

Judgment  
22, 1957

~~P.C.G.T.G.2.~~  
11 1957

Supreme Court of Ceylon,  
No. 577 (Final) of 1954.

District Court, Kandy,  
No. 754

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

BETWEEN

ERNEST CHRISTOPHER PERERA, Station Master, Ceylon  
Government Railway, Beruwala .. .. . *2nd Defendant-Appellant.*

*Versus*

JINADASA HALWATURA of the Ceylon Government Railway,  
Mirigama .. .. . *Plaintiff-Respondent*

And

VALIN KARUNAWATHIE HALWATURA, *nee* Pitigala, presently  
of Hantane Estate, Kandy .. .. . *1st Defendant-Respondent.*

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RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON  
 25 FEB 1958  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

ii  
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No. 1  
Journal Entries  
11.12.52 to  
11.7.56—  
Continued

(6) 9.4.53.  
Summons on 1st defendant not issued—not properly stamped.

(7) 20.4.53.  
Summons issued on defendant.

(8) 28.4.53.  
Mr. Wickremaratne for plaintiff. Summons not served. Re-issue  
for 9.6.53.

(Intd.) N. S.,  
A.D.J.

(9) 1.5.53.  
Summons re-issued.

10

(10) 21.5.53.  
The Divisional Transport Superintendent, C.G.R., states that the  
copy Summons was served on E. C. Perera, Station Master, C.G.R.,  
Kurunegala, on 18.5.53.

His acknowledgment is also attached. File.

(Intd.) F. C. P.,  
A.D.J.

(11) 9.6.53.  
Messrs. Wickremaratne for plaintiff.

20

Defendants (1) Karunawathie Halwatura *nee* Pitigala ; (2) E. C.  
Perera.

Summons served on 1st defendant. Proxy filed.

Summons served on 2nd defendant.

Mr. Carthigeser to file proxy of 2nd defendant. Answer on  
23.6.53.

(Intd.) N. S.,  
A.D.J.

(12) 23.6.53.  
Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.

30

(1) Proxy of 2nd defendant filed.

(2) Answer of 1st defendant and (3) Answer of 2nd defendant on  
7.7.53.

(Intd.) N. S.,  
A.D.J.

(13) 23.6.53.

Stamp duty Rs. 6/- due on proxy of 2nd defendant filed today.

No. 1  
Journal Entries  
11.12.52 to  
11.7.56—  
*Continued*

(14) 7.7.53.

Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.

(1) Stamp duty Rs. 6/- due from 2nd defendant to be supplied to office. Not supplied.

(2) Answer of 1st defendant on 21.7.53.

10 (3) Answer of 2nd defendant is filed.

(Intd.) N. S.,  
*A.D.J.*

(15) 21.7.53.

Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.

(1) Stamp duty Rs. 6/- from 2nd defendant supplied.

(2) Answer of 1st defendant on 25.8.

(Intd.) N. S.,  
*A.D.J.*

20

(16) 25.8.53.

Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.

Answer for 1st defendant due. Filed. Trial, 6.10.53.

(Intd.) N. S.,  
*A.D.J.*

(17) 9.9.53.

Plaintiff's list of witnesses filed.

30 (18) 9.9.53.

Plaintiff's list of documents filed.

(19) 23.9.53.

Plaintiff takes out 5 subpoenae.

(20) 1.10.53.

Plaintiff's additional list of documents filed.

(21) 2.10.53.

Plaintiff takes out 3 subpoenae.

No. 1  
Journal Entries  
11.12.52 to  
11.7.56—  
*Continued*

(22) 6.10.53.

*Trial*

Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.

2nd defendant files report that he is ill. *Vide* report filed. *Vide* proceedings.

Further trial on 3.12.53.

(Intd.) N. S.,  
A.D.J. 10

(23) 18.11.53.

2nd defendant's list of witnesses filed.

(24) 3.12.53.

*Further Trial*

Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.  
*Vide* proceedings. Judgment on 28.1.54.  
Documents P1 to P11, D1. to be filed.  
Call on 22.12.53 for documents.

(Intd.) N. S.,  
A.D.J. 20

(25) 22.12.53.

Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.  
Documents to be filed.

(Intd.) N. S.,  
A.D.J.

(26) 11.1.54.

Mr. E. Carthigeser for 2nd defendant moves to file letter dated 13.5.1952 marked 2DI, together with a list.  
File.

30

(Intd.) N. S.,  
A.D.J.

(27) 16.1.54.

Call case on 19.1.54 for Documents, PI to PII, DI.

(Intd.) N. S.,  
A.D.J.

(28) 19.1.54.

Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.  
Documents PI to PII and DI—on 26.1.54.

(Intd.) N. S.,  
A.D.J. 40

(29) 26.1.54.

Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.

Documents PI to PII, and DI. Handed over.

Judgment on 18.3.54.

No. 1  
Journal Entries  
11.12.52 to  
11.7.56—  
*Continued*

(30) 18.3.54.

(Intd.) N. S.,  
A.D.J.

*Judgment.*

10 Mr. Wickremaratne for plaintiff.  
Mr. Mapalagama for 1st defendant.  
Mr. Carthigeser for 2nd defendant.

Judgment delivered in open Court in the presence of proctor for plaintiff, Mr. Musthapa who takes notice on behalf of proctor for 1st defendant, and Mr. Taylor who takes notice on behalf of proctor for 2nd defendant.

Enter and issue *decree nisi* against 1st defendant for divorce as stated in judgment to be made absolute three months hence.

(Sgd.) N. SIVAGNANASUNDERAM,  
A.D.J.

20

(31) 3.4.54.

*Decree Nisi* entered.

A.D.J.

(32) 29.3.54.

Mr. Felix R. Pinto, proctor for 2nd defendant-appellant files :—

(1) Revocation papers revoking the proxy granted by the 2nd defendant-appellant to Mr. Carthigeser together with his proxy.

(2) Petition of Appeal together with three applications for type-written copies and Kachcheri Receipt No. 2321 of 29.1.54 for Rs. 75/-.

30 (3) Motion dispensing with security for costs of appeal and notice of Appeal.

(1) Accepted.

(2) Accepted and forward record to S.C. in due course.

(3) Allowed.

(Intd.) N. S.,  
A.D.J.



No. 1  
Journal Entries  
11.12.52 to  
11.7.56—  
Continued

(33) 8.5.54.

Messrs. Wickremaratne & Perera, proctors for plaintiff, file an application for execution of a Decree by issue of writ against the 2nd defendant's property, both movable and immovable, to realize a sum of Rs. 20,000/-.

A copy of this application has been sent to Mr. F. R. Pinto, proctor for 2nd defendant.

Inquiry on 7.6.54.

(Intd.) N. S.,  
A.D.J. 10

(34) 7.6.54.

*Inquiry*

Messrs. Wickremaratne & Perera for plaintiff.

Mr. Mapalagama for 1st defendant.

Mr. Pinto for 2nd defendant-appellant.

Mr. Adv. V. Jonklaas instructed for plaintiff, moves to withdraw the plaintiff's application for execution, reserving plaintiff's right to file fresh application.

Proctor for 2nd defendant-appellant consents.

Plaintiff's application is dismissed without costs.

(Intd.) N. S., 20  
A.D.J.

(35) 23.9.54.

Amount of fees required for appeal brief	..	..	Rs. 150/-
Amount in deposit	..	..	Rs. 75/-

Balance	..	..	..	..	Rs. 75/-
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The appellant is required to deposit the balance fees under section 2 (4) (b) of Civil Appellate Rules.

Notice proctor for appellant.

(Intd.) S. K. S.,  
Secretary. 30

(36) 6.10.54.

Balance fees Rs. 75/- deposited. *Vide* K.R. 334 of 6.10.54.

37) 3.12.54.

Paid by Requisition No. 969 :

W. M. Kuda Banda	..	..	Rs. 75.00	
W. N. D. H. Wilfred	..	..	„ 22.50	
G.A., C.P. ...	..	..	„ 52.50	150.00

Amount deposited	..	..	Rs. 150.00
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Balance	..	..	..	..	Nil
---------	----	----	----	----	-----

(Intd.) S. K. S., 40  
Secretary.

- (38) 13.12.54.  
Record together with 2 copies of the appeal briefs and register marked P10 forwarded to Registrar, S.C.  
(Intd.) S. K. S.,  
*Secretary.*
- (39) 11.4.56.  
The Registrar, Supreme Court, forwards record with S.C. order. The appeal has been dismissed with costs. Proctors and parties to note.  
10 (Intd.) .....  
*A.D.J.*
- (40) 24.4.56.  
Messrs. Wickramaratne & Perera, proctors for plaintiff, file an application for execution of a decree by issue of writ against the 2nd defendant's property (movable and immovable) to realise a sum of Rs. 20,000/- being damages due from him in terms of decree. Allowed.  
(Intd.) .....  
*A.D.J.*
- 20 (41) 2.5.56.  
The Divisional Transportation Superintendent, C.G.R., Colombo, requests that this record be forwarded to him as it is required on public grounds to take disciplinary action against an employee of his Department. He further states that the record will be returned after one month's time.  
Forward record, to be returned within two weeks.  
(Intd.) .....  
3.5.
- 30 (42) 3.5.56.  
Record forwarded to D.T.S., C.G.R., requesting him to return same within 2 weeks.
- (43) 28.5.56.  
D.T.S., C.G.R., returns record.
- (44) 31.5.56.  
Writ issued against the 2nd defendant. (Returnable 30.10.56).
- (45) 10.7.56.  
The Registrar, Supreme Court, requests that this record, documents and all connected papers, be forwarded to him early as the 2nd defendant-appellant's application for final leave to appeal to Her Majesty in Council has been allowed.  
40 Forward.  
(Intd.) .....  
*D.J.*
- (46) 11.7.56.  
Record and documents sent to Registrar, S.C.



5. Thereafter the 2nd defendant took the 1st defendant to Haputale to a house known as "Highcliffe" belonging to one Mrs. Wijeratne and there committed acts of adultery with the 1st defendant on the 2nd July, 1952, and for a few days thereafter.

No. 2  
Plaint of the  
Plaintiff  
11.12.52—  
Continued

6. At the end of August, 1952, the 2nd defendant brought the 1st defendant to Rexden Farm, Daulagala Road, Peradeniya, within the jurisdiction of this Court and there committed acts of adultery with the 1st defendant on the 1st, 2nd, 3rd and 4th of September, 1952.

10 7. By reason of the foregoing facts an action has accrued to plaintiff to sue the 1st defendant for a *divorce-a-vinculo-matrimonii* from her and to recover from the 2nd defendant damages sustained by plaintiff by reason of 2nd defendant's illicit sexual relations with the 1st defendant.

8. The plaintiff estimates at Rs. 20,000/- the damages sustained by him by reason of 2nd defendant's conduct and his sexual relations with the 1st defendant which have resulted in the disruption of plaintiff's family.

Wherefore the plaintiff prays :—

- 20 (1) for a *divorce-a-vinculo-matrimonii* from the 1st defendant on the grounds of her adultery with 2nd defendant and her desertion of plaintiff ;
- (2) for damages against the 2nd defendant in the said sum of Rs. 20,000/- sustained as aforesaid.
- (3) for the custody of plaintiff's children referred to in paragraph 2 ;
- (4) for costs of action against 2nd defendant and for such other relief as to the Court shall seem meet.

(Sgd.) WICKREMARATNE & PERERA,

30

*Proctors for Plaintiff.*

Documents filed with plaint.

