the said Vendor for myself my heirs, executors, and administrators and assigns do hereby covenant, promise and declare with and to the said Vendee his heirs, executors, administrators and assigns that the said premises hereby sold and conveyed are free from any encumbrance whatsoever and that I have not at any time heretofore made done or committed or been party or privy to any act, deed, matter or thing whatsoever whereby or by reason whereof the said

40

premises or any part thereof are, is, can, shall or may be impeached or
 encumbered in title, charge, estate or other wise howsoever and that I
 and my aforewritten shall and will at all times hereafter warrant and
 defend the same or any part thereof unto him and his aforewritten
 against any person or persons whomsoever and further also shall and
 will at all time hereafter at the request and cost of the said vande
 or his aforewritten do and excute or cause to be done and executed all
 such further and other acts, deeds matters, assurances and things,
 whatsoever for the further and more perfectly assuring the said
 10 premises hereby sold and conveyed and every part thereof, unto him
 or his aforewritten may be reasonably required.

Exhibits,
 No. R 11.
 Deed
 No. 3441.
 6-5-43.
 --continued

IN WITNESS WHEREOF I the said Vendor do hereunto
 and to two others of the same tenor and date as these presents set my
 hand at Kalutara on this Sixth day of May, One Thousand Nine
 Hundred and Forty Three.

The Schedule above referred to :

1. All that allotment of land called Lot 4 of Ketakerallagaha-
 watte pitakattiya with all the plantations and everything else standing
 thereon situated at Kolehakada in Iddagoda Pattu of Pasdun Korale
 20 West in the District of Kalutara, Western Province and bounded on
 the North by Lot No. 3 and rubber estate East by rubber estate and
 Ketakerallagahawatte *alias* Madawalawatte South by Lot No. 7 of the
 same land and West by Lot No. 8 and of the same land containing in
 extent one rood and twenty four and decimal eight perches (A O R 1
 P 24'8) as per Partition Plan No. 6689 dated 21 and 22 March, 1938
 made by H. O. Scharenguwel, Licensed Surveyor and filed of record
 in Partition Case No. 13088 D. C. Kalutara.

2. All that allotment of land called Lot No. 6 of Ketakerallagaha-
 watte pitakattiya with the plantations and everything else thereon
 30 situated at Kolehakada aforesaid and bounded on the North by Lot 9
 of the same land East by Lot 7 South by Galketiya hena Aswedduma
 and on the West by Lot No. 5 of the same land containing in extent
 one rood twenty four and decimal eight perches (A O R 1 P 24'8) as
 per Partition Plan No. 6689 aforesaid and both of which said premises
 are held and possessed by the said vendor under and by virtue of
 Fiscal's Transfer No. 12528 of 29th April, 1941.

Witnesses :

1. Sgd. H. C. RODRIGO. Sgd. A. D. KARTHELIS

2. Sgd. Signature of
 40 SURIYA ARATCHIGE
 DON THEMIS SINGHO.

Sgd. P. F. A. GOONETILLEKE.
Notary Public.

Exhibits. I, Peter Fredrick Alwis Goonetilleke of Kalutara in the Island of
 No R 11. Ceylon, Notary Public, do hereby certify and attest that the foregoing
 Deed instrument having been duly read over and explained by me the said
 No. 3441. Notary to the said vendor who is known to me and who signed as
 6-5-43. "A. D. Karthelis" in the presence of Hettearatchige Charles Rodrigo
 —continued of Paiyagala and Suriya Aratchige Don Themis Singho of Kalutara
 who have signed as "H. C. Rodrigo" and in Sinhalese the subscribing
 witnesses hereto both of whom are known to me the same was signed
 by the said executants and also by the said witnesses and by me the
 said Notary in my presence and in the presence of one another all
 being present at the same time at Kalutara aforesaid on this sixth day
 of May, One thousand Nine hundred and forty three. 10

And I further certify and attest that out of the consideration a
 some of Rupees Five hundred (Rs. 500/-) was paid in my presence and
 the balance was said to have been accepted previously and that the
 Duplicate of this Instrument bears three stamps of the value of Rupees
 Sixteen and the original a stamp of one rupee.

Which I Attest.

Date of Attestation
 this 6th day of May, 1943.

Sgd. P. F. A. GOONETILLEKE,
Notary Public.

20

Seal.

No. R 10.
 Deed
 No. 783.
 13-5-43.

R 10.

No. R 10.

Deed No. 783.

Application No. 878/8643.

Prior Registration C 75/86.

DEED OF LEASE.

Lands 2.

Consideration

No. 783.

Rs. 225/-.

THIS INDENTURE of Lease made and entered into at
 Kalutara on this 13th day of May One Thousand Nine hundred and
 forty three. 30

Between Aratchi Appuhamillage Don Carthelis of Welagedera
 presently of Induruwa (hereinafter called and referred to as the
 Lessor) of the one part and Hewa Menikge Bandara of Pettah in
 Colombo (hereinafter called and referred to as the Lessee) of the other
 part.

WITNESSETH.

That for and in consideration of the sum of Rupees Two hundred
 and fifty (Rs. 250/-) lawful money of Ceylon being rent for the entire 40

of the term thereof (the receipt whereof the said Lessor hereby admit and acknowledge and in consideration of the covenants provisions and agreements hereinafter contained on the part and on behalf of the leesee and his aforewritten to be paid observed and performed the said lessor hereby let lease and demise unto the said lesee his heirs executirs administrators and assigns, all those the premises in the schedule hereto fully described together with all and singular the rights, privileges, easemants, servitudes, and appurtenances, whatsoever to the said premises belonging or used or enjoyed therewith or reputed or known as part and parcel thereof and all the estate, right, title, interests claim and demand, whatsoever of the Lessor into out of or upon the same.

Exhibits.
 No. R 10.
 Deed
 No 783.
 13-5-43.
 —continued

10

To hold the said premises hereby demised with all and singular the rights and appurtenances thereto belonging unto the said lesse his heirs, executirs, administrators and assigns, for and during the term or period of three years commencing from the fifteenth day of May, One thousand nine hundred and forty three fully to be completed and ended yeilding and paying therefor during the said term unto the Lessor his heirs, executors, administrators or assigns.

20

And the said Lessee hereby for heirs, executors administrators covenant with the Lessor his heirs, executors and administors and assigns that the lesee or his aforewritten shall and will during the continuance of this lease pay the said rent hereby reserved in manner and on the days and dates hereinbefore provided and appointed for the payment of the same and shall and will hold the said lease subject to the following obligations on the part of the lessor and the lesee respectively to be observed and performed viz :

30

1. The leesee shall pay a sum of Rupees Seventy Five at the execution of these presents.
2. The leesee shall pay the balance lease money in instalments of Rupees Seventy Five on or before the fifteenth day May 1944 and fifteenth day of May 1945 respectively.

And lastly the leesee shall and will at the expiration or other sooner determination of the said term, peacably and quietly deliver up and surrender the said demised premises unto the Lessor or his aforewritten in good order and condition reasonable wear and tear excepted.

40

And lastly the lessor hereby for himself his heirs, executors and administrators, covenant with the leesee, his heirs, executors, administrators, and assigns that the leesee duly paying the rent hereby reserved and observing and performing the covenants and conditions herein contained on his part to be observed and performed shall and may pecably and quietly possess and enjoy the said premises hereby demised during the said term hereby granted without any lawful interruption from or by the Lessor on any rightfully claimimg from or under,

Exhibits.
 No R 10.
 Deed
 No. 783.
 13-5-43.
 —continued

IN WITNESS WHEREOF the said Lessor and the said
 Leesee have hereunto and to two others of the same tenor and
 date as these presents set their hands at Kalutara on this 13th day
 of May, One thousand nine hundred and forty three.

The Schedule above referred to :

The entirety of the soil and trees and of the rubber plantations
 and other trees standing thereon of the contiguous lot Nos. 6 and 7 of
 the land called Paraketiye mullewatte situated at Walagedera in
 Wallalawiti Pattu of Pasdun Korale in the District of Kalutara
 Western Province and bounded on the North by Lot No. 5 of this
 land East and South by Paraketiye mullekele and West by Foot path, 10
 containing in extent one rood and thirty perches (A 0 R 1 P 30) as per
 plan No. 5675 dated 15th May 1929 made by H. O Scharenguivel
 Licensed Surveyor and held and possessed by the Lessor under and
 by virtue of a Fiscal's Conveyence which is not produced before the
 Notary attesting these presents.

2. The entirety of the soil and of the rubber plantations standing
 thereon of an allotment of land called Lot No. 2 of Paraketiye mulle
 watte situated at Walagedera aforesaid and bounded on the North by
 Waturewewela and Potuwilamullewela East by Waturewela and Lot 20
 No. 3 of the same land South by lot No. 3 of the same land and Lot
 No. 1 and West by foot path, containing in extent one rood and two
 perches (A 0 R 1 P 2) and held and possessed by the Lessor under and
 by virtue of deed No. 1671 dated 4th January 1934 attested by D. C.
 Paranagama, Notary Public which is not produced before the Notary
 attesting there presents.

Sgd. A. D. KARTHELIS.

WITNESSES :—

Signed and delivered in the
 presence of us and we declare
 that we are well acquainted
 with the executant and
 know proper occupation and
 residence.

Signed in Sinhalese.
 This is the signature of
 H. BANDARA.

30

1. Sgd. E. WILMOT DE SILVA

2. Sgd. D. W. BRAMPY

Sgd. WILSON DE SILVA,
 N. P.

I, Wilson de Silva of Kalutara in the Island of Ceylon, Notary
 Public do hereby certify and attest that the foregoing instrument
 having been duly read over and explained by me the said Notary to

Exhibits.
 No. R 26.
 Report of
 Mr. L
 Muthu
 Krishna.
 12-6-43.
 —continued

- (5) Bond No. 2793 of J. A. D. S. Vaidyatileke, Notary Public, Kalutara, dated the 7th December, 1937 ;
- (6) Proxy in D. C. Kalutara, Case No. 22300, in favour of Messrs. Fernando and Goonetilleke, Proctors, dated the 6th November, 1941 ;
- (7) Proxy in D. C. Kalutara, Case No. 22817, in favour of Mr. Wilson de Silva, Proctor, dated the 2nd December, 1941; and
- (8) Coupon Card No. 106346 for 2,011 lb. rubber relating to Small Holding No. 79653 KL 208 (undated).

The Will is dated the 5th October, 1942, and is written in Sinhalese on an open folio sheet of ruled foolscap paper, and is signed by five witnesses. The deceased's name appears in English as "D. F. Siriwardena", probably modelled on his genuine writing, but without the distinguishing characteristics of the authentic signatures. 10

In my opinion, it is most improbable that the deceased signed the Last Will as alleged, and, in the course of any evidence I may be required to give in these proceedings, I shall be prepared to state the reasons upon which my conclusion is based, and to satisfy the Court that the impugned signature is a forgery.

Sgd. LAWRIE MUTHU KRISHNA, 20
Examiner of Questioned Documents.

12th June, 1943.

RE D. C. COLOMBO, CASE No. 10277.

NOTES FOR MY EXAMINATION.

- (1) I am an Examiner of Questioned Documents.
- (2) I have practised as such for nearly the third of a century.
- (3) I have given evidence in a very large number of cases, in practically all the Courts of this Island, as well as before the High Court of Madras.
- (4) In a fairly large number of cases in which I was consulted I was not required to give evidence because the opinions I expressed were adverse to those whose consulted me. 30
- (5) In this case, I was instructed by the Proctor for the Respondents, to examine the signature on the Last Will, dated the 5th October, 1942, and to ascertain whether the signature was that of the late D. F. Siriwardene.
- (6) I produce a copy of my report, dated the 12th June, 1943, in which I expressed the opinion that it was most improbable that the deceased had signed the Last Will as asserted.

(7) I specify in this Report the documents which were furnished me as comparison standards, covering the period of nearly sixteen years, from 1925 to 1941.

Exhibits.
No. R 26.
Report of
Mr L.
Muthu
Krishna.
12-6 43.
—continued

(8) It is noteworthy that the essential features of the writing remained unmodified during all this long period. Such writing habits, therefore, established and hardened by a long passage of time, would not become suddenly altered except through some grave physical or mental disintegration or impairment of the writer's personality.

10 (9) The signatures on the first five of these documents appear on the photograph marked R 21 in the order of date.

(10) The signature on the other three documents appear in the photograph marked R 32. The first signature on this photograph is that on the coupon card No. 106346; the second signature is that on the proxy in D. C. Kalutara Case No. 22300; the last signature is on the Proxy in D. C. Kalutara Case No. 22817.

(11) Since furnishing the Report mentioned above I have had the opportunity of inspecting six more signatures said to be those of the deceased in certain "C" forms marked P 9 to P 14 which are arranged below in sequence of date :

20 P 14 — 26th March, 1941.
P 10 — 22nd February, 1942.
P 11 — 21st May, 1942.
P 13 — 9th July, 1942.
P 12 — 26th July, 1942.
P 9 — 25th September, 1942.

(12) These "C" forms bear the signatures of two witnesses each; and the signatures of the deceased and those of the witnesses are reproduced on photographs marked respectively R 22 and R 23.

30 (13) P 10, P 11 and P 12 purport to bear the signatures of J. D. Handy Singho and P. K. Somaratne in Sinhalese, but the signature of 'Somaratne' on P 12 is definitely not in the hand of the person who signed that name on P 10.

(14) The signature of 'Somaratne' on P 12 is very much in the style of the writing in the endorsement on document marked R 7.

(15) P 9, P 10 and P 12 bear marks which suggest that these signatures were used for tracing other signatures or were otherwise tampered with, or were copied by some other hand. The crushed appearance of P 12 is very suspicious, and the fact that the signature of the witness 'Somaratne' is in a different hand from that which

Exhibits wrote that signature on P 10, and adds to the suspicion. These signatures should, therefore, be excluded from consideration as they are not authentic and dependable standards.

No. R²⁶.
Report of
Mr. L.
Muthu
Krishna.
12-6-48.
—continued

(16) If, however, these three signatures are to be taken as genuine, they cannot be regarded as normal in their style. There are marked differences between them and the impugned signature, but their abnormalities are strangely reproduced in the Last Will signature, while the features common to the standards are absent. For every unusual feature in the Last Will signature, Father Julian and Mr. Mc Intyre have had to have resource, to these suspicious signatures, and they claim to find some parallelisms in them which are more fanciful than real.

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(17) These experts admitted that they based their opinion mainly and primarily on these "C" Forms which, in my opinion, are most unsuitable as standards.

(18) Comparison standards should be selected from a class of documents related in character to the document which is questioned. In this case, the signature on the Bonds, deeds and proxies are obviously a safer and more suitable standards for comparison with the signature on the Last Will than the informal signatures on the "C" forms which have been subjected to some kind of tampering.

20

(19) Yesterday I was able to examine four out of the six proxies in the Kalutara Court Records which I had not previously inspected. These were the proxies in the following cases, arranged in order of date:

- P 36 — D. C. Kalutara 21707 dated 4/12/39.
- P 34 — " " 21764 dated 26/8/40.
- P 33 — " " 21976 dated 11/11/20.
- P 37 — " " 22451 dated 21/7/41.

(20) The proxies in D. C. Kalutara Cases Nos. 22300 and 22817 have been marked, respectively, P 35 and P 32, and were examined by me and enumerated in my Report.

30

(21) Excluding the pencilled signatures which are comparatively valueless in this case and which are included in P 15, I have thus examined 5 signatures on Bonds and deeds; six signatures on proxies; six signatures on "C" forms; and one inked signature on a Rubber Coupon Card; making eighteen signatures in all, of which eleven may be described as formal signatures, and seven as informal.

(22) The opinion I expressed in my original Report has been confirmed by my examination of the further documents mentioned above, as well as by the unconvincing and spacious arguments put forth by the two Experts called to uphold the Last Will signature.

40

(23) Although I have no doubt whatever in my own mind as to the spuriousness of the Last Will signature, I have, nevertheless, employed, as I invariably employ in all my Reports, the language recommended by the Privy Council to be employed by Handwriting Experts on submitting opinions on Questioned writing, namely, that a writing is probably or improbably, as the case may be, in the hand of its reputed author. This is why I have stated that it is most improbably that the late D. F. Siriwardena signed the Last Will under reference because it is for the Court, and for the Court alone, to determine the authenticity of the Last Will according to the sum total of the direct and indirect evidence placed before it.

Exhibits.
No. R 26
Report of
Mr. L.
Muthu
Krisna.
12 G 43.
—continued

(24) My opinion that the Last Will signature is not genuine is based, not on the forms of letters, which is a very crude and empiric kind of handwriting evidence, but on the formation of the letters as disclosed by a careful analysis of the writing process. In other words, I am not seeking the adventitious aid of specimen signatures with the shapes and styles of those letters the impugned signature may or may not agree. I invite attention to the inherent evidence of falsity in the impugned signature as revealed by the normal and habitual mannerisms of the deceased in writing his signature.

(25) It will be seen that the standards widely differ among themselves as regards the shapes of letters. They have been spontaneously written, and the writing is full of life and variation in the resulting forms of letters, although the formative process remains fundamentally the same.

(26) For this purpose I shall analyse the signatures under about half a dozen important heads, so as to shorten my evidence as much as possible. These heads are Pen-Pressure and Presentation; Continuity; Interspacing; Alignment; Speed; and Movement; and I shall briefly state the difference and distinctions which emerge from such an analysis of the admitted and disputed writing.

27. Every point to which I call attention is capable of ocular proof, and will thus constitute a visual fact, and not merely be a matter of my own personal opinion. The cumulative effect of such facts and the obvious inferences to be drawn from them will be a matter for assessment by the Court.