Certified copy of Marriage Certificate dated 9th June, 1938.

No 2  
Plaint of the  
Plaintiff  
11.12.52—  
Continued

## (CERTIFICATE OF MARRIAGE—MARKED “ A ”)

## CEYLON

## Certificate of Marriage

9.3.53.  
5256

No. 2531

Central Province—Kandy District. Kandy Gravets and Gangawata Division.

	<i>Male Party</i>	<i>Female Party</i>
1. Name and Surname of Parties	Jinadasa Halwatura	Valin Karunawathie Pitigala
2. Age (in years)	Thirty years	Twenty-one years
3. Condition	Bachelor	Spinster
4. Race and Rank or Profession	Clerk, C.G.R., Sinhalese	Sinhalese
5. Residence	No. 313, Galle Road, Mount Lavinia	Austin House, Mapanawatura
6. Father's name and Surname	Halwatura Acharige Adirishamy	Pitigala Acharige Odirishamy
7. Rank or Profession of Father	Jeweller	Fitter and Mechanic
8. Name and Division of Registrar who issued Certificate	C. M. Agalawatta, Colombo (Mudaliyars)	T. W. de Silva, Kandy Gravets and Gangawata
9. Place of solemnization of Marriage	Austin House, Mapanawatura	

10. Married by me this 9th day of June, 1938. (Sgd.) T. W. De SILVA,  
Registrar (or )Minister.
11. This marriage was solemnized between us in the presence of } (Sgd.) Jinadasa Halwatura  
(Sgd.) Valin K. Pitigla } 30
12. (1) Signature of Witness } (Sgd.) D. C. Andiris  
(2) Name, Occupation and Residence of Witness } Delpe Charita Acharige Andiris, Assistant Superintendent of Surveys, Asgiriya, Kandy

13. (1) Signature of Witness } (Sgd.) S. Wimalaratne No. 2  
 (2) Name, Occupation and Residence of Witness } Somapala Wimalaratne, Lecturer, College of Indigenous Medicine, Kirillapone, Nugegoda Plaintiff 11.12.52—  
 Continued
14. Signed before me .. .. } (Sgd.) T. W. de Silva, Registrar (or) Minister

15. \*I certify that the above is a true copy of the Statement No. , furnished to me under Section 32, Marriage Registration Ordinance (Cap. 95), of a Marriage solemnized by

, Minister

Registrar.

10 \* To be filled up only when entering a marriage solemnized by a minister.

I, E.H. Seneviratne, Assistant Provincial Registrar of Marriages of the Kandy District, do hereby certify that the foregoing is a true copy of the Original Register of Marriages of the Registrar at Kandy Gravets and Gangawata in the Kandy District, filed in this office, and the same is granted on the application of Mr. J. Halwatura.

Assistant Provincial Registrar's Office,

(Sgd.) E. H. SENEVIRATNE,  
*Assistant Provincial Registrar.*

Kandy, 17.3.1953.



No. 3  
Answer of the  
2nd Defendant  
7.7.53

**No. 3**

**Answer of the 2nd Defendant**  
**IN THE DISTRICT COURT OF KANDY**

J. Halwatura of the C.G.R., Mirigama.....  
..... *Plaintiff*

*vs.*

- No. D. 754. 1. Valin Karunawathie Halwatura of Hantane in Kandy.
- 2. K. Christopher Perera, Station Master, C.G.R., Kurunegala..... *Defendants.* 10

On this 7th day of July, 1953.

The answer of the 2nd defendant abovenamed appearing by his proctor E. Carthigeser states as follows :—

1. This defendant is unaware of the averments contained in paragraphs 1 and 2 of the plaint and admits paragraph 3 of the plaint.

2. This defendant denies the averments contained in paragraphs 4, 5 and 6 of the plaint and puts the plaintiff to the proof thereof.

3. Further answering this defendant denies specifically the averments in paragraph 6 of the plaint and further states that on failure of proof thereof plaintiff cannot have and maintain this 20 action in this Court.

4. No cause of action has therefore accrued to plaintiff to sue this defendant for damages.

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

(Sgd.) E. CARTHIGESER,  
*Proctor for 2nd Defendant.*

No. 4  
Answer of the  
1st Defendant  
25.8.53

**No. 4**

**Answer of the 1st Defendant**  
**IN THE DISTRICT COURT OF KANDY**

Jinadasa Halwatura of Mirigama..... *Plaintiff*

*vs.*

- No. D. 754. 1. Mrs. Valin Halwatura of Kandy.
- 2. C. E. Perera of Kandy..... *Defendants.*

This 25th day of August, 1953.

The answer of the abovenamed 1st defendant appearing by her proctor Paulus Mapalagama states as follows :—

1. This defendant admits the averments in paragraph 1 and denies all and singular the other averments in the plaint save and except in so far as hereinafter may be admitted.

No. 4  
Answer of the  
1st Defendant  
25.8.53—  
*Continued*

2. Answering to paragraph 2 this defendant admits that the said five children were born of the union but denies that she lived happily with the plaintiff till December, 1951.

3. Further answering this defendant specifically denies the averments in paragraphs 4, 5, 6 and 7 of the plaint and states that she left the plaintiff because she was made to believe and had reason **10** to suspect that the plaintiff was not faithful to her. This defendant further states that the 2nd defendant was one of those instrumental in creating this impression in her mind.

4. This defendant is now satisfied that she has been misled and her suspicions unfounded and is prepared to live again with the plaintiff as his wife.

Wherefore this defendant prays :—

- (a) that plaintiff's action be dismissed,
- (b) for costs, and for such other and further relief as to this Court shall seem meet.

20

(Sgd.) P. MAPALAGAMA,  
*Proctor for 1st Defendant.*

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**No. 5**

No. 5  
Issues Framed

**Issues Framed**

D.C. Case No. D. 754.

6.10.53.

Jinadasa Halwatura of the Ceylon Government  
Railway, Mirigama..... *Plaintiff*

*vs.*

30

- 1. Valin Karunawathie Halwatura *nee* Pitigala presently of Hantane Estate, Kandy.
- 2. E. Christy Perera, Station Master, C.G.R., Beruwala..... *Defendants.*

Mr. Adv. Jonklaas instructed by Mr. Wickremaratne for plaintiff.

Mr. Adv. Wickremanayake instructed by Mr. Mapalagama for 1st defendant.

Mr. Adv. Jayasinghe instructed by Mr. Carthigeser for 2nd defendant.



No. 5  
Issues  
Framed—  
Continued

Plaintiff is present.  
1st defendant is present.  
2nd defendant is absent.

Mr. Adv. Jonklaas raises the following issues :—

(1) Did the 2nd defendant commit adultery with the 1st defendant on the dates and places specified in paras. 4, 5 and 6 of the plaint or any of them ?

(2) If so, is the plaintiff entitled to a decree for divorce against the 1st defendant on the ground of adultery with the 2nd defendant ?

(3) What damages is plaintiff entitled to recover from the 2nd defendant ?

(4) Is the plaintiff entitled to the custody of his 5 children, *i.e.* Asoka Suraweera Halwatura aged 12 years, Sujatha Halwatura aged 11 years, Ranjit Athula Halwatura aged 8 years, Lakshmi Premalatha Halwatura aged 6 years and Kanthi Daya Halwatura aged 4 years ?

Mr. Adv. Wickremanayake does not raise any issues.

Mr. Adv. Jayasinghe does not raise any issues.

I accept the issues.

(Sgd.) N. SIVAGNANASUNDERAM, 20  
A.D.J., 6.10.53

No. 6  
Plaintiff's  
Evidence  
J. Halwatura  
Examination

**No. 6**  
**Plaintiff's Evidence**  
**PLAINTIFF'S CASE**

J. Halwatura. Affirmed. 46 years. Officer-in-charge, Railway Station, Mirigama. I am the plaintiff. I married the 1st defendant on the 9th June, 1938, as would appear from the certificate of marriage filed of record marked "A." At the time of marriage I was stationed in Colombo. I took the 1st defendant and lived as husband and wife in Colombo. I have 5 children by the 1st defendant, *i.e.* Asoka, 30 aged 12 years, Sujatha, aged 11 years, Ranjit Athula, aged 8 years, Lakshmi Premalatha, aged 6 years, and Kanthi Daya, aged 4 years. The last child was born on 3.5.48. I went to Gintota in June, 1949, as Officer-in-Charge of the Gintota Railway Station. I occupied the Government quarters given to me together with the 1st defendant and my children. At that time the 2nd defendant was the Station Master, Ganewatte, about 150 miles away. In June, 1950, the 2nd defendant was also transferred to Gintota as Station Master. I then was his assistant at Gintota. The 2nd defendant at that time had

divorced his wife and was living with his children in the Government quarters given to him at Gintota. Our houses were 15 yards apart and I and the 2nd defendant used to visit each other. We got on well till the end of 1950. Till 1950 I got on very well with the 1st defendant who was a good wife and good mother to my children. On the 11th of December, 1951, I went for duty to the Railway Station, Gintota, at 11.15 a.m. I was on duty till 10 p.m. on that day. I went home for  $\frac{1}{2}$  an hour to my quarters to have my meals and then got back. At that time my wife was there and served me  
10 my meals. In the evening at about 5 p.m. my eldest son came to me and told me something. I immediately went to my quarters between 5 and 5.30 p.m. and found that the 1st defendant was not in the house. I also found that the 1st defendant's clothes and jewellery were missing. On inquiry I found that the 1st defendant has left the house between 1 and 2 p.m. taking with her clothes and jewellery alone. The 2nd defendant had gone on leave from 10.12.51 for 4 days. On inquiry I learned that the 1st defendant had gone to the house of her cousin Mrs. Amarasena. I made inquiries to find out whether the  
20 1st defendant had gone to Galle and learnt that she had not gone to Galle. I then informed her father who was in Kandy that the 1st defendant was missing. I then went on the same day (11th) at about 8.30 p.m. to the Galle Police Station and made a complaint that my wife is missing. When I came back to Gintota from Galle I learnt that the 2nd defendant was seen travelling in a bus on 12.12.51 to Galle. On the following day, *i.e.*, 12.12.51, I made another complaint to the Galle Police that I suspected that the 2nd defendant was responsible for the 1st defendant, my wife, leaving my house. Thereafter the 1st defendant did not return home. The 2nd defendant resumed duties at Gintota on 14.12.51. I made search for a number  
30 of days and finally about 3 months later sometime in February, 1952, I learnt that the 1st defendant was living in a Guest House known as "Kilarney" in Diyatalawa run by Mrs. Sharpe.

No. 6  
Plaintiff's  
Evidence.  
J. Halwatura  
Examination ---  
Continued

(Intd.) N. S.,  
A.D.J.

At this stage the Court adjourns for lunch.

Resumed after lunch.