(28) With regard to all such points which I submit in order to indicate the distinctive character of the impugned signature, there may possibly be an exception or a couple of exceptions, real or fancied, cited by cross-examining Counsel but such exceptions will not negative the force of the general habits which are characteristic of the writer. For example, one alone of all the formal documents lacks an underscore. The reproduction of this singularity in the impugned signature does not by any means tend to bolster it up as genuine, but only serves to intensify its spurious character, by reason of the presence, also, of

Exhibits: other similarly singular features found in a few abnormal signatures. It is the combination of such peculiarities which betrays the fraudulent character of the Last Will signatures.

No. R 26,
Report of
Mr. L.
Muthu
Krishna.
12-6-43.
—continued

(29) Osborn very pointedly draws attention to this convergence of an unusual features in an alleged by genuine signature, at page 230, and the passage may be put to me or read out by me at your request before I proceed with my reasons in support of my opinion. In the impugned signature any element of habitual writing appears to be purely accidental, whereas in the standards the customary features exist in abundance to enable identification, although there may be the possible omission of one or the introduction of a new feature.

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No R 34.
Mr. L.
Muthu
Krishna's
Notes for
Counsel.
12-6 43 and
26-8 43.

No. R 34.

R 34. Mr. L. Muthu Krishna's Notes for Counsel.

RE D. C. COLOMBO, CASE No. 10277 (TESTY).

NOTES FOR COUNSEL.

1. The impugned signature differs from the admitted signatures in its general and special features, but it is not necessary to compare the impugned writing with the genuine writing in order to establish its falsity, as there is considerable inherent evidence in the impugned signature itself to demonstrate its obviously fraudulent character.

20

2. Such inherent evidence is detailed below, and the defects to which reference is made may be seen in the enlarged photographs or under a lens capable of moderately large magnification :

- (a) The first down stroke of the first initial has been made hesitantly, and the stroke has a wavy appearance and much variation of pressure ;
- (b) Pen-halts may be noticed along this stroke just below the first (in sequence of movement) cross-stroke ; at the junction of the returning section of this stroke with the second cross-stroke which begins the delta of the initial ; and in the upper stroke of the delta which eventually stops abruptly at the point where it crosses the down stroke of the second initial, the continuation of the writing thereafter being made by a fresh effort, and not as an extension of the line forming the upper part of the delta ;
- (c) From what has been said above, it will be noticed that the connecting stroke of the first initial and the descending stroke of the second initial which have the appearance of being continuous are really discontinuous ;

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- (d) At the bottom of the downstroke of the second initial the pen appears to have been applied to the letter to make the upward extension which is now seen, although the original spur to the stroke appears to have been much shorter and at a slightly higher level ;
- (e) The connecting stroke of the second initial with the third initial has been made with several pauses ;
- (f) At the end of the third initial a correction has been made by an extension which is very similar in formation to the extension at the base of the second initial ;
- (g) The necessity for this correction betrays the forger who was manifestly unfamiliar with the manner in which the downstroke was customarily ended and presumably allowed the impetus of the pen to form a loop at the bottom of the stroke before he realised its unusualness and applied his pen to make a heavy leftward projection ;
- (h) After writing the 'i' the pen appears to have rested at a point two-thirds up before it proceeded to form the first summit of the 'r' and the downstroke of that summit does not appear to be continuous with the upstroke ;
- (i) The upstroke which proceeded to form the second summit of this letter which should have been continuous with the downstroke of the first summit is a fresh piece of writing, and the curved downstroke which follows this stroke is also a fresh effort of the pen, the upward stroke thereafter being written hesitantly and not continuously with the next letter ;
- (j) The 'w' has several pen-halts, and the last part of it has been distinctly overwritten ;
- (k) The letter after the "w" was presumably difficult for the forger to inscribe, and he has artfully made a blotch which, however, is so clumsy that it does not indicate how it was begun and ended, and how the inner space of the letter came to lie under a film of ink, as the extension of the blotch comes out of the centre of it and stops at a point almost half way up the ascending line ;
- (l) In the extension of the line beginning from the point where the hand stops after making the blotch there are pen pauses, and the angular point which links the upward and forward strokes does not appear to have been made with one pen effort ;
- (m) The terminal stroke of the whole signature ends in two distinct lines which are not the tracks of a single sweep of the nib, but a clear revision of the writing which gives it a strange fanned-out finish.

Exhibits.
No. R 34.
Mr. L.
Muthu
Krishna's
Notes for
Counsel.
12-6-43 and
26-8-43.
—continued

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Exhibits.
 No. R 34.
 Mr. L.
 Muthu
 Krishna's
 Notes for
 Counsel.
 12-6-48 and
 26-8-49.
 —continued

3. The further evidence of unnaturalness is provided by the sharp and sudden twists and turns of the pen, indicating that the writer was building up his letters by little bits, afraid to proceed at any speed, in marked contrast to the fluent and spontaneous writing of the deceased.

4. The genuine signatures were probably written with a fountain pen, and a writer who habitually uses such a pen is unlikely to use an ordinary pen for signing an important document like his Last Will. Even if circumstances compelled him to do so, however, the pressure of the pen would not vary in the manner in which the impugned writing discloses extreme variation of pressure. There is, however, an obvious reason for a forger to avoid the use of a fountain pen as he would not be able to control the flow of ink where he intended to make any corrections of the contours of the letters in order to approximate them to some model before him.

10

5. The interspacing of the initials in the genuine writing is fairly regular, but in the impugned signature the third initial is more distant from the second than is the case in the customary writing. This irregularity may also be seen in the interspace between the first and second letters after the third initial.

20

6. The genuine writing is generally in four sections, namely, the group of initials, the letters "iriw", the letters "ar", and the letters "dene". In the impugned signature the small letters of the surname are in close contact, written in apparently one continuous effort, although each letter may be shown to have been assembled in parts.

7. The small letters of the surname are more or less, in alignment with the bases of the initials in the admitted writing, whereas, in the impugned signature, the surname is written at a considerable height above the bases of the first two initials. It will also be noticed that, in the genuine writing, there is generally a tendency for the last section of the letters to descend, whereas in the disputed signature the last section is clearly ascendent.

30

8. The full stops between the initials are generally well below the level of the writing in the genuine signatures, but this is not so in the impugned signature.

9. The first dot over the signature is generally in the form of a horizontal dash in the genuine writing, whereas it is quite different in form in the disputed signature.

10. The first dot (or dash) over the signature is generally over the second letter in the genuine writing but it is directly over the first letter in the questioned signature.

40

11. The body of the first initial in the genuine writing is almost invariably well rounded, but it is angular and awkward in the impugned signature.

12. The downstroke of the second initial in the genuine writing begins generally a little higher than the down stroke of the first initial; and ends also generally below the level of the first initial; but this is not the case in the disputed signature.

13. Although the genuine signatures appear to differ very greatly among themselves, a critical examination of several of them shows a uniformity of style with which the corresponding letters of the impugned writing are in significant contrast. For example:

- 10 (a) The letters 'w' is generally made with the second part of it below the base of the first part, whereas, in the disputed writing, the second part of this letter is actually higher than the first part;
- (b) The start of this letter is generally in the form of an ascendent stroke parallel with the sides of the letter, whereas in the impugned writing the letter is started with a definite horizontal stroke;
- (c) This letter is ended with a definite downward movement which sometimes curves up and sometimes does not, whereas in the impugned writing this part is strikingly different;
- 20 (d) The second initial ends simply in the genuine writing, but it has an unhabitual spur in the disputed signature;
- (e) The first initial starts with a plain down stroke in the genuine writing, but it has a peculiar crook in the impugned writing, implying, as it were, the character of the whole writing.

14. The genuine signature is written in a manner which makes the surname read like "Suriwardene", instead of "Siriwardene". The impugned signature, however, erroneously depicts the correct spelling of the name, and in so doing, contracts the number of strokes and movements involved in the normal execution of the signature.

30 15. The underscore generally found below the signature in the genuine writing is absent in the impugned.

16. It cannot be supposed that the deceased intended to abandon all the distinguishing characteristics of his customary writing in setting his signature to the Will under reference. The mutually exclusive features of the genuine and disputed writings are, therefore, conclusive proof that they are not of identical authorship.

40 17. There is so much resemblance between the writing of the first witness to the Will and the signature on the Will said to be that of the deceased, that it is not improbable that both signatures are in one and the same hand, more especially as the body of the Will appears, also, to be in the hand of this witness.

12th June, 1943.

Sgd. LAWRIE MUTTUKRISHNA,
Examiner of Questioned Documents.

Exhibits.
No. R 34.
Mr. L.
Muthu
Krishna's
Notes for
Counsel.
12-6-43 and
26-8-43.
—continued

Exhibits.

RE D. C. COLOMBO, CASE No. 10277 (TESTY).

No. R 34.

Mr. L

Muthu

Krishna's

Notes for

Counsel.

12-6-48 and

26-8-48.

—continued

FURTHER NOTES FOR COUNSEL.

1. In addition to the documents mentioned in my report of the 12th June, 1943, I have also examined the documents marked P 9 to P 14 which are said to contain the signatures of the deceased. These signatures are attested by two witnesses on each document.

2. P 10 and P 11 purport to bear the signatures of J. D. Hendy Singho and P. K. Somaratne in Sinhalese. The second witness is supposed to have signed also the next document (P 12) along with another whose signature is in English. It is most improbable, however, that the signature of P. K. Somaratne on P 12 is in the hand of the person who signed that name on P 10. 10

3. The very crushed appearance of P 12 makes it suspicious, apart from the peculiarities of the writing in the alleged signature of the deceased which closely resemble the defects in the disputed signature. It is not improbable that the paper was deliberately treated in the way it has been treated in order to obscure the tampering to which the signature was subjected.

4. The points to which I have invited attention are those which are generally evident in the admitted signatures. The fact that there may be an occasional omission of a particular feature in a particular signature, or the introduction of what may seem an unusual feature will not have any bearing on the general combination of characteristics found in the admitted writing. Exceptions where they occur prove the rule, and do not in any way serve to vindicate the impugned signature. 20

5. The important point in considering the impugned signature is that it has a combination of unusual features, and that habitual features are exceptional. This convergence of unusual features has no parallel in any single admitted signature, or in any two, or three, or four, or five, or even half a dozen genuine signatures. It is only by extending indefinitely the series of genuine signature that they can be exploited for a few of the unhabitual features which are concentrated in the impugned signature. 30

6. A striking feature of the admitted writing which is in sharp contract to the disputed writing is the heavily accented character of the punctuation. The pen has generally been jabbed into the paper vigorously in making the dots and dashes above and below the signature in the admitted writing, whereas it has been weakly applied in making these marks in the disputed writing. 40

7. Pencilled writing is not ordinarily comparable with inked writing and any apparent deviations from the normal style in the

pencilled writing of the deceased cannot be fastened upon to justify the unhabitual features in the impugned signature. Exhibits.

8. The impugned signature it will be noticed has an appearance of continuity which is quite deceptive. The deceased never built up his signature in the manner indicated in the disputed writing. Would he have, then, so altered his invariable style in order, as it were, to have the authenticity of his Last Will questioned?

No. R 34.
Mr. L
Muthu
Krishna's
Notes for
Counsel.
12-6-43 and
26-8-43.
—continued

Sgd. LAWRIE MUTTUKRISHNA,
Examiner of Questioned Documents.

10 26th August, 1943.

No. P 30.

Report of Mr. Mac Intyre.

No. P 30.
Report of
Mr. Mac
Intyre.
18-6-43.

P 30.

Munsoor Buildings,
Main Street,
Colombo.

J. S. PARANAVITARNE ESQ.,
Proctor S. C. & Notary,
Colombo.

Sir,

20 Pursuant to your instructions I examined the Last Will of Mr. D. F. Siriwardena at the Record Room of the District Court of Colombo and beg to submit herewith my findings.

Questioned Document.

Last Will written on a ruled Foolscap paper in Sinhalese in blue-ink, and witnessed by five persons. The Will is dated the 5th October, 1942. The will bears the signature "D. F. Siriwardena".

Comparison Material.

30 1. Six signatures of D. F. Siriwardena appearing on the Prevention of Rubber Thefts forms. Five have been signed in 1942, and one in 1941.

I further had the opportunity of the examining six signatures of Mr. D. F. Siriwardena at the District Court of Kalutara on the following documents.

1. Proxy filed in D. C. Kalutara No. 22817 in favour of Wilson de Silva Esq., Proctor S. C. & Notary dated the 22nd December, 1941.

Exhibits.
 —
 No. P 30.
 Report of
 Mr. Mac
 Intyre.
 18-6-43.
 —continued

2. Proxy filed in D. C. Kalutara No. 22300 in favour of Messrs. E. S. Fernando and P. F. Goonetilleke dated the 6th November, 1941.
3. Proxy filed in D. C. Kalutara No. 22451 in favour of Wilson de Silva Esqr., dated the 21st July, 1942.
4. Proxy filed in D. C. Kalutara No. 21764 in favour of Messrs. E. S. Fernando and P. F. Goonetilleke dated the 26th August, 1940.
5. Proxy filed in D. C. Kalutara No. 21707 in favour of Messrs. E. S. Fernando and P. F. Goonetilleke dated the 20th December, 1939.
6. Proxy filed in D. C. Kalutara No. 21976 in favour of Messrs. E. S. Fernando and P. F. Goonetilleke dated the 11th November, 1940.

10

I also had access to nine further signatures appearing on the Coupon Issue Cards of the Rubber Control Department.

Matter for Determination.

Whether the signature of D. F. Siriwardena appearing on the Last Will is genuine?

Opinion.

20

I have very carefully examined the signature appearing on the Last Will under Magnified Lenses and through Transmitted light.

I have also photographed and enlarged the admitted and some of the disputed signatures and compared them in detail.

The disputed signature has all the symptoms of genuineness and under every test applied by me convincingly points to the fact that the hand that signed as D. F. Siriwardena in the documents enumerated and described under the caption "Comparison Material" has signed the signature "D. F. Siriwardena" on the impugned Will.

Sgd. E. T. MAC INTYRE,
Examiner of Questioned Documents.

30

Colombo, 18th June, 1943.

No. P 31.

Statement of Reasons of Mr. Mc Intyre.

Exhibits
 No. P-31.
 Statement
 of Reasons
 of Mr. Mac
 Intyre

P 31.

Munsoor Buildings,
 Main Street,
 Colombo.

STATEMENT OF REASONS IN SUPPORT
 of my opinion that the Signature of
 D. F. Siriwardena appearing on the
 Last Will is genuine.

10

D. C. COLOMBO CASE No. 10277.

1. The alignment of the disputed signature agrees with the alignment of the admitted signatures.
2. The second letter "F" is not joined to the following letter "S" in the admitted and disputed signatures.
3. The initials are written in one movement of the pen and this is constant in the admitted and disputed signatures.
4. The whole signature presents an angular writing with irregular height and this is consistent in both sets of signatures.
5. The construction of the letters in the admitted and disputed signatures agree.
6. The spacings of the letters in the disputed and admitted signatures agree.
7. The signature on the disputed will shows abandon and easy flow and carry the "Hall Mark" of genuineness.
8. The whole signature has been written with a flowing hand without any hitch or delay.
9. There are no circumstances which point to any suspicion in the writings.
10. There is no tremour of fraud in the disputed signature.

20

30

In investigating into a forgery it must be borne in mind that the most common symptom is that drawn and hesitating quality of stroke or line particularly at certain points of the letters. This symptom is missing.

Exhibits:
 No. P 31.
 Statement
 of Reasons
 of Mr. Mac
 Intyre.
 —continued

Flying starts and flying finishes where the action of the pen proceeds the beginning of the stroke and continues beyond the end to a vanishing point are found in free natural writings and as a rule important indication of genuineness.

Anything of any kind about a writing that indicates that the writer was not thinking of the writing itself is evidence of genuineness, for forgery is necessarily a self-conscious, careful act, while natural writing comes to be so nearly automatic that it is almost unconscious.

Abbreviated, distorted and illegible forms which are sufficiently free and rapid indicate genuineness.

10

There can be no doubt after careful analysis of the disputed signature that it is the genuine signature of Mr. D. F. Siriwardena.

Sgd. E. T. MAC INTYRE,
*Examiner of Questioned Documents
 Handwriting Fingerprint &
 Poroscopy Expert.*

No. R 39.

No. R 39.
 Evidence of
 Don Peter
 Jayasinghe
 at the
 previous
 trial.
 25-8-43.

Evidence of Don Peter Jayasinghe at the previous trial.

R 39.

Don Peter Jayasinghe, Affirmed. 46, Cultivator and Trader, Walagedera.

20

I am worth about Rs. 10,000/-. I own a boutique, I knew the deceased. He was a friend of mine. We were also distantly related.

On the 5th of October last I was sent for by the deceased and in response to that invitation I went to the house on that day at about 1 or 1-30 p.m. I went into the deceased's room and asked him why he had sent for me. He said that Dr. Ratnayake's treatment had not improved his condition and that he desired to go to Colombo for treatment. He also said that he had written a Last Will in favour of Carthelis and his (deceased's) two younger sisters. Then he asked me to sign the will as a witness. I consented to do so, and then I was asked to wait. Thereupon I went out of the room and occupied a seat in the verandah. At about 4-30 p.m. Vel Vidane Handy Singho, Parlis Goonetilleke and Thomas also came to the house. When I went out of the room Parlis and Vedamahatmaya were in the verandah. Thomas came to the deceased's house later. At about 4-30 p.m. Samy Jayasinghe asked me and the other witnesses to enter the room and we did so. After we entered the room the deceased wanted the

30

door shut and asked the clerk to read out the will. The clerk did so. Then the deceased asked the clerk to write the names of the witnesses in full on the will. This was done and the writing was handed to the deceased who thereafter read it and signed it. Next I and the other witnesses signed it. After the will was signed the witnesses left the room except Sammy Jayasinghe and Thomas. (Shown document 'A'). This is the will I signed. I identify my signature on it. It is the third signature. I also identify the deceased's signature. That signature was also put in my presence. I am familiar with the deceased's signature.