J. Halwatura. Recalled. Affirmed.

*Further examined.* I discovered by my inquiries that the 1st  
40 defendant was living in the Guest House of Mrs. Sharpe under the name of Mrs. Wijesinghe. Mrs. Sharpe is a witness. Mrs. Sharpe has given me certain letters that she has received. I know the hand writing of the 2nd defendant well. I can identify his writing and signature. I have received from time to time several letters from

No. 6  
Plaintiff's  
Evidence  
J. Halwatura  
Examination—  
Continued

the 2nd defendant, official and personal. Shown letter dated 21st November, 1951, marked P1. P1 is in the handwriting of the 2nd defendant and it is signed by C. P. Wijesinghe and the address is Hikkaduwa, C/o. B. E. Perera, Hettigoda, Hikkaduwa. B. E. Perera is a checker who works under the 2nd defendant. Shown letter dated 5.12.51 marked P2. P2 is in the handwriting of the 2nd defendant. It is signed C. P. Wijesinghe. The signature is written over some other words. Shown letter dated 14.12.51 marked P3. P3 is in the handwriting of the 2nd defendant. It is signed C. P. Wijesinghe. Shown letter dated 14th September, 1952, marked P4. 10 It is signed E. C. Perera, Station Master, Gintota. The 1st defendant's brother gave me certain letters he had received from the 1st defendant. Shown letter dated 18th July, 1952, marked P5. It is in the handwriting of the 2nd defendant. Valin referred to in P5 is the 1st defendant, my wife. The 2nd defendant is a man who has married before. He had been divorced twice. The 2nd defendant is having 7 children. He is 53 years old. The 1st defendant's brother Pitigala gave me another letter that he had taken from the 1st defendant. I produce that letter marked P6 which is undated. It is in the handwriting of the 2nd defendant. From the time the 1st defendant left 20 I had to look after my 5 children by myself. Of my children 2 are girls, aged 12, and 7 years respectively. The youngest child Kanthi Daya was 2 years old when the 1st defendant left me. After the 1st defendant left me I had to request my mother to look after my children. It meant extra expenditure. Till the 2nd defendant came and interfered I was getting on very well with the 1st defendant who was very loyal to me.

J. Halwatura  
Cross-examina-  
tion

*Cross-examined* by Mr. Wickremanayake for 1st defendant. Nil.

*Cross-examined* by Mr. Jayasinghe for the 2nd defendant. I sent a letter in December, 1951, to the General Manager of Railways 30 making a complaint that I suspected that 2nd defendant has run away with the 1st defendant. Then 2nd defendant sent me a letter of demand in May, 1952. He made a demand for Rs. 15,000/- as damages for my making that complaint. I replied that I was not liable. I produce a copy of the reply sent to the 2nd defendant dated 30.5.52 marked D1. On the reverse side of D1 is a letter of demand. (D1 is handed over to Court by this witness from his own files). The 2nd defendant came and resumed duties at Gintota on 14.12.51. I have a list of the dates on which the 2nd defendant had taken leave and left Gintota from December, 1951, till August, 1952. 40 It was about 3 months after that the 1st defendant left me that I discovered her whereabouts. I made inquiries from her relatives in Galle. I made inquiries from her uncle Mr. Paulis Silva. I also inquired from another relative at Alutgama, i.e. Mr. Wijenarayana, I also went in search to various places, but I cannot remember them. On 12.12.51 I complained to the Galle Police that I suspected the

2nd defendant of having taken the 1st defendant. The 2nd defendant returned to Gintota on the night of 13.12.51. I also tried to follow the movements of the 2nd defendant so that I may be able to discover the whereabouts of my wife, but I could not successfully trail the 1st defendant. I was on leave for 2 months from 12th December, 1951, till 31.1.52. During this long leave I had to look after my children and also to search for the whereabouts of the 1st defendant.

No. 6  
Plaintiff's  
Evidence  
J. Halwatura  
Cross-examina-  
tion—  
Continued

*To Court.*

Q. After the 1st defendant left you and your children what was  
10 your state ?

A. I was like a mad man. I was not able to concentrate on my work. That is also why I took leave. My mother had one servant and looked after my children. My mother is 75 years old, and could not have looked after my children as well as a younger person could. I was not reconciled to the position that I had completely lost the 1st defendant. I continued to be anxious even after I resumed my work. I resumed duties and was posted at Mirigama, where I attended to my duties. The feeling of strain I had gradually decreased. By that time I learnt the whereabouts of  
20 the 1st defendant. That was about 2 or 3 months after she left me. After I learnt sometime in February that the 1st defendant was in the House of Mrs. Sharpe, I did not make any further inquiries. I did not go to meet the 1st defendant. I did not want to meet the 1st defendant because she had gone away with another man and I did not want to meet her. Before 1st defendant left me I say that she was worth her weight in gold to me, and after she went away she lost her weight. The 1st defendant's father was a motor mechanic. He is alive. During the time the 1st defendant lived with me her  
30 father got on well with us, but after the 1st defendant left me I cannot say whether he is well with her or offended with her. The 1st defendant's father has occasionally stayed with me after December, 1951, from time to time. He was with me from 24.9.53 till 2.10.53.

Q. Did the 1st defendant's father say anything about the 1st defendant during the time he stayed with you ?

(Mr. Jayasinghe states that he is putting this question as there has been condonation of 1st defendant by plaintiff).

I allow the question.

I cannot recollect as having said anything about the 1st defendant. I may have discussed the 1st defendant's conduct with her father  
40 occasionally, but I cannot remember or recollect any particular thing so discussed. The 1st defendant's father is about 63 years old.

Q. Did it occur to you that you should get reconciled with the 1st defendant in the interest of your children ?

No. 6  
Plaintiff's  
Evidence  
J. Halwatura  
Cross-examina-  
tion—  
Continued

A. It may have occurred to me, but I cannot remember.

Q. Did it occur to you that you should get back the 1st defendant for the sake of your children?

A. I did not want to do so in view of what she had done. The 1st defendant is not well to do. She does not own property. I learnt that the 1st defendant was living in Kandy. I cannot say whether she is even now living there. The 1st defendant's brother is a clerk in Hantane Estate, Kandy. I cannot say what salary he draws. He is not married. The 1st defendant has only one brother. I am not aware whether the 1st defendant has any cousins. She may be 10 having cousins, but I cannot tell the number. The 1st defendant has an uncle called Barnis Hamy. I visited him once a long time ago. After the 1st defendant left me I have not visited her. I know some of the children of Barnis Hamy. I cannot say whether Barnis Hamy has a son called Edwin. I have 5 files of correspondence relating to this case, which I have shown to my lawyers before the case was filed. I have showed some of the letters to my lawyers before this case was filed and some after the case was filed. Some letters were given to me by Mrs. Sharpe and some by the 1st defendant's brother. There are some more letters given to me by the 1st defendant's brother, 20 which I have not produced in this case.

Q. I put it to you that the 1st defendant has been coming to you and giving the letters to you.

A. It is not so.

J. Halwatura  
Re-examination

*Re-examined.* Shown letter dated 4.7.52 marked P7. P7 is written by the 1st defendant to her brother. "Aiya" referred to in P7 is myself. P7 is in the handwriting of the 1st defendant. I identified the writing. In P7 there is a reference to a letter attached which I produce marked P7(A). P7(A) is in the handwriting of the 2nd defendant. The 2nd defendant has promised in writing that he 30 would marry the 1st defendant as soon as she is free. Shown letter dated 14.4.52 marked P8. This letter has been written in 1952 and is in the handwriting of the 1st defendant. She has addressed it to her brother. I produce the list of the dates on which 2nd defendant was on leave between December, 1951, and August, 1952, marked P9.

(Sgd.) N. SIVAGNANASUNDERAM,

A.D.J., 6.10.53.

Mrs. Sharpe  
Examination

Mrs. Sharpe. Sworn. 67 years. Diyatalawa. I run a Guest House at Diyatalawa called "Kilarney." I found an advertisement in the papers in November, 1951, seeking accommodation for guests 40 and I replied to that advertisement. Then I received letter P1 in reply. I remember having received P1 which I produce, signed by

one C. P. Wijesinghe. The writer has given his address as C/o. B. E. Perera, Hettigoda, Hikkaduwa. I also received P2 from the writer which I produce. On 12.12.51 a man and a woman came to live in my house as the guests and one of them was the 1st defendant whom I identify. I can identify the man who came if I see him. The man who brought the 1st defendant used to come to my house to visit the 1st defendant sometimes once a month, sometimes twice a month. When the 1st defendant and the man came to my house they told me that they were the persons who had written to me. The 1st defendant and the man gave their names as Mr. and Mrs. Wijesinghe, by which I gave them one double room which they occupied together and for all purposes they moved together. I would not have accommodated them if I had known that they were not husband and wife. Shown plaintiff. It is not the plaintiff who came with his wife. The 1st defendant and the man were very affectionate towards each other and moved so. The 1st defendant lived in my house for a period of 8 months till August, 1952, and during this period the man who brought her there used to visit her off and on. It was the man who paid all the bills. After the 1st defendant left my house I received letter P4. I was puzzled about this identity, but I compared P4 with the writing in P1 and P2 and other letters and found that the writer of P4 is the person who has signed himself as E. C. Perera, and is the same person who has signed as C. P. Wijesinghe in P1 to P3 and other letters. I was annoyed when I received P4. In P4 he has requested me not to say that it was he who brought the 1st defendant to my house. I handed all the letters written to me by that man who called himself as Wijesinghe and later Perera to the plaintiff. I can identify him if I see him.

*Cross-examined* by 1st defendant. Nil.

30 *Cross-examined* by Mr. Jayasinghe for 2nd defendant.

I can rely on my events and dates. The 1st defendant came on 12.12.51 to "Kilarney" and left in August, 1952. Sometime in the latter part of August. During this period the man used to come and take the 1st defendant away for a day and bring her back. Except for these days outgoings the 1st defendant was continually in "Kilarney". Sometimes the man used to take the 1st defendant for a couple of days out. The man would come even to my house and say that the Police are after her and would take her away. I suspected that there was something wrong, but later I knew for certain that something was wrong. As soon as I found that my suspicions were well founded, I told the 1st defendant that she should leave my house immediately. Then the 1st defendant asked me where she was to go as she had no home. I did not complain to the Police. I did not want to eject her summarily as the 1st defendant had no place to go. She stayed thereafter for one month and left in

No. 6  
Plaintiff's  
Evidence  
Mrs. Sharpe  
Examination—  
*Continued*

Mrs. Sharpe  
Cross-  
examination

No 6  
Plaintiff's  
Evidence  
Mrs. Sharpe  
Cross-  
examination—  
Continued

August, 1952. During the last month the man who brought the 1st defendant came in the early part of the month and once again in the latter part of the month. When the man came there during the 1st part of August I told him that I cannot have the 1st defendant in my house and to take her away. Then the man did not say anything. When the man took 1st defendant he told me that 1st defendant was tired of staying at "Kilarney" and that he was taking her to her aunt's. I had told the 1st defendant that she must find accommodation elsewhere. I did not want to speak to the man. It was the 1st defendant who used to bring the money due to me. I was aware 10 that it was the man who gave the money to the 1st defendant to be given to me. I relied on the promise of the letter P1 that my dues will be paid.

*Re-examined.* Nil.

(Sgd.) N. SIVAGNANASUNDERAM,  
A.D.J., 6.10.53.

J. S. Mendis  
Examination

J. Solomon Mendis. Sworn. 60 years. Hotel Proprietor, Haputale. I run a hotel called "Highcliffe" at Haputale. I produce my Visitors' Book marked P10—page 37 under date 1st July, 1952. There is a record of one Mr. and Mrs. C. P. Wijesinghe 20 having stayed in my hotel from 1.7.52. P10 has been signed by the man who called himself Wijesinghe. I identify the 1st defendant as the lady who came with the man as Wijesinghe and who stayed in the hotel from 1.7.52 till 18.7.52. The man stayed till 4.7.52. I thought that the man and the 1st defendant were husband and wife. I gave them one room which they occupied. In P10 the address given is Hettigoda, Hikkaduwa. I can identify the man who came with the 1st defendant if I see him.