Exhibits.
No. R 99.
Evidence of
Don Peter
Jayasinghe,
at the
previous
trial.
25-8-49.
—continued

Cross-examined.

When I said I am worth Rs. 10,000/-, I meant that I have property worth that amount. My property consists of 3½ acres of rubber, 20 pelas of paddy belonging to me and my wife and two boutiques. The 3½ acres of rubber was under mortgage to a man called Britto. The mortgage has been released. Altogether 11 acres were mortgaged to Britto. There is a mortgage to my sister for Rs. 400/-. Judgment went against me in D. C. Case No. 13198 Kalutara and in two other cases. That was about 1½ years ago. I have satisfied the judgments entered against me. In one of the cases I have paid the share due from me. Another share is still due in that case. That has to be paid by another person (Joronis).

The deceased lived about a mile away from my house. I am a somewhat busy man. I go to the deceased's house occasionally. I went there if I had some business with the deceased. I did business with the deceased. He advanced Rs. 1000/- to me on an agreement for the purpose of taking lands on leases. Before the 5th October I went to his house on the 3rd of that month. On the 3rd he was ill. He did not recover from that illness. On the 3rd he did not tell me anything about the Last Will.

On the 5th a message was brought to me from the deceased by one Edwin a carter employed under the deceased. I mentioned that to the Proctor instructing the Petitioner. When I arrived at the house on the 5th Samy Jayasinghe was there. I talked to him first. I did not ask him why the deceased had sent for me. Immediately I arrived at the house, I went straight into the deceased's room and asked the deceased why he had sent for me. Then it was that he told me that he wanted to sign a Last Will. He further said that he had written a will. He did not show it to me. He did not say who had written it when I went out of the room Vel Vidane and Parlis Goonetilleke were in the house. They did not go into the room in my presence. They were talking with me in the verandah. I did not tell them that the deceased had sent for me in connection with the signing of his Last Will. At that time neither Parlis nor Vel Vidane told me why they had come. The deceased asked me to wait for a while. He did not

Exhibits.
 No R 39
 Evidence of
 Don Peter
 Jayasinghe
 at the
 previous
 trial.
 25-8-43.
 —continued

say "I am waiting for Thomas. Kindly wait till he arrives". I waited from 1-30 till about 4-30 p.m. Meanwhile I went to a school and came back. The others did not tell me why they were waiting. Sammy Jayasinghe did not tell me anything. I cannot say whether after Thomas arrived, he went straight into the deceased's room. When Sammy Jayasinghe told me that I was wanted, the other three witnesses were with me. Thomas was also present at the time. He did not tell me that he had been asked to sign a Last Will.

After I and the other witnesses entered the room, Sammy Jayasinghe read out the Last Will. That document was taken from the drawer by Sammy Jayasinghe. I heard the terms of the will when the contents were read out. The witness who signed the will first was Sammy Jayasinghe and the 4th witness was the Vel Vidane. I know the order in which the witnesses signed. After the will was signed, I do not know what happened to it. I did not see where it was put. I did not see it being rolled up. 10

(To Court : Besides asking us to sign the will as witnesses, the deceased asked us not to tell anyone about it. He said that immediately after the will was signed.)

He did not ask us not to divulge the will before his death. He asked us in general not to let anyone know about it. He did not ask us not to divulge the will before a particular time. After signing the will I left the room. I did not know what happened there after that. 20

Subsequently on the 10th, I visited the deceased in Hospital in Colombo. I went there alone. I did not meet Thomas on the 10th. I heard of the deceased's death on the 12th when the body was taken past my house. On the next day, 13th, I went to the deceased's house. I did not see the headman there that day. I went there on the 13th morning and remained there for about 15 minutes. On that occasion I asked when the cremation would take place. I got leaflets printed with regard to the death of the deceased. On the 13th Welin was not in deceased's house. His son was there as well as Carthelis. It was from Carthelis I inquired when the cremation would take place. On that occasion I did not tell him that the deceased had signed a Last Will. Subsequently I became aware that the headman was brought to the deceased's house to compel Carthelis to hand over the keys to Welin. I came to know that the same day (13th) at about 6 p.m. Carthelis did not tell me that he had been forced to hand over the keys. There was a talk that Welin had tried to assault Carthelis and that the headman had gone to the house. The attempt to assault was in connection with a case. Carthelis had refused to give the keys, and the headman had been brought. After that I went to the deceased's house. At that time Carthelis was not there. I met him there on the 14th. On that occasion I did not tell him "why did you hand over the keys? You are the executor appointed under the Last 30 40

Will". It did not strike me that I should say that. I did not know with whom the keys were. I thought they were with Carthelis. I did not tell Welin there is a Last Will in which you have not been given anything. I was not concerned with the disposal of the deceased's property.

Exhibits.
No. R 39,
Evidence of
Don Peter
Jayasinghe
at the
previous
trial.
25-8-43.

I attended the cremation on the 15th. On that occasion Carthelis and Sammy Jayasinghe were present. Then there was no talk about the will. I kept the Last Will a secret. On the 20th I went before Mr. de Alwis. After the cremation on the 15th in the evening
10 Carthelis told me that a Last Will had been executed and asked me whether I had not got it. I said a Last Will was written by the deceased. I do not know who has got it. Then Carthelis told me "I hear you were a witness to the Last Will. What do you know about it." He did not tell me how he knew that I had signed the will as a witness. When he asked me "You also signed the will as a witness" I said "Yes". I do not know how he came to know that I had signed. Up to date I do not know how he came to know that. I told him the terms of the will, that the will was in favour of three persons, and that he had been appointed the executor.

—continued

My next connection with the matter is my appearance before Mr. de Alwis on the 20th. Carthelis came and called me to go before Mr. de Alwis and I consented. All the five witnesses went before Mr. de Alwis. When Carthelis called me to go before Mr. de Alwis, he told me that he had not got the will and that he believed it was lost. Thomas was not present when he said that. All the five witnesses did not go to Mr. Alwis' bungalow together. I went there alone. I do not know how the others went. I went there cycling. My house is about 7 miles from Mr. de Alwis. After I signed the document before
20 Mr. de Alwis I did not make inquiries as to what had happened to the
30 Last Will. I do not know whether inquiries were made in that connection. Welin was in possession of the deceased's estate. I knew that he was possessing it. It occurred to me that he had no right to the property. But what could I do.

I met Thomas frequently. He did not tell me where the will was. He did not tell me that he had a clue by which the will could be traced. He said that the will was taken to Colombo. That statement was made by him about 3 days after the cremation. I did not communicate that to Carthelis. I did not meet him.

I was fined in a case for assaulting Piloris Jayasinghe. I was not
40 convicted in another case for removing a bull seized by a cattle seizer and fined Rs. 25/-. More recently I was not charged by Welin in another case with the theft of a bull. Last month there was a case against me by him. That case has been thrown out.

(To Court: Besides the fine of Rs. 25/- I have not been fined on any other occasion).

Exhibits. *Re-examined.*

No. R 39.
Evidence of
Don Peter
Jayasinghe.
at the
previous
trial.
25-8-48
—continued

I signed a document in this Court stating that the will was a true one and handed it over to Mr. Paranavitarne. I signed that document on 4th December. On the 5th Welin entered a prosecution against me. The complaint against me was made to the Police on the 5th December. In that case Welin was cross-examined by my Proctor Mr. Cyril de Zoysa. I produced a cattle voucher in my favour as well as another cattle voucher in favour of my vendor. The cattle voucher in favour of Carthelis was one of 1934. During the cross-examination of Welin his Proctor moved to withdraw the case. I was discharged in that case. The case in which I was fined Rs. 25/- was about 15 years ago.

10

There is no truth in the suggestion that I am a rowdy. I was a member of the Village Committee for 9 years. I was not the Chairman of the Committee. 12 years ago the price of rubber slumped to 12 cts. a pound. At that time there was a big depression, and I was compelled to borrow money. I was not sued in that connection. The action against me was not for the recovery of money. There are no decrees outstanding against me. The only debt I owe is a sum of Rs. 300/-. That sum is due to my sister.

20

Q. It was suggested that you or your wife was related to a man called U. Don Peeris.

Question objected to.

I disallow the question.

At the opening of a school at Walagedera there was a photograph taken. The A. G. A. sat for that photograph as well as the Mudaliyar (Photograph marked P 25 shown). This was the photograph. The deceased is there seated in the front row. (Figure marked with cross in red).

I am standing in the second row (marked in blue).

30

On my right is Handy Singho, Welvidane and on my left Thomas Appuhamy. The photograph also includes some school masters and planters of the district.

Sgd. JAMES JOSEPH,
Addl. District Judge.
25-8-43.

No. P 44.**Extract from the Information Book of Alutgama Police.****P 44.**

Exhibits,
 No P 44.
 Extract
 from the
 Information
 Book of
 Alutgama
 Police,
 29-8-43.

EXTRACT FROM THE INFORMATION BOOK OF ALUTGAMA POLICE.

Page 6 Para 1007. Date 29-8-43. Time 7-30 a.m.

10 Badde Vithanage Lewis Appuhamy trader of Galmatta in Welipenna appears and complains that:—Yesterday I got into a bus at Colombo about 7 p.m. I do not know the number of the bus. Nor can I give other particulars of it. I had a suit case small one with one white coat, tweed cloth brown in colour and two books in which I enter buying of rubber. One of the books bears my name (printed). There are no identifiable marks on the cloth. This suit case was kept on the hood by the bus conductor. About 12 the bus came to Alutgama and I got down and asked for the suit case. The conductor said it is missing. The bus went towards Galle. I came to inform Police. I cannot even identify the driver or the conductor of the bus. I came to make an entry.

Sgd. In Sinhalese.

Read and explained.

20 Inquiries will be made into this.

Sgd. P. S. 593, Horangama.

No. P 45.

Exhibits.
 No. P 45.
 Extract
 from the
 Information
 Book of
 Welipenne
 Police.
 29-8-43.

Extract from the Information Book of Welipenna Police.

P 45.

Date 29-8-43. Time 11-45 a.m. Page 312. Para 866.

Re—Suit case missing.

Baddavitharanage Don Lewis Appuhamy age 50 years, Trader of Galmatta, Walagedera present and states :—

On the 27-8-43 I went to Colombo to attend D. C. in connection with Case No. I0277 to give evidence that day as I was not called and on the following day I got into a bus at Colombo bus stand with my suit case which contained my Registered Rubber Licence book, C form book one tweed cloth and one white coat. Then when I got into the bus I gave my suit case to be kept to the bus conductor and he put the suit case on the hood of the bus. Then the bus reached Alutgama at about 11-30 p.m. and when I asked for my suit case the conductor of the bus searched for the suit case and said that it is missing. Then I stayed at Alutgama on the night and made an entry at Alutgama Police on the following morning. I am unable to say the number of the bus or the conductor of the bus. There is no marks on the articles except for my name in the Rubber Register book, B. D. Lewis Appuhamy and on the C form book, D. L. Baddevitharne. The suit is brown in colour and about 2 feet in length and one foot in breadth. The tweed cloth is slight brown colour and 2½ yards in length. I am unable to suspect anyone for this and I made a complaint to the V. H. of Walagedera today in the morning. This is all I got to say.

10

20

Sgd. In Sinhalese.

No. R 42.

Evidence of Francis Amarasinghe at the previous trial.

R 42.

Francis Amarasinghe Affirmed.

Exhibits.
 No. R 42.
 Evidence of
 Francis
 Amara-
 singhe
 at the
 previous
 trial.
 2-9-43.

40, I was employed under the deceased. I was in charge of his rubber lands. I was drawing a salary of Rs. 22/50 a month with food. I resided in the bungalow.

10 *To Court :* Gomis was also living in the bungalow. To my knowledge he was not living with his wife in a hut in one of the rubber lands. I had been in the deceased's house for about 2½ or 3 years. During all that period Gomis was also residing in the bungalow.

20 *To Court :* We both had our meals there. I slept in an outer room in the bungalow. I visited the rubber lands daily. I go at about 7 or 7-30 in the morning and return at about 10 or 11. I was supervising the work of the tappers and I also had to see that there were no thefts of rubber. I remained in the bungalow in the afternoon. I did not do any work in the bungalow.

30 Towards the end of September I went to Kalutara with the deceased to attend to a case of his. He took me with him. After I returned from Kalutara I remained at the house of the deceased. I did not go anywhere for a few days. I remember the deceased falling ill. I was in the house then. The others in the house at the time were Gomis, Thomas, Carolis a cook, apart from these servants Cecilia and Lily were there. Carthelis was not in the house. He came later from the Induruwa boutique. Sammy Jayasinghe was present. The Meegama Native Doctor attended on the deceased. He treated for about five or six days. Gomis, I and Cecilia's husband were attending on the deceased personally. I was there all the time during the illness. Dr. Ratnayake also treated the deceased. The Petitioner brought the Doctor. I remember the deceased being removed to the General Hospital. Two days before that I was in the bungalow. I cannot recall any particular incident that took place on this day.

Exhibits.
 No. R 42.
 Evidence of
 Francis
 Amara-
 singhe
 at the
 previous
 trial.
 2-9-48.
 —continued

To Court : Velun Siriwardene came to see the deceased on the 1st October and once after that. A message was sent to him by Thomas a carter and Velun came. Before the deceased fell ill Velun was in the habit of visiting his brother. He used to pay two or three visits a month. I cannot remember any event that took place two days before the deceased was removed to Colombo. I know Sammy Jayasinghe. I know Thomas. Thomas used to come there off and on. He was a witness in a case of the deceased. I know Peter Jayasinghe. I know Handy Singho. Handy Singho came some months before the deceased fell ill, not after that. Pelis Gunatilleke never came. I know the man. 10

To Court : No will was executed. If a Testament had been written I would have known about it. If five people came and they went into the room of the deceased and the room closed and something took place I would have known about it. I went to see the deceased after he left Galmatta to Colombo. I came to Colombo on the 8th. I saw the deceased in the hospital on the 8th. I saw him again on the 10th. I remained back when I came on the 10th. On the morning after the 12th the deceased died. I was in the Hospital when the deceased expired. There were no others present at the time. Carthelis and Lewis Veda Mahatmaya left the previous day at about 3 p.m. to fetch a Veda Mahatmaya. Velun visited the deceased at the Hospital. I met him in the Hospital on the 8th. I know Dharmasena. I met him once in the Hospital. The body was removed on the 12th. I attended to the registration of the death. I signed a form to remove the body. I was present in the house when the funeral arrangements were made. The younger brother of the deceased made the arrangements. That is Velun Siriwardene. I remember the date of the cremation. After the cremation Carthelis did not come to the house. I am unable to say where he was. I remained in the house. I continued in the employment. I am still in the same employment. Velun is in charge now. Sammy Jayasinghe continued in his employment, for two or three months thereafter. I used to meet him everyday. He did not tell me that there was a Last Will, 20 30 40

Cross-examined.

I am a man of Hikkaduwa. I was working in a plumbago pit under the deceased.

To Court : I did not work at Hikkaduwa. I came to the deceased as a man who knew how to work plumbago pits. The deceased had a plumbago pit at Seeniyawe. I was in charge of that pit. That pit is about 12 miles from Galmatta. I was paid to do that work, at the beginning. At the start I was working in the plumbago pit. About six months before the deceased died the work in the plumbago pit was stopped as there was difficulty in obtaining rice.

Exhibits.
No R 42.
Evidence of
Francis
Amara-
singhe
at the
previous
trial.
2-9-43.
—continued

10 Q. You suggest there is no plumbago pit worked in Ceylon because of the rice shortage?

A. They could not get dynamite.

Q. Despite the high price of dynamite and so on plumbago minning is going on at a terrific rate.

A. The deceased stopped because he could not get the license for dynamite.

Q. The deceased was a well to do man?

A. Yes. But he could not get the license passed.

20 The plumbago mine was not been worked right down to the time of the deceased's death.

Work was stopped six months before. The books of the deceased were all stolen. On the day of the cremation a thief stole all the books in the plumbago pit. I was informed by the watcher and I informed the headman.

Q. What is the value of a check roll kept in a plumbago pit for a thief?

A. I do not know.

30 Q. I put it to you this is a cock and bull story of yours for the non-production of the plumbago pit accounts because the book will show that you were working there all through out.

A. No answer.

To Court : My name may have been in that book. I did not keep the books. There was a boy from Paiyagala who wrote the books. I was in charge of the pit. The boy was not under me. He was writing the accounts.

Exhibits. *To Court :*
 No. R 42.
 Evidence of
 Francis
 Amara-
 singhe
 at the
 previous
 trial.
 2-9-48.
 —continued

I know what he has been writing: My name is entered in the book and the pay that was made to me. Everything that was in the pit was stolen. Six months before the death of the deceased I came to his house. Before that I was at Seeniyawe. After I came to the deceased's house I supervised the tapping. I have not done that work previously, but I had a general knowledge.