*Cross-examined* by 1st defendant. Nil.

*Cross-examined* by 2nd defendant. Nil.

30

(Sgd.) N. SIVAGNANASUNDERAM,  
A.D.J., 6.10.53.

H. C. Wijeratne  
Examination

H. C. Wijeratne. Sworn. 47 years. Business man, Peradeniya. I knew E. C. Perera the 2nd defendant when he was Station Master, Peradeniya. From the 1st to the 4th September, 1952, E. C. Perera came and stayed in my firm with a certain woman. I identify the woman as the 1st defendant. Both occupied one room. Mr. Perera told me that the 1st defendant was his wife.

*Cross-examined* by 1st defendant. Nil.

*Cross-examined* by 2nd defendant. Nil.

40

(Sgd.) N. SIVAGNANASUNDERAM,  
A.D.J., 6.10.53

M. Malawarachi. Affirmed. 26 years. Clerk attached to the Urban Council, Avissawella. The Resthouse at Avissawella is under the control of the Urban Council. On 11.12.51 there is an entry in the register of visitors in the Resthouse that one Mr. and Mrs. C. P. Wijesinghe of Colombo spent an hour in the Resthouse between 8.30 and 9 p.m. I produce page 688 marked P11, under date 11th and 12th December, 1951. I cannot identify these two persons.

No. 6  
Plaintiff's  
Evidence  
M. Malawarachi  
Examination

*Cross-examined* by 1st defendant. Nil.

*Cross-examined* by 2nd defendant. Nil.

10 (Sgd.) N. SIVAGNANASUNDERAM,  
A.D.J., 6.10.53.

Plaintiff's case closed leading in evidence P1 to P11. Mr. Adv. Jonklaas states that since the 2nd defendant is absent in Court today and there is an application for the postponement of the case on his behalf, he moves to recall his witnesses Mrs. Sharpe and Mr. Mendis to have them to identify the 2nd defendant if he denies that he stayed as stated in their evidence. He closes his case leading in evidence P1 to P11 reserving his right to call these witnesses if necessary.

20 (Sgd.) N. SIVAGNANASUNDERAM,  
A.D.J., 6.10.53.

Mr. Adv. Wickremanayake states that his client has filed an answer, but in view of the evidence placed before him in this case by plaintiff he does not wish to call any evidence on behalf of the 1st defendant.

Mr. Adv. Jayasinghe for 2nd defendant states that in view of the Medical Report filed that the 2nd defendant is ill that he be given a date to lead evidence for the 2nd defendant. I allow the application,

30 Mr. Jonklaas consents on terms, *i.e.* that a sum of Rs. 75/- is to be prepaid on or before the next date to enable him to secure the attendance of witnesses Mrs. Sharpe and Mr. Mendis on the next date of trial.

Further trial on 3.12.53.

2nd defendant to pay Rs. 75/- as costs to plaintiff.

(Sgd.) N. SIVAGNANASUNDERAM,  
A.D.J., 6.10.53.



No. 6  
Plaintiff's  
Evidence—  
Continued

3.12.53.

Mr. Adv. Jonklaas for plaintiff.

Mr. Adv. Wickremaratne for 1st defendant.

Mr. Adv. Fernandopulle with Mr. Adv. Jayasinghe for 2nd defendant.

Mrs. Sharpe witness for plaintiff is present in Court and identifies the 2nd defendant as the person who called himself C. P. Wijesinghe and brought the 1st defendant to her establishment at Diyatalawa as a guest and resided there on the material dates spoken to in her evidence. 10

Mr. Mendis witness for plaintiff is also present and identifies the 2nd defendant as the person who brought the 1st defendant to Highcliffe at Haputale and stayed in his establishment on the dates spoken to by him in his evidence and also as the person who signed the Visitors' Book P10 as Mrs. Wijesinghe and Mr. C. P. Wijesinghe.

Mr. Adv. Fernandopulle states that the statement made by both witnesses, Mrs. Sharpe and Mr. Mendis, are correct.

Mr. Adv. Wickremanayake for the 1st defendant closes his case.

No. 7  
2nd Defendant's  
Evidence  
Mrs. V. Hal-  
watura  
Examination

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**No. 7**

**2nd Defendant's Evidence**

20

**2ND DEFENDANT'S CASE**

Mrs. V. Halwatura. Affirmed. 35 years. Wife of J. Halwatura, the plaintiff, Kandy. I am the 1st defendant. I am the wife of plaintiff. I was living in Gintota in 1951. The 2nd defendant was the Station Master at Gintota. My husband was a booking clerk at the Gintota Railway Station. My husband and I had known 2nd defendant for 1½ years at that time. We were occupying Government Quarters at Gintota. During that period the plaintiff and I used to visit the 2nd defendant who also used to return the visit. The 2nd defendant has not taken meals in our house. Whenever we visit 30 the 2nd defendant we had taken tea but not any meals. The 2nd defendant even used to visit me in my house at Gintota in the absence of my husband and would go away when the plaintiff came in. I never told my husband about these visits by 2nd defendant. 2nd defendant knew at what times my husband would be off duty and would go away secretly before my husband came home. I left my home on 11.12.51. The plaintiff did not know anything about the intimacy between me and the 2nd defendant and therefore he did not tax me with my conduct. Till I left home in December, 1951,

the plaintiff and I were living very happily. I say that my husband did not know anything about this intimacy between me and the 2nd defendant.

No. 7  
2nd Defendant's  
Evidence  
Mrs. V. Hal-  
watura  
Examination—  
Continued

Q. Was there any trouble between you and your husband ?

A. At this time 2nd defendant brought and showed me a letter said to have been written by a lady called Soma to my husband.

I cannot say how long before December, 1951, 2nd defendant showed me this letter. I know that he brought that letter before 11.12.51. That letter gave me the impression that my husband had  
10 something to do with that lady called Soma. 2nd defendant also brought a telegram, when my husband was not in the house and showed it to me. That telegram was a message by the said Soma to my husband making an appointment with him to meet her in Colombo.

Q. Evidently this was to poison your mind against your husband?

A. Yes.

Till that time I was living quite happily with my husband. I was also dutiful towards my husband. During this time I had sexual relations with my husband. 2nd defendant started coming to see me  
20 during my husband's absence. 2nd defendant used to come home converse with me for a long time and ask me to go away with him leaving my home. He professed to love me. I did not inform my husband about these visits or chats of the 2nd defendant. The 2nd defendant had given me a telegram said to have been sent by Soma and asked me not to show it to my husband, but I showed it to my husband. That was before December, 1951. My husband then told me that because he and I are getting on well that some one is trying to break us apart. The 2nd defendant told me that if I  
30 did not go with him he would harass me and cause my husband to be dismissed from his office. It is to prevent this happening that I went with the 2nd defendant. I did not tell my husband that the 2nd defendant was asking me to go away with him.

Q. Did you like the idea of going away with the 2nd defendant ?

A. No, but because 2nd defendant had uttered certain threats I went away with him through fear.

I had not informed my husband about the threats made by the 2nd defendant.

Q. Did you not think it a duty on your part to inform your husband about these threats ?

40 A. I did not tell my hisband through fear that there may be trouble between the 2nd defendant and my husband if I told my husband about these matters.

No. 7  
2nd Defendant's  
Evidence  
Mrs. V. Hal-  
watura  
Examination—  
Continued

The 2nd defendant came and told me that my husband had received a letter from one Soma at his office. I did not question my husband about this. I do not know whether my husband questioned 2nd defendant about that telegram sent by Soma. I do not think that my husband will question the 2nd defendant about the letter given to me said to have been written by Soma.

Q. You and your husband did not do anything about that letter or telegram ?

A. Although I showed the telegram I did not find fault with my husband as he was a good man. 10

On 11.12.51, 2nd defendant and I left my home. I went with the 2nd defendant as I feared that he would harm me and my husband.

Q. You were prepared to sacrifice your virtue to save your husband ?

A. Yes.

I filed an answer in this case.

Q. In your answer have you averred that you did not live happily with your husband till December, 1951 ?

A. I lived happily with him.

Q. It is stated in para 3 of your answer that you left plaintiff 20 because you were made to believe and had reason to suspect that plaintiff was not faithful to you. Is it correct to say so ?

A. No.

I gave instructions to my proctor in this case. To my knowledge plaintiff never saw my proctor. When I was living at Gintota we had a servant woman called Jane. She would be about 22 or 23 years old today. We had brought up Jane from her young age. She had been adopted by my father and brought up. Jane is still a servant in my husband's house. There was no quarrel whatsoever between me and Jane at any time. 30

Q. Since it is averred in your answer that you did not live happily till December, 1951, can you state the reason why you were not living happily with your husband ?

A. Because of that letter said to have been written by Soma to my husband my feelings towards my husband were strained.

Q. Independently of what the 2nd defendant made you believe, had you reason to believe that your husband was unfaithful to you ?

A. No, I had no reason to believe that my husband was unfaithful to me except for the reason 2nd defendant made me believe so.

Q. Were you unhappy because you suspected intimacy between plaintiff and Jane ?

A. No, not at all. I did not go because of such a belief.

My husband was not aware that there was any intimacy between me and the 2nd defendant.

Q. You have stated in your answer that you are now satisfied that you have been misled and your suspicions unfounded and that you are willing to live again with plaintiff as his wife. Is it correct to say so ?

10 A. Yes. I am willing to live with my husband if he will take me

Q. Has plaintiff indicated to you in any manner that he is willing to take you back for the sake of your children ?

A. I only saw him on the last date of trial of this case. My husband did not give me any such indication.

Till August, 1952, I was living in the house of Mrs. Sharpe. The 2nd defendant took me first to Mrs. Sharpe's establishment and later took me to Haputale and lived with me in the hotel of Mr. Mendis. After I left 2nd defendant in 1952, I went and lived with my brother, Pitigala, in Hantane Estate, Kandy. I do not know whether my  
30 husband was transferred from Gintota to Mirigama. My children, I believe, are with my husband. My children did not come to see me when I was with my brother at Hantane Estate. I had seen my children in the house of my uncle Mr. Alwis in Kandy sometime last year. I saw them only once. My father and my brother are more affectionate towards my husband than towards me. My father has come to Hantane Estate. My father said that he was not staying at any fixed place. I cannot say whether my father was living with the plaintiff after this case was filed. I cannot say whether my father was living with plaintiff till 3.10.52. My father did not attend Court on  
20 the last date of trial on 6.10.53. My brother was present in Court. I went back to my brother's house after the last date of trial. I did not see my brother talking to plaintiff in Court. In my presence the plaintiff did not talk to my brother. My brother never told me that he had spoken to plaintiff at any time. 2nd defendant has written certain letters to me. I received those letters when I was in the house of Mrs. Sharpe. I had those letters with me when I left Mrs. Sharpe's house.

Q. Did you not think that those letters would be against you in the event of a divorce action being filed ?

40 A. I did not know.

No. 7  
2nd Defendant's  
Evidence  
Mrs. V. Hal-  
watura  
Examination—  
Continued

*To Court :*

*Q.* Why have you preserved those letters ?

*A.* I just kept them. They were in my box. I told my brother Pitigala that I had such letters with me. When my brother asked for those letters I gave them to him. He did not tell me that those letters would be useful. I gave them to him of my own accord. I do not know what has happened to those letters. I do not know whether any of these letters given by me to my brother have been produced in this case. I have been living with my brother after the last date of trial. I was present in Court. I understand English to some 10 extent. I do not know that some letters written to me by 2nd defend-  
ant were produced in the case. When I was at home I discussed with my brother the evidence led in the case. I cannot say what has happened to those letters I gave to my brother. I had never spoken to plaintiff and I never told him that I was willing to go and live with him for the sake of my children. I have not even told that to my brother, or to my father. I have not discussed with my father what my future is going to be.

*Q.* Is it correct to say that your father would be concerned about your future ?

20

*A.* I think so, for he would do so as a father. My brother never told me that plaintiff was willing to take me back. My brother is an assistant clerk in the Hantane Estate. I do not know what salary he draws. He must be drawing a small salary. My brother has been supporting me ever since I lived with him. My father does not give me any money after I left plaintiff. No application has been made in this case by my lawyers for costs or for alimony *pendente lite*. The prayer in the answer is for dismissal of the action.

Mrs. V. Hal-  
watura  
Cross-  
examination

*Cross-examined* by Mr. Wickremanayake.

The 2nd defendant showed me certain letters alleged to have 30 been sent to my husband by Soma. The 2nd defendant also represented to me that my husband was on intimate terms with Soma. I do not know who that Soma is. I do not know whether such a person known as Soma exists. I did not tell my husband when I showed him the telegram that it was the 2nd defendant who gave them to me. I only questioned my husband about those letters and telegrams without telling him as to how I came by them.

*Cross-examined* by Mr. Adv. Jonklaas.

The 2nd defendant informed me 2 days previously before he took me away that he was taking me away. I did not know before that 40 whether he was making any arrangements for taking me away. I say that the 2nd defendant has made misrepresentations to me and poisoned my mind against my husband. I know now that the story

he has told me are false. After the 2nd defendant took me I had sexual intercourse with him, on several occasions. After I went away with 2nd defendant I learnt that my brother Pitigala was angry with me for leaving plaintiff. I also asked my brother to assist me to obtain a divorce from the plaintiff because 2nd defendant asked me to have that marriage annulled so that 2nd defendant may marry me. The 2nd defendant kept me concealed at Diyatalawa for some time and made me take precautions that no one saw me. The 2nd defendant's name is C. E. Perera. Although 2nd defendant's name is C. E. Perera, he and I lived in the name of Mr. and Mrs. C. P. Wijesinghe in Diyatalawa and Haputale. Any letters sent to me or to 2nd defendant were to be sent C/o B. E. Perera, Hettigoda, Kikkaduwa. I know that this B. E. Perera is a checker working under the 2nd defendant. Shown letter dated 4.7.52, P7. I wrote P7 to my brother Pitigala. In P7 I have not given the address as the 2nd defendant has asked me not to give any address. In P7 I have written to my brother asking him to write a reply to me C/o B. E. Perera. P7 read out. The person referred to in P7 as "Aiya" is the plaintiff. I produce a writing marked P7A which is attached to P7. P7A is in the handwriting of 2nd defendant. In P7A the 2nd defendant assures that he would marry me when I am free to marry him. In P7 I have written to my brother asking him to hurry up with the case so that I may marry 2nd defendant. I enclosed P7A with P7 to my brother so that my brother may speed up the case which I wanted him to annul my marriage.

At this stage the Court adjourns for lunch.

(Intd.) N. S., A.D.J.  
13.12.53.

Resumed after lunch.

30 Mrs. V. Halwatura. Further examined by Mr. Jonklaas.

Shown P8. I wrote letter P8 to my brother. In P8 I have asked my brother not to get angry because I am writing to him again and I beg of him to meet 2nd defendant so that he might come to know how good and loving the 2nd defendant is, and that 2nd defendant is thousand times better than plaintiff. I have also stated in P8 that I have no way of getting married to 2nd defendant without my brother's help. I have also stated in P8 that 2nd defendant is not a person who will keep me as a mistress for a few days and then leave me. From Mrs. Sharpe's house 2nd defendant brought me to the house of Mr. Wijesinghe at Peradeniya, where I stayed with him a few days. Thereafter 2nd defendant gave me up. That was about September, 1952. The 2nd defendant used to write to me thereafter but never came to see me again. He did not send me any money

No. 7  
2nd Defendant's  
Evidence  
Mrs. V. Hal-  
watura  
Cross-  
examination—  
Continued

No. 7  
2nd Defendant's  
Evidence  
Mrs. V. Hal-  
watura  
Cross-  
examination—  
Continued  
Mrs. V. Hal-  
watura  
Re-  
examination

thereafter to support me. Thereafter I had to seek refuge with my brother. The only place where I could go for shelter was to my brother, Pitigala. My brother has stood by me in my present state. My brother was very angry with me when I left plaintiff, but when I went to him he took me into his house.

*Re-examined.* I wanted my brother to assist me to get a divorce from the plaintiff. I believed that 2nd defendant would marry me and therefore sent P7A to my brother and wanted him to assist me to obtain a divorce by filing action against him. I do not know how the letter that I gave to my brother came to be in the hands of plaintiff. 10 I admit having written in P8 that 2nd defendant was a thousand times better than plaintiff. At the time I wrote so it was true.

*Q.* Why did you write in that way saying that the 2nd defendant was so much better than plaintiff ?

*A.* I wrote so at the instance of 2nd defendant. It was not correct to say that I was unhappy with my husband.

I do not have a poor opinion of my husband because I suspect him of infidelity.

(Sgd.) N. SIVAGNANASUNDERAM,

*A.D.J.*

20

3.12.53.

M. J. Pitigala  
Examination

M. J. Pitigala. Affirmed. 30 years. Assistant Clerk, Hantane Estate, Kandy. I am the brother of the 1st defendant. The plaintiff is 1st defendant's husband. I know that at one time plaintiff and defendant lived at Gintota. I learnt sometime later that 1st defendant had gone away with the 2nd defendant. I knew from a cousin of mine named Dharmasena. I knew that the 1st defendant had gone away with 2nd defendant sometime in March or April, 1952. Plaintiff never wrote to me or spoke to me. I was not angry with plaintiff at that time. My father used to live sometimes with plaintiff and 30 1st defendant at Gintota. After 1st defendant went away with 2nd defendant my father stayed with plaintiff. That was before I learnt the whereabouts of the 1st defendant. After March or April, 1952, plaintiff and I did not fall out. I was not angry with 1st defendant. When I knew that 1st defendant had gone away with 2nd defendant I detested as to what she has done. Sometime later I knew that plaintiff was transferred from Gintota to Mirigama. Plaintiff had his 5 children with him at Mirigama. My father lived with plaintiff at Mirigama. My father stays off and on now with plaintiff. I cannot say whether my father was with the plaintiff 2 or 3 days 40 before 6.10.53, the last date of trial. The 1st defendant came and lived with me after October, 1952, at Hantane Estate. I took her to

live with me in my house. She did not discuss her future with me. I did not advise her what she should do for the future. I thought I would keep my sister with me and maintain her as long as I can. I did not discuss with her the advisability of filing a divorce action. Before she came to live with me 1st defendant wrote to me asking me to help her so that she can live with me and my father. 1st defendant did not write to me or send to me the writing said to have been given to her by the 2nd defendant and ask me to assist her to file a case. Shown P7 and P7A. I cannot remember having  
 10 received letter P7 with P7A by post from my sister. 1st defendant gave me several letters said to have been written to her by the 2nd defendant. I cannot remember having received letter P7 by post. 1st defendant has written letters to me after she went away with the 2nd defendant. 1st defendant never sent to me the letters received by her from the 2nd defendant.

No. 7  
 2nd Defendant's  
 Evidence  
 M. J. Pitigala  
 Examination—  
 Continued

Q. Did the letters written by 2nd defendant to 1st defendant reach your hands in any manner ?

A. Yes, I took some letters from 1st defendant.

I knew that the letters contained material proof that 1st  
 20 defendant and 2nd defendant lived together as man and mistress. Even though 1st defendant came and lived with me I had not given up detesting her.

Q. Were you willing to help her to file a case or to defend her if a case is filed against her ?

A. I was willing at any time to help her to punish the man who had brought her into this trouble.

My father never came from Mirigama to see me and my sister the 1st defendant at Hantane. To my knowledge my father has not come to my house after 1st defendant came to live with me.  
 30 Plaintiff never wrote to me or spoke to me after 1st defendant came to live with me. Whenever I met the plaintiff I have spoken to him. When plaintiff was in Kandy on 6.10.53 on the last date of this case I had spoken to him. I cannot say whether he has come to Kandy before that date. I may have met plaintiff before 6.10.53, but I am not so definite as my having met him on 6.10.53. I may have met him once or twice before 6.10.53, I met plaintiff casually at my uncle's place. My uncle is Thomas Silva who lives at Castle Street, Kandy. Plaintiff has never come and seen me in my estate. Whenever I met plaintiff I only asked him how he was getting on and  
 40 that is all.

Q. Can you say how the letters that you took from your sister's hands came to be in plaintiff's hand ?

A. I gave those letters to him.

I gave those letters some time ago.



No. 7  
2nd Defendant's  
Evidence  
M. J. Pitigala  
Cross-  
examination

*Cross-examined* by Adv. Wickremanayake. Nil.

*Cross-examined* by Adv. Jonklaas.

My father is angry with my sister for her conduct. My uncle Thomas Silva is also angry with my sister. I have a strong desire to punish the man who has brought my sister into this trouble. The plaintiff asked me to give him any letters or any evidence, so I gave the letters to him. My sister wrote to me after March or April, 1952. She wanted me to meet the 2nd defendant. She wanted me to become friends with the 2nd defendant. She also wanted me to induce my father to take her to the 2nd defendant. She also wanted me to assist her to make her free so that she could marry the 2nd defendant. Shown P7. It may be that I may have received letter P7 from 1st defendant. In P7 the person referred to as "Aiya" is the plaintiff. I was aware from the letters 1st defendant wrote to me that 2nd defendant had come to Kandy Railway Station to meet me several times, but I refused to meet him and never went to meet him. Shown P8. In P8 my sister has written to me informing that 2nd defendant had come to the Kandy Railway Station to meet me, that I had failed to meet him and she finds fault with me for not having met the 2nd defendant. In P7 the 1st defendant has written asking me to show the "promise" to my father. By "promise" she refers to P7A. Now I remember having received P7 with P7A.

*Re-examined.* Nil.

(Intd.) N. S.,  
A.D.J., 3.12.53.

2nd defendant's case closed, leading in evidence D1.

No. 8  
Addresses to  
Court

### No. 8

#### Addresses to Court

Mr. Adv. Fernandopulle addresses Court.

Although there is an issue on damages there is no evidence by plaintiff giving the quantum of damages he suffered. Plaintiff has not specifically stated in his evidence that he is asking for damages. Damages should not be awarded in this case because there is no evidence by plaintiff that he has suffered any damage.

He cites 11 C.L.W., page 49, John *vs.* Wace de Neise. Since plaintiff has failed to place specific evidence on the amount of damages he has suffered, it must be taken that plaintiff is not asking for damages. He cites 2 Weerakoon Reports, page 47, Keeraman *vs.*

Marikar. He cites 27 N.L.R., page 289, De Silva vs. De Silva. Damages is compensatory and not punitive. He cites section 601 of the C.P.C. 1st defendant has given letters written to her by 2nd defendant to plaintiff, acting in collusion. This would be "presenting and prosecuting in collusion" within the meaning of Section 601 of C.P.C. He cites Raydon on Law and Divorce, page 136. He cites One Searl Report, pages 227 and 230, Farmer vs. Farmer. He cites 1946 Probate, page 115. He cites Hume vs. Sharpe, South African Law Report, Vol. 4 of 1944, page 825.