- Q. You know that it is a highly skilled job. The K. P. has got to teach the tappers how to tap and check the damage to the bark and so on he must be an expert tapper? 10
- A. I had a fair knowledge. I have never tapped in my life.
- Q. Then you cannot be an expert tapper?
- A. Yes.
- Q. You cannot teach a tapper how to tap a tree.
- A. At the time I did not have that knowledge but the deceased asked me to attend to this work. I have that knowledge now. I do not know whether my name appears in any account or book kept at Galmatta after I came there. Sammy Jayasinghe kept the books. The labourers under the deceased, the Supervisors and others were all paid according to the books kept by Sammy Jayasinghe. When I was attending to the work at the plumbago pit I was paid Rs. 22/50 every month. Thereafter the deceased paid me sometimes as much as Rs. 30/- and Rs. 40/-. All the names of those who worked for the deceased may appear in the check roll. The deceased's house was at Galmatta. I sign as J. Amerasinghe. I am also known as Hikkaduwe Amerasinghe. I was not known as Thiranagama Amerasinghe. I am a resident of Thiranagama. I did not come to the deceased's house only on the 8th October. I was in the house even when he was ill. 20
- Q. I put it to you that you were only brought there because the deceased and Carthelis went to Hospital on the 7th. You were sent for from Meegahatenne and came only on the 8th?
- A. No on the 20th September the deceased and myself went to Kalutara. He remained there and asked me to go back to the bungalow. 40

- Q. From what day do you say you were living in the deceased's house ?
- A. About six months before.
- Q. From about April or May ?
- A. I am not quite certain of the month.
- (Shown R 13—re-marked P 41). My name appears under date 1942 October as Hikkaduwe Amerasinghe.
- Q. Your name appears under date 8th October for the first time ?
- 10 A. This is a book prepared for payment of salary after the death of the deceased. It was done by Velun who instructed Sammy to put my name also down. I do not know whether my name appears in the book before that. I can read Sinhalese. My name does not appear in September, August and July.
- Q. If what you say is true your name ought to appear only after the 12th October because you say after the deceased's death Velun instructed Sammy to write your name ?
- 20 A. I do not know how the name appears.
- Q. Your story is that your salary was Rs. 22/50 a month?
- A. Yes.
- Q. Will you be surprised to find that you are put down as Rs. 20/- a month ?
- A. I was paid Rs. 22/50.
- Q. Your story is that you were a sort of Supervisor of all the properties although you had no knowledge of tapping ?
- A. Yes.
- 30 Q. Therefore your name ought to appear as the first name on the roll ?
- A. I do not know. This book is written by Sammy Jayasinghe. In November I have worked everyday but for a day or two when I had gone to my village. So also in December.
- Q. Will you be surprised to find from the 19 to 31st October you have not worked ?
- A. I do not know.

Exhibits.
No. R 42.
Evidence of
Francis
Amara-
singhe
at the
previous
trial.
2-9-43.

—continued

Exhibits. Q.
 No. R 42.
 Evidence of
 Francis
 Amara-
 singhe
 at the
 previous
 trial.
 2-9-43.
 —continued

Q. You notice in the book that there is a tick on each of the dates that you were absent ?

A. It is so in the book.

Q. In December how long do you say you worked ?

A. I cannot say.

Q. From the 20th November right down to the 13th December you have not worked ?

A. I worked.

I cannot say why my name has not been marked. According to the book there is a tick against the name of a person who is absent. There is no such tick from the 1st to 7th October. According to the book I have only started work on the 8th October. I am still working under the deceased. I live in the house.

10

Q. I put it to you that you were being paid Rs. 20/- a month although you did not work much more than half a month according to the book in order that you may give false evidence in this case ?

A. No.

Q. You came from Hikkaduwa to work under the deceased for the first time in December, 1941 ?

20

A. I cannot remember.

To Court :

Q. Is it not a year before his death that you came for employment under the deceased ?

A. Yes.

Pusehena Patala was the actual name for this plumbago pit. (Shown account of Pussehena Patala). This is also in Sammy Jayasinghe's writing. The name Tiranagama Amerasinghe appearing in this book may be my name.

30

Q. You have begun work only on the 24th December 1941 ?

A. I do not know how my name has been entered in the books, but I was paid my salary during the time I worked there.

Sgd. JAMES JOSEPH,
Additional District Judge.
 2-9-43.

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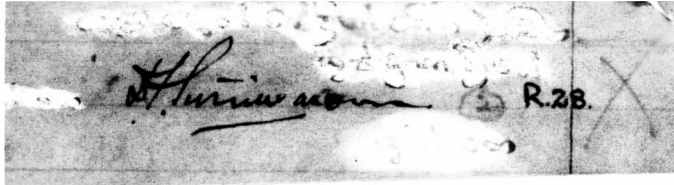
No. R 28.

Signature in Deed No. 322.

(PHOTOSTATIC COPY)

Exhibits

No. R 28.
Signature in
Deed
No. 322.
29-3-30.

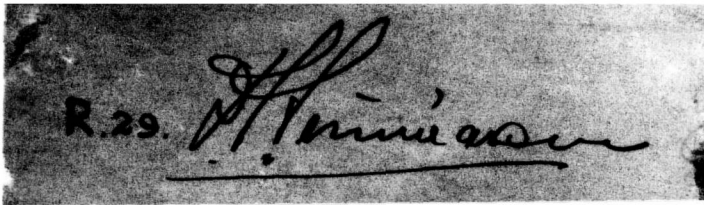
A photostatic copy of a signature in a deed. The signature is written in cursive and is underlined. To the right of the signature, the text "R.28." is printed. There is a large 'X' mark to the right of the signature.

No. R 29.

Signature in Deed No. 1713.

(PHOTOSTATIC COPY)

No. R 29.
Signature in
Deed
No. 1713,
19-3-34.

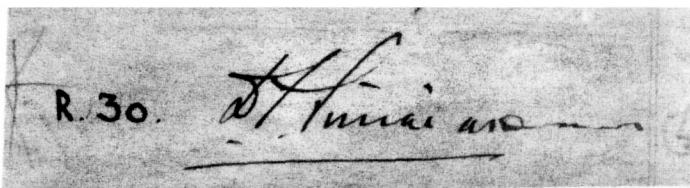
A photostatic copy of a signature in a deed. The signature is written in cursive and is underlined. To the left of the signature, the text "R.29." is printed.

No. R 30.

Signature in Deed No. 1898.

(PHOTOSTATIC COPY)

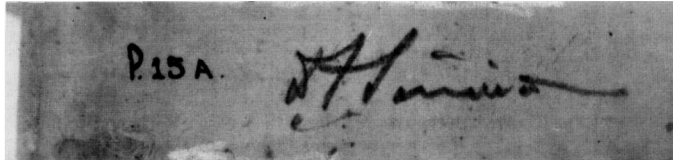
No. R 30.
Signature in
Deed
No. 1898.
10-3-36.

A photostatic copy of a signature in a deed. The signature is written in cursive and is underlined. To the left of the signature, the text "R.30." is printed.

No. P 15 A.

Signature in Rubber Coupon Issue Card.

(PHOTOSTATIC COPY)



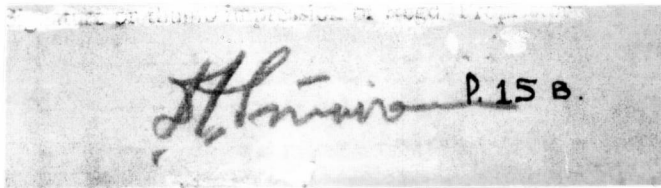
Exhibits.

No. P 15 A.
Signature in
Rubber
Coupon
Issue Card.
1940—43.

No. P 15 B.

Signature in Rubber Coupon Issue Card.

(PHOTOSTATIC COPY)



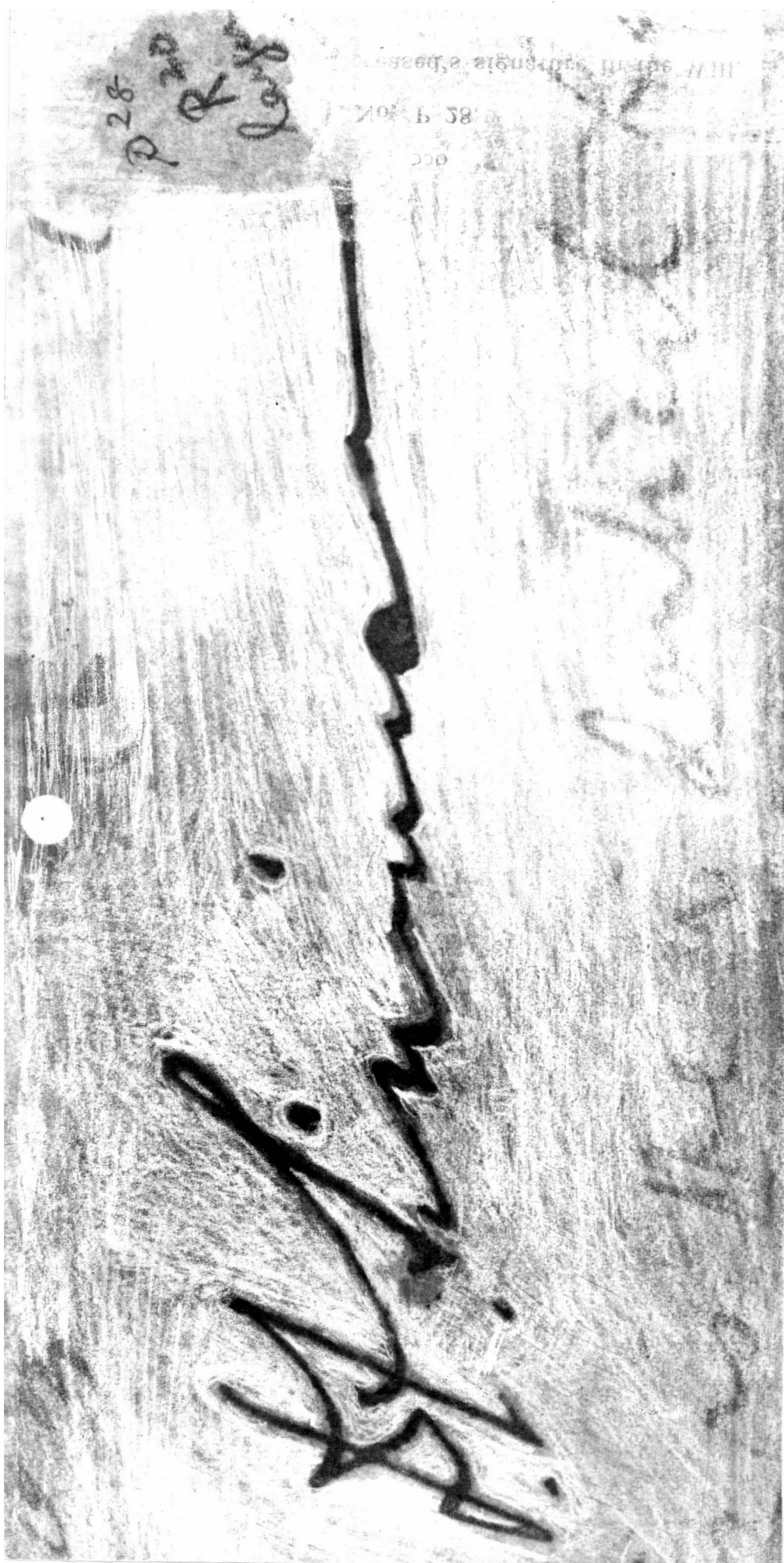
No. P 15 B.
Signature in
Rubber
Coupon
Issue Card.
1940—43.