No. 8  
Addresses to  
Court—  
Continued

10 Mr. Adv. Wickremanayake addresses Court.

1st defendant's answer took up the only position that could have been taken. If the averments in the plaint were denied the 1st defendant would have to perjure herself to give evidence in this case.

Mr. Adv. Jonklaas addresses Court.

20 Failure of 2nd defendant to give evidence. No evidence of collusion at all placed by 2nd defendant in this case. On the point of connivance letter P1. All letters by 2nd defendant sent under a false name. His letters to Mrs. Sharpe emphasises to keep 1st defendant alone without any one seeing her. P4—2nd defendant writes to Mrs. Sharpe asking her to give false evidence. *Collusion*: If 1st defendant was colluding with the plaintiff there would have been no answer. In the answer adultery is not admitted. He cites Raydon on Law and Divorce, page 131. Act of 2nd defendant using his official position to steal his subordinate's wife. He cites 54 N.L.R. page 538—Deen vs. Anthony.

Judgment on 28.1.54.

(Sgd.) N. SIVAGNANASUNDERAM,  
A.D.J., 3.12.53

30 Documents P1 to P11, D1 to be filed.

## No. 9

### Judgment of the District Court

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18.3.54

18.3.54.

### JUDGMENT

Plaintiff in this action sues his wife the 1st defendant and the 2nd defendant for a decree for a *divorce-a-vinculo-matrimonii* against the 1st defendant on the grounds of adultery with the 2nd defendant and her desertion of plaintiff, for damages against the 2nd defendant in a sum of Rs. 20,000/- and for the custody of plaintiff's children.

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*Continued*

First defendant filed answer denying the averments in the plaint of adultery and further averred that she was not living happily with plaintiff till December, 1951, that she left plaintiff "because she was made to believe and had reason to suspect that plaintiff was not faithful to her, that 2nd defendant was one of those instrumental in creating this impression on her mind, that the 1st defendant is now satisfied that she had been misled and her suspicions unfounded and is prepared to live again with the plaintiff as his wife." Second defendant filed answer denying the averments in the plaint of adultery and put the plaintiff to the proof thereof. 10

The case for the plaintiff rests on the evidence of the plaintiff himself who was the Officer-in-Charge of the Railway Station at Gintota, of Mrs. Sharpe, the Manager of a Guest House called "Kilarney" at Diyatalawa, Solomon Mendis, the Proprietor of the Hotel "Highcliffe" at Haputale, H. C. Wijeratne, a businessman of Peradeniya and Malawarachi, clerk of the Urban Council, Avissawella, and documents P1 to P11. It would appear that the plaintiff Halwatura married 1st defendant on 9.6.38 and has 5 children by her, the last child having been born on 3.5.48. In June, 1949, he assumed duties as Officer-in-Charge of the Railway Station at Gintota and 20 lived in the Government quarters with his wife the 1st defendant and his children. The 2nd defendant assumed duties as Station Master, Gintota, in June, 1950, and was the superior Officer of the plaintiff. Second defendant had at that time obtained a divorce from his wife and was living with his children at Gintota in Government quarters situated about 15 yards away from plaintiff's quarters. Both families were on visiting terms and got on well till the end of 1950. Plaintiff has stated that 1st defendant was a good wife and a good mother to his children. On 11.12.51 plaintiff was on duty at the Railway Station at Gintota from 11.15 a.m. to 10 p.m. and when he went home 30 to have his noon meals his wife the 1st defendant was in the house and served him his meals. At about 5 p.m. on that day plaintiff's eldest son gave some information to plaintiff who immediately went to his quarters between 5 and 5.30 p.m. and found 1st defendant missing from the house and also her clothes and jewellery missing. On inquiry he learnt that 1st defendant had left the house between 1 and 2 p.m. on that day taking with her, her clothes and jewellery. He made further inquiries and being unable to trace her, informed 1st defendant's father and also made a complaint to the Galle Police that his wife was missing. Meanwhile the 2nd defendant was on 40 leave from 10.12.51 for a period of 4 days. Plaintiff learnt that on 12.12.51 the 2nd defendant was seen travelling in a bus to Galle and made another complaint to the Galle Police on that day that he suspected that 2nd defendant was responsible for 1st defendant leaving plaintiff. Thereafter 1st defendant did not come back to plaintiff. The 2nd defendant resumed duties at Gintota after his

leave on 14.12.51. Plaintiff continued his search for 1st defendant and 3 months later in February, 1952, learnt that 1st defendant was living in the Guest House "Kilarney" run by Mrs. Sharpe in Diyatalawa. He appears to have met Mrs. Sharpe and obtained from her certain letters produced in this case which have been written in the handwriting of the 2nd defendant.

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The first letter produced is P1 dated 21.11.51 written in the handwriting of the 2nd defendant and signed by him as C. P. Wijesinghe, to Mrs. Sharpe in which 2nd defendant states that "his wife is ill after a miscarriage and wants a change for a few months. I shall bring her immediately . . . She is a very shy person and this is the first time she is going to be out alone. . . . I shall send you the money in advance when I decide to bring her." The next letter is P2 dated 5.12.51 addressed to Mrs. Sharpe written in the handwriting of the 2nd defendant and signed C. P. Wijesinghe in which he states that he will bring "my wife there on Wednesday morning and I shall return on Thursday morning. This is the first time she is out of house." The next letter is P3 dated 14.12.51 written in the handwriting of the 2nd defendant and signed C. P. Wijesinghe to Mrs. Sharpe, in which he states that "As things stand here she may have to stay with you for 7 or 8 months . . . Kindly see that no one turns up to see her. Should anyone come please turn them away saying that there is no such lady in your house." It is to be noted that letters P1, P2 and P3 have been written from Hikkaduwa and that in letters P1 and P2 the 2nd defendant has given his address as C. P. Wijesinghe C/o. B. E. Perera, Hettigoda, Hikkaduwa. Plaintiff has stated in his evidence that B. E. Perera is a checker in the Ceylon Government Railway and worked under the 2nd defendant at that time. P4 dated 14.9.52 is a letter written to Mrs. Sharpe by 2nd defendant and signed by him with his own name in which he complains to Mrs. Sharpe "how well he had loved her what great sacrifices he made for her, that the disappointment is terrible, and asking Mrs. Sharpe if she sympathizes with him, to tell anyone who comes for information that it was her brother who brought her there and paid for her board. He further continues and states that "I, of course, will admit that I went in search of her and gave her a promise of marriage long after she left her husband as my name was in vain dragged into it. But I deny having lived with her. That is in case anything pops up now that she has gone back to him."

40 Plaintiff had received letters from 1st defendant's brother to whom 1st defendant had written those letters. Letter P5 dated 18.7.52 is a promise of marriage signed by 2nd defendant in his own name and reads as follows:—"This is indeed a sincere promise that I am prepared to get married to dear Valin Pitigala any day any time anywhere." Plaintiff has stated that the Valin Pitigala referred to in P5 is the 1st defendant. Another letter P6 which is undated and

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in the handwriting of the 2nd defendant is addressed to "My very fondest and sweetest darling girl," in which he gives expression to a number of endearments and plans for the future and wanting the addressee to promise not to go back to "him." The next letter P7 dated 4.7.52 is in the handwriting of the 1st defendant and addressed to her brother Pitigala who has given evidence in this case, in which she wrote that she had to leave "Kilarney" because "Aiya has come to know the place and the booking clerk there is helping him and was trying to take a photo also . . . Has father come back and what did he say. Did you show him the promise brother. Please hurry 10 up with the case for me to be free soon. We are very anxious to get married." In P7 the 1st defendant has given the address to which a reply is to be sent as B. E. Perera, Hettigoda, Hikkaduwa, which is the same address that had been given by 2nd defendant in P1 and P2. P8 dated 14.4 without the year is from the 1st defendant to her brother Pitigala, in which she has stated that "If you talk to him only you will know how good and loving he is. As for me he is thousand times better than him, brother, but I have no way of getting married to him without the help of you brother . . . and has given me in writing that when I am free he will marry me. If you come at any time I 20 can show you that, brother. I can send it to you, but I do not like to send it because you all are to his side and you will put the poor man into trouble, brother. . . . He is not a man to keep me for a few days and run away. His love for me is truth . . . and we saw to our horoscope also, it is very good. If I am with him I will never get children and we both will be very happy in our life." Document P7(a) is probably the promise of marriage referred to in P8, and which reads as follows. "This is to assure on my honour that I promise to marry Dear Valin Pitigala the day she is free to be my wife." Signed E. C. Perera, Station Master, Gintota, dated 5.3.52. 30

Plaintiff stated that the 2nd defendant is 53 years old, was married and divorced twice and has 7 children. Plaintiff has 5 children and had got on well with the 1st defendant till 2nd defendant had taken her away, and incurred extra expenditure to bring up his children. He admitted in cross-examination that in December, 1951, he complained to the General Manager of Railways that the 2nd defendant had taken away his wife the 1st defendant. Second defendant then had in May, 1952, sent a letter of demand claiming a sum of Rs. 15,000/- from plaintiff. The plaintiff had replied that he was not liable. No action was taken thereafter by the 2nd 40 defendant. Plaintiff also stated that he had to search for his wife for 3 months, that he was on leave from December, 1951, to the end of January, 1952, spending his time in searching for his wife, that he was unable to concentrate on his work and was like a mad man, and that he did not meet the 1st defendant after he knew that she was in Mrs. Sharpe's Guest House. He stated that the 1st defendant was

“worth her weight in gold” and that he did not want to get her back in view of her conduct and that after September, 1952, she was living with her brother Pitigala in an estate in Kandy. He denied that the 1st defendant ever met him or gave any letters to him. He also produced a list P9 of the days on which 2nd defendant was on leave in 1951 and 1952.

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The next witness is Mrs. Sharpe, Manager of “Kilarney” Guest House in Diyatalawa who stated that she received letters P1 and P2 in November, 1951, that on 12.12.51 a man and a woman whom she identified as the 2nd and 1st defendants came to live in her house as guests, that the 2nd defendant used to come to her house to visit the 1st defendant once or twice a month, both defendants admitted that they were the persons who had written to her, that they gave their names as Mr. and Mrs. Wijesinghe and occupied the same room. She noticed them to be affectionate towards each other. First defendant lived in her house for 8 months till August, 1952, and it was the 2nd defendant who paid all the dues. Later she received letter P4 dated 14.9.52 and signed E. C. Perera and being puzzled about the identity of the writer, had compared P4 with P1 and P2 and found them to have been written by the same person. She stated that she was annoyed when she received P4 as there was a request in P4 asking her not to say that it was the 2nd defendant that brought the 1st defendant. She handed all the letters written to her by the 2nd defendant to plaintiff. She later identified him in Court. In cross-examination she stated that during the period that 1st defendant stayed in her Guest House 2nd defendant used to take her out occasionally, that she suspected that there was something wrong and asked the 1st defendant to leave her Guest House immediately. First defendant left the Guest House in August, 1952.

Solomon Mendis, Proprietor of the Hotel “Highcliffe,” Haputale, produced the visitors’ book P10 in which at page 37 under date 1.7.52 there is a record of Mr. and Mrs. C. P. Wijesinghe having stayed in his hotel from 1.7.52 till 18.7.52. He identified those persons as the 1st and the 2nd defendants and stated that he thought that they were husband and wife. They had occupied one room in the hotel. The address given by the visitors in P10 is Hettigoda, Hikkaduwa.