No. P 28.

Photograph of the Deceased's signature in the Will.

(PHOTOSTATIC COPY)

Exhibits,
No P 28.
Photograph
of the
Deceased's
signature in
the Will.



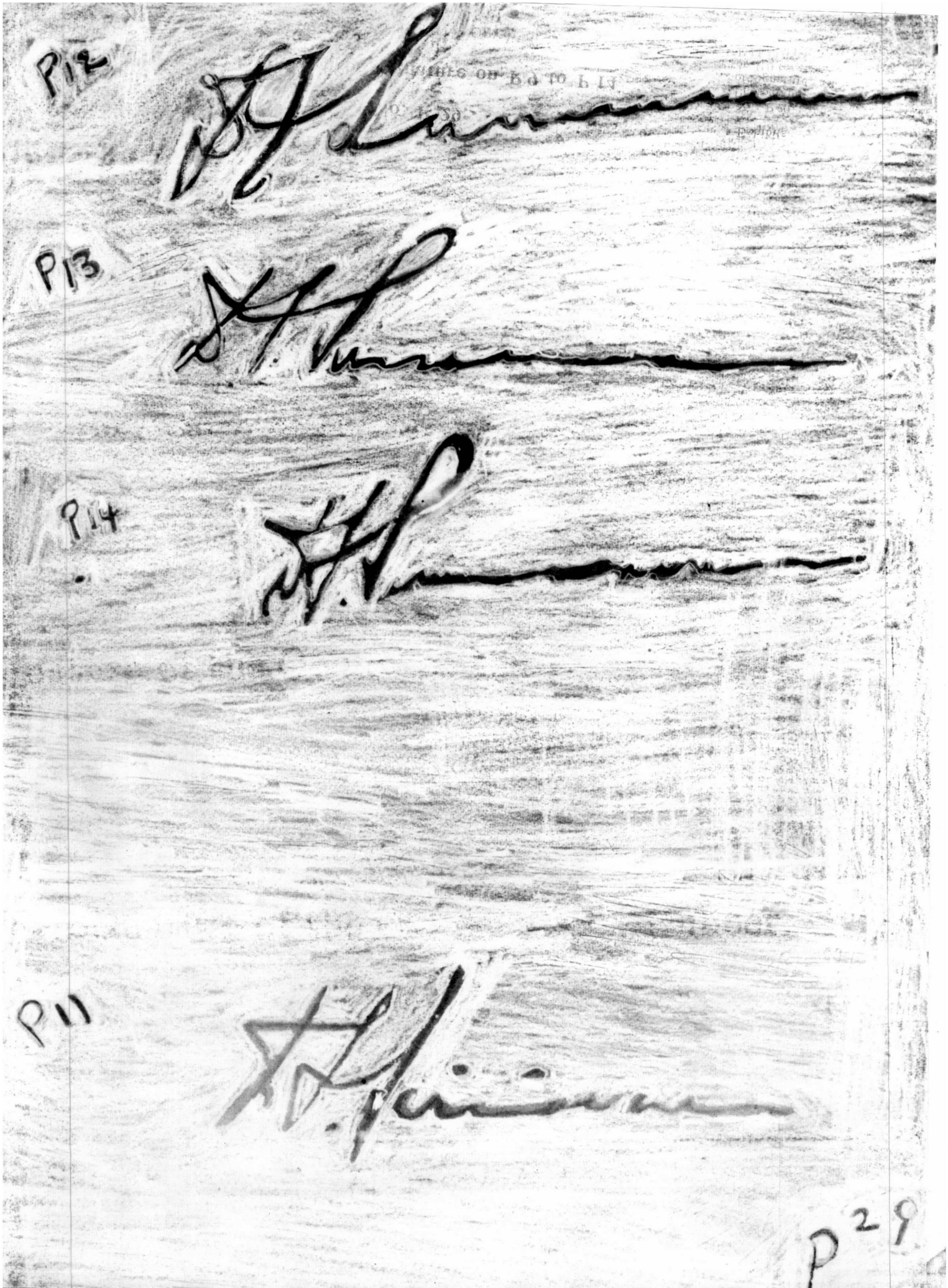
No. P 29.

Photograph of Signature on P 9 to P 14.

(PHOTOSTATIC COPY)

Exhibits.

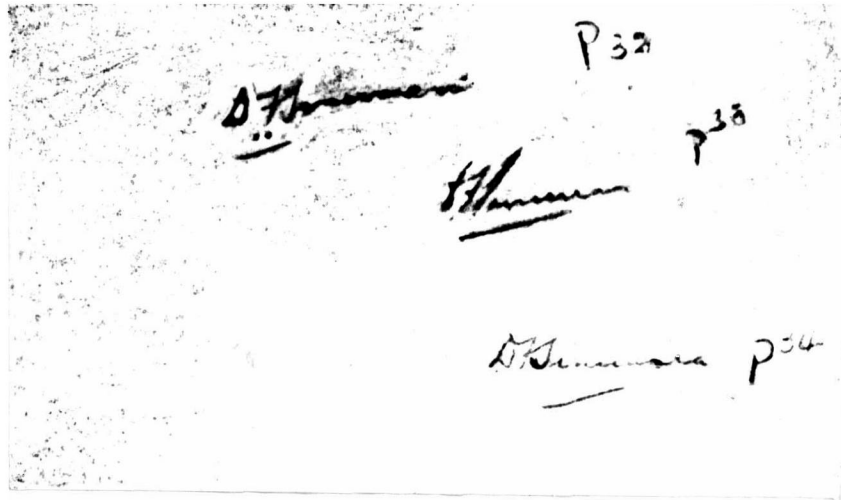
No. P 29.
Photograph
of Signature
on P 9 to
P 14.



Nos. P 32, P 33 & P 34.

Signatures in Proxies in D. C. Kalutara Case Nos. 22817,
21976 & 21764.

(PHOTOSTATIC COPY)



Exhibits.

Nos P 32,
P 33 & P 34.
Signatures
in Proxies in
in D. C.
Kalutara
Case Nos.
22817,
21976 &
21764.
22-12-41,
11-11-40 &
26-8-40.

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No. P 40.

Photograph of Signature.

(PHOTOSTATIC COPY)

Exhibits

No. P 40.
Photograph
of
Signature.



Supreme Court of Ceylon
No. 100 (Interlocutory)
of 1950

District Court, Colombo
No. 10277.

In Her Majesty's Privy Council
on an Appeal from the Supreme Court of Ceylon.

In the matter of the Last Will and Testament of KATHRI
ARACHIGE DON FREDERICK SIRIWARDANA of Wala-
gedera, Deceased.

BETWEEN

KATHRI ARACHIGE DON VELIN SIRIWARDANA of
Kolehekada in Katugahahena in Iddagoda Pattu of Pasdun
Korale West. *Respondent-Appellant.*

AND

ARACHI APPUHAMILLAGA DON CARTHELIS APPU-
HAMY of Walagedera. *Petitioner-Respondent.*

THE COLOMBO BUDDHIST THEOSOPHICAL SOCIETY
LTD. of Buddhist Head Quarters, Norris Road, Pettah,
Colombo. *Added-Respondent-Respondent.*

1. KATHRI ARACHIGE PREMAWATHIE SIRIWAR-
DANA of Kolehekada.
2. CECELIA KANNANGARA of Kalutara.
Intervenients-Respondents-Respondents.

RECORD
OF PROCEEDINGS