Wijeratna, business man, Peradeniya, stated in his evidence that he knew 2nd defendant when he was Station Master, Peradeniya, and that from 1.9.52 to 4.9.52, 2nd defendant had stayed in his house with a woman whom he now identifies as the 2nd defendant and both occupied one room, and that 2nd defendant had told him that 1st defendant was his wife. Malawarachi of the Urban Council, Avissawella, produced the Register of Visitors of the Resthouse in which under date 11.12.52 there is an entry that one Mr. and Mrs. C. P. Wijesinghe of Colombo spent an hour in the Resthouse between 8 and 9 p.m. He was unable to identify them.

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Counsel for the 1st defendant did not lead any evidence in the case. Evidence was led for the 2nd defendant and the first witness called was the 1st defendant. She stated that she was living with her husband the plaintiff and her children in Gintota in 1951. At that time 2nd defendant was the Station Master at Gintota. Plaintiff and she had known 2nd defendant and occupied quarters close to each other. Visits were exchanged. At a stage 2nd defendant began to visit her in her house in the absence of plaintiff and would leave when plaintiff came into the house. She had not told plaintiff about the visits of the 2nd defendant, who knew the times of the day when plaintiff was on duty. She stated that she left her house on 11.12.51 and that plaintiff did not know anything about her intimacy with the 2nd defendant. She had been living till that day very happily with her husband the plaintiff and that there was no trouble whatsoever between them. Second defendant had shortly before she left plaintiff shown her a letter alleged to have been written by a lady called Soma to plaintiff and that letter gave her the impression that plaintiff was intimate with a lady called Soma. Second defendant had also shown her a telegram which contained a message from the said Soma making an appointment to meet plaintiff in Colombo. First defendant stated that this had been done by the 2nd defendant to poison her mind against her husband with whom she had been living quite happily till that time. The 2nd defendant used to visit her, converse with her for a long time and ask her to go away with him professing to love her, but she did not inform her husband about these visits. She showed the telegram given to her by the 2nd defendant containing a message from Soma to plaintiff making an appointment, to her husband the plaintiff who then had told her that that was a false message and that someone was trying to put them apart. Then 2nd defendant told her that if she did not come with him he would harass and also have her husband dismissed from service, and that "it is to prevent this happening that I went with the 2nd defendant." She did not inform the plaintiff about these threats made by the 2nd defendant. On 11.12.51 she left with 2nd defendant, "prepared to sacrifice her virtue to save her husband." She stated that she had lived happily with plaintiff and denied that there was any unpleasantness between her and plaintiff over a servant woman called Jane. She admitted that her feelings towards her husband were to some extent strained when she saw that letter given to her by 2nd defendant and stated by him to have been written by Soma to plaintiff. Apart from that letter she had no reason to believe that her husband was unfaithful to her and stated that it was 2nd defendant who made her believe so. Her husband was not even aware that she was intimate with the 2nd defendant. In answer to a question she stated that she is willing to live with her husband if he would take her. She had not seen plaintiff except in Court. She admitted that till August, 1952, she was living in the Guest House of

Mrs. Sharpe where 2nd defendant had taken her at first and then later at the hotel "Highcliffe" at Haputale where he had taken her. After the 2nd defendant left her in 1952 she went and lived with her brother Pitigala in Kandy. Thereafter she had seen her children once in the house of an uncle of hers in Kandy. She had informed her brother Pitigala that she had certain letters written to her by 2nd defendant and had given them to him. She admitted that her father and her brother were more attached to plaintiff than to her. She had given these letters to her brother of her own accord. She denied  
 10 having ever spoken to plaintiff or having told him that she was willing to go and live with him for the sake of her children. She also stated that her brother never told her that plaintiff was willing to take her back. She had been supported by her brother ever since she left the 2nd defendant. In cross-examination she stated 2nd defendant told her two days earlier before 11.12.51 that he would be taking her away with him, that 2nd defendant had made misrepresentations to her and poisoned her mind against her husband and that she now knows that the story 2nd defendant had told her was false. She admitted that she had sexual intercourse with 2nd defendant on several  
 20 occasions. She further stated that she had asked her brother Pitigala to obtain a divorce because 2nd defendant had asked her to have the marriage annulled so that he may marry her. Second defendant had kept her concealed at Diyatalawa and took precautions that no one saw her. She also stated that 2nd defendant and she lived in the name of Mr. and Mrs. C. P. Wijesinghe at Diyatalawa and Haputale and that the address given by them was C/o. B. E. Perera, Hettigoda, Hikkaduwa. She knew that B. E. Perera is a checker working under the 2nd defendant. In P7 she had not given any address as 2nd defendant had asked her not to give any address. In P7 the person  
 30 referred to as "Aiya" is the plaintiff. She also produced writing P7 (a) which contains a promise of marriage made by 2nd defendant to her. She also admitted having written P8 to her brother entreating her brother to meet 2nd defendant to see how good a man 2nd defendant was and how much better he was than plaintiff. From Mrs. Sharpe's house 2nd defendant brought her to the house of Mr. Wijeratne at Peradeniya where she stayed with the 2nd defendant for a few days and thereafter 2nd defendant gave her up in September, 1952, and would write to her but never saw her or sent her money to support her. She had therefore to seek refuge with her brother who was  
 40 very angry with her for leaving plaintiff. She had at an earlier stage wanted her brother to hurry up with the case believing that 2nd defendant would marry her and had also sent the promise of marriage P7 (a) to her brother. She also stated that she had written P8 that 2nd defendant was a much better than plaintiff because 2nd defendant had asked her to write in that manner.

Next witness is Pitigala the brother of 1st defendant who stated that he learnt in March or April that 1st defendant had gone away



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with 2nd defendant. Thereafter his father who stayed with plaintiff came to live with him. When he knew that 1st defendant had gone away with 2nd defendant he detested what she had done. First defendant was living with him from October, 1952. He did not discuss with her her matters. He at first denied having received letters P7 and P7 (a) from 1st defendant but later stated that he had received those letters. First defendant had given him several letters said to have been written to her by 2nd defendant. Plaintiff had never met him or spoken to him after 1st defendant came to live with him. He had spoken to plaintiff once in Kandy on 6.10.53. He admitted that 10 he gave the letters that he received from 1st defendant to plaintiff. He also stated that at one time 1st defendant had wanted him to become friends with the 2nd defendant and wanted him to induce her father too and also to assist her to make her free so that she could marry the 2nd defendant. This witness said that he had refused to meet 2nd defendant.

It is clear from the evidence in this case led in support of the plaintiff's case as well as for the 2nd defendant that the 2nd defendant had taken advantage of plaintiff's absence from his quarters at Gintota to prosecute a sordid intrigue with 1st defendant who was 20 living happily with her husband the plaintiff and her 5 children. Second defendant timed his visits in such a manner that plaintiff had no suspicion at all of what was happening in his house in his absence. Whether there had been sexual intimacy between the defendants before 11.12.51, is doubtful although the probabilities are that there was. Not content with stealing her affections, the 2nd defendant began to turn 1st defendant against plaintiff by giving to her a letter and a telegram to induce her into the belief that plaintiff was friendly with a woman named Soma and was unfaithful to 1st defendant. The 1st defendant appears to have fallen a victim to 30 this strategy of treachery and made up her mind to leave her home, her husband and her 5 children and go away with the 2nd defendant to live with him and in due course as she hoped, to be his wife when she was free. Second defendant took her after making due preparations under a false name, to the Guest House "Killarney," at Diyatatalawa, run by Mrs. Sharpe. His letters P1, P2 and P3 to Mrs. Sharpe show his anxiety to have 1st defendant live in the Guest House in secrecy under a false name and under the false identity of his wife. During this period from December, 1951, to August, 1952, second defendant had stayed with 1st defendant in the Guest House occupy- 40 ing one room together and passing off as husband and wife to Mrs. Sharpe who had at a certain stage become suspicious and discovering that the parties were not what they professed to be insisted on 1st defendant leaving her house. Second defendant had paid the bills for accommodation of the 1st defendant in the Guest House, to Mrs. Sharpe from 12.12.51 to 8.7.52. Second defendant had taken 1st defendant to the Hotel "Highcliffe" at Haputale run by witness

Mendis, giving their names as Mr. and Mrs. C. P. Wijesinghe and occupied one room in the hotel. In September, 1952, both the defendants had stayed together in one room in the establishment of witness Wijeratna to whom 2nd defendant had described the 1st defendant as his wife. Although witness Malawarachi of the Rest-house, Avissawella, was unable to identify the defendants, there is an entry in Register P11 that two persons who have signed as Mr. and Mrs. Wijesinghe had spent sometime together in the Resthouse giving their names as Mr. and Mrs. Wijesinghe.

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Continued

- 10 The case for the plaintiff is supported by the evidence given by the 1st defendant. First defendant has stated in detail in her evidence how 2nd defendant had undermined her loyalty to her husband and how he had prevailed on her to leave her home and go away with him, and how he had kept her in various places till finally he gave her up in September, 1952. She also stated that he had promised by P7 (a) to marry her and that she had wanted her brother to assist her to obtain a divorce from plaintiff so that she may marry the 2nd defendant. She denied that she had spoken to plaintiff after she left him or that her father and her brother had influenced
- 20 her in any way with regard to the position she had taken up in this case. Her plea in her answer as well as in her evidence is a plea of repentance, rather late, and penitence. There is no doubt that the 2nd defendant had imposed on her with a show of affection and with treacherous guile successfully prevailed on her to give up her home and family and fall into his arms. There is no evidence for me in the case to hold that there is any collusion or connivance on the part of the plaintiff either before 1st defendant left her or in the prosecution of this case by plaintiff. On the other hand, the plaintiff impressed me as a very frank and truthful witness when he recited his tale of
- 30 woe and recounted the story of his despair and distraction when he found his wife, the mother of his 5 children, missing from the home. He strained every nerve and frantically made search for his wife, little suspecting that it was his superior officer, his false friend and neighbour who had spirited her away. The list P9 showing the leave obtained by 2nd defendant in 1951 and 1952 contain the dates of 2nd defendant's leave which coincide with the dates of disappearance and subsequent movements of 1st defendant. There is ample evidence in the case to hold that 2nd defendant had taken 1st defendant away from plaintiff and committed adultery with her at the various places in
- 40 which he had kept her and maintained her under false names, and that plaintiff had no knowledge whatsoever that 1st defendant had gone away with 2nd defendant till March or April, 1952. The part played in this matter by 1st defendant's brother Pitigala is that of a dutiful brother who had given shelter to his sister the 1st defendant and whose opinion of the 1st defendant is that she had been more sinned against than shining. It was contended by the defence that it should be inferred from Pitigala's evidence that the 1st defendant's

father and brother were assisting 1st defendant to act in collusion with plaintiff, but I am unable to see how that inference can be drawn from the evidence given by Pitigala and the 1st defendant. In my view there is no substance at all in the contention of the defence that there has been connivance or collusion.

Plaintiff has stated in his evidence that the 1st defendant who is the mother of his 5 children had been a faithful, dutiful and affectionate wife and a good mother to his children, that he was distracted to the point of madness by her going away from him and that he had to undergo intense pain of mind and suffering by her conduct which was 10 influenced by the 2nd defendant, and that he had to incur extra expenditure to bring up his children with great difficulty. The eldest of the 5 children is 12 years old and the youngest 3 years. He also has stated that his wife was "worth her weight in gold before she left him." Even in the evidence of the 1st defendant it will be seen that having sinned, and now disillusioned she still hopes that she may be taken back by her husband whom she still professes to love. In the case of *Dean vs. Antonis*, 54 N.L.R., 538 it has been held that the two main considerations governing the award of damages as against the co-respondent are (a) the actual value of the wife to the husband, 20 (b) compensation to the husband for injury to his feelings, the blow to his marital honour and the loss to his matrimonial and family life. In assessing the damages the Court may take into account the facts that the plaintiff was indiscreet in allowing a close association of the co-respondent with his family too long and only took action when matters had gone too far. The facts of this case show that there had been no indiscreetness on the part of plaintiff because the 2nd defendant had so timed his approaches to 1st defendant during the absence of plaintiff from his home that plaintiff was not at all aware that mischief was afoot in his home. In point of fact the disappearance 30 of 1st defendant from his home was, as he stated in his evidence and which I accept, a great surprise to him. I hold that the plaintiff in this case is entitled to damages in the amount he has asked for in the plaint. The plaintiff is entitled to the custody of his 5 children to whom he is devoted and who have been brought up by him after 1st defendant left him. First defendant has not in her evidence even asked for the custody of the children or any of them. The children are brought up by the plaintiff with the assistance of his mother and in a manner that he can with the means at his disposal. At any rate the 1st defendant has forfeited her rights by her matrimonial mis- 40 demeanour to the custody of her children.

Accordingly I answer the issues as follows :—

- (1) Yes.
- (2) Yes.
- (3) As prayed for.
- (4) Yes.

In the result I enter judgment for plaintiff as prayed for with costs of suit.

(Sgd.) N. SIVAGNANASUNDERAM,

A.D.J., 18.3.54. 50

## Decree of the District Court

No. 10  
Decree of the  
District Court  
18.3.54

## DECREE FOR DIVORCE " A VINCULO MATRIMONII "

## IN THE DISTRICT COURT OF KANDY

Jinadasa Halwatura of the Ceylon Government  
Railway, Mirigama . . . . . *Plaintiff*

Class V.

*Against*

No. D. 754.

10

1. Valin Karunawathie Halwatura *nee* Pitigala,  
presently of Hantane Estate, Kandy.
2. E. Christy Perera, Station Master, C.G.R.,  
Beruwala . . . . . *Defendants.*

This action coming on for disposal before N. Sivagnanasunderam, Esquire, Additional District Judge, Kandy, on the 18th day of March, 1954, in the presence of Mr. Wickremaratne, proctor on the part of the plaintiff, and of Mr. Mapalagama on the part of the 1st defendant and Mr. E. Carthigeser, proctor on the part of the 2nd defendant: And it appearing to this Court that the 1st defendant having committed adultery with the 2nd defendant and having lived away from the plaintiff.

- 20 It is ordered and decreed that the marriage between the plaintiff and the 1st defendant be set aside, dissolved, and annulled by reason of the 1st defendant's act of committing adultery with the 2nd defendant and of malicious desertion of the plaintiff unless sufficient cause be shown to the Court why this decree should not be made absolute within three months from the making thereof.

It is further ordered that the said 1st defendant may henceforth resume and be known by her name of Valin Karunawathie Pitigala and have and enjoy all the rights and privileges to which unmarried women are by law entitled.

- 30 And it is further decreed that the plaintiff, according to the prayer of plaint, be entitled to and charged with the custody, care, and education of his children Asoka Suraweera Halwatura, Sujatha Halwatura, Ranjit Athula Halwatura, Lakshmi Premalatha Halwatura and Kanthi Daya Halwatura in the pleadings mentioned: Provided always that this order for the custody, care, and education of the said infant may at any time hereafter be modified, varied, or annulled upon sufficient cause shown.

No. 10  
Decree of the  
District Court  
18.3.54—  
*Continued*

And it is further decreed that the 2nd defendant do pay to the plaintiff the sum of Rs. 20,000/- being damages sustained by the plaintiff, and that this allowance is to continue until further order, and be subject to variation as future circumstances may require.

And it is further ordered that the 2nd defendant do pay to the plaintiff the costs of this action as taxed by the officer of this Court.

(Sgd.) N. SIVAGNANASUNDERAM,  
*Additional District Judge.*

The 18th day of March, 1954.

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No. 11

10

No. 11  
Petition of  
Appeal of the  
2nd Defendant  
to the Supreme  
Court  
29.3.54

**Petition of Appeal of the 2nd Defendant to the  
Supreme Court**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Jinadasa Halwatura of The Government Rail-  
way, Mirigama . . . . . *Plaintiff*

S.C. 577 M/1954.

*vs.*

D.C. Kandy  
No. D. 754.

1. Valin Karunawathie Halwatura, *nee* Piti-  
gala, presently of Hantane Estate,  
Kandy.
2. Ernest Christopher Perera, Station Master, 20  
C.G.R., Beruwala . . . . . *Defendants.*

Ernest Christopher Perera, Station Master,  
C.G.R., Beruwala . . . . .  
. . . . . *2nd Defendant-Appellant*

*vs.*

1. Jinadasa Halwatura of The Government  
Railway, Mirigama . . . . .  
. . . . . *Plaintiff-Respondent.*
2. Valin Karunawathie Halwatura, *nee* Piti-  
gala, presently of Hantane Estate, 30  
Kandy . . . . . *1st Defendant-Respondent.*

To the Honourable the Chief Justice and the Other Judges  
of the Supreme Court of the Island of Ceylon.

On this 29th day of March, 1954.

The petition of Appeal of the 2nd defendant-appellant appearing by his proctor, Felix Reginald Pinto, states as follows :—

No. 11  
Petition of  
Appeal of the  
2nd Defendant  
to the Supreme  
Court  
29.3.54—  
Continued

1. The plaintiff-respondent instituted the above styled action for a decree of divorce *vinculo matrimonii* against the 1st defendant-respondent on the ground of her adultery with the 2nd defendant-appellant and also prayed for the custody of the children of the marriage. He further claimed a sum of Rs. 20,000/- as damages from this appellant.

10 2. The 1st defendant-respondent in her answer denied the allegations of adultery, and further averred that she left the plaintiff-respondent because she was made to believe and had reason to suspect that the plaintiff-respondent was not faithful to her, and that the 2nd defendant-appellant was one of those instrumental in creating this impression in her mind, she also averred that she is now satisfied that she has been misled, and her suspicions unfounded and is prepared to live again with the plaintiff-respondent as his wife.

3. The 2nd defendant-appellant in his answer denied the allegations of adultery, and further denied that the plaintiff-respondent had  
20 any claim for damage whatsoever against this appellant.

4. The parties went to trial on the following issues :—

(a) Did the 2nd defendant commit adultery with the 1st defendant on the dates and places specified in paragraphs 4, 5 and 6 of the plaint or any of them.

(b) If so, is the plaintiff entitled to a decree for divorce against the 1st defendant on the ground of adultery with the 2nd defendant.

(c) Is the plaintiff entitled to the custody of his five children, viz., Asoka Suraweera, aged 12 years, Sujatha, aged 11 years, Ranjit Atula, aged 8 years, Lakshimi Premalatha, aged 6 years, and Kantha  
30 Daya, aged 4 years.

(d) Damages against the 2nd defendant.

5. After trial the learned Additional District Judge by his judgment dated the 18th day of March, 1954, gave judgment in favour of the plaintiff-respondent as prayed for in his plaint.

6. Being aggrieved with the said judgment the 2nd defendant-appellant begs to appeal to Your Lordship's Court on the following among other grounds that may be urged by Counsel at the hearing of this Appeal :—

(a) That the said judgment is contrary to law and the weight of  
40 evidence adduced in this case.

No. 11  
 Petition of  
 Appeal of the  
 2nd Defendant  
 to the Supreme  
 Court  
 29.3.54—  
*Continued*

(b) It is respectfully submitted that the plaintiff-respondent has presented and prosecuted this plaint in collusion with the 1st defendant-respondent and further that the plaintiff-respondent has condoned the adultery of the 1st defendant-respondent.

(c) It is in evidence that the documents P5 and P6 written by the 2nd defendant-respondent to the 1st defendant-respondent and the documents P7 and P8 written by the 1st defendant-respondent to her brother—witness Pitigala—were produced by the plaintiff-respondent. The plaintiff-respondent could not have been in possession of the documents if the 1st defendant-respondent and the other 10 members of her family were not acting in collusion to assist the plaintiff-respondent to succeed in his claim for damages against the 2nd defendant-appellant.

(d) It is respectfully submitted that the learned Additional District Judge was in error in holding that there was no evidence to infer collusion between the parties. It is respectfully submitted that from an examination of the evidence and the conduct of the 1st defendant-respondent and the other members of her family in this action, it will be clear that this action is one filed collusively to secure and obtain damages against the 2nd defendant-respondent. 20

(e) This appellant begs to submit that averments in paragraphs 3 and 4 of the answer of the 1st defendant-respondent ; the fact that she asked for no costs of this action or for alimony *pendente lite* ; that there was no cross-examination of the plaintiff-respondent by the Counsel for the 1st defendant-respondent and the evidence of the 1st defendant-respondent as a witness for this appellant were all indicative of the collusive nature of this action.

(f) It is respectfully submitted that the learned Additional District Judge has misdirected himself on the evidence led in this case. It is in evidence that the 1st defendant-respondent's father has 30 lived with the plaintiff-respondent subsequent to 1st defendant-respondent's adultery and that he may have discussed a reconciliation between the plaintiff-respondent and the 1st defendant-respondent was at " Killarney " till August, 1952, without taking any action on his part. It is respectfully submitted that the learned Additional District Judge should on this evidence have drawn inferences adverse to the plaintiff-respondent.

(g) It is in evidence that the 1st defendant-respondent was a person who was content to leave her five children—the youngest of whom was only 3 years—and live away from her husband and if 40 possible to get a divorce from the plaintiff-respondent and get married to the 2nd defendant-appellant, who according to P8 is a thousand times better than the plaintiff-respondent. It is also in evidence that the plaintiff-respondent knew of the whereabouts of the 1st

defendant-respondent in February, 1952, and that he made no attempt whatsoever to get back the 1st defendant-respondent who he stated was worth her weight in gold. It is respectfully submitted that in view of this evidence and the collusive nature of the evidence given by the 1st defendant-respondent, the damages awarded to plaintiff-respondent are in any event excessive and unwarranted by the evidence led in this case.

No. 11  
Petition of  
Appeal of the  
2nd Defendant  
to the Supreme  
Court  
29.3.54—  
*Continued*

(h) As a matter of law, it is respectfully submitted that the learned Additional District Judge should have dismissed the plaint of the plaintiff-respondent in terms of section 601 of the Civil Procedure Code on a correct finding of collusion and for condonation on the part of the plaintiff-respondent.

Wherefore this appellant prays :—

- (i) that the judgment of the learned Additional District Judge, dated 18th March, 1954, be set aside ;
- (ii) that the plaintiff-respondent's action be dismissed ;
- (iii) for costs and for such other and further relief as to the Court shall seem meet.

(Sgd.) FELIX R. PINTO,

*Proctor for 2nd Defendant-Appellant*

20

**No. 12**

**Decree of the Supreme Court.**

No. 12  
Decree of the  
Supreme Court  
13.3.56

ELIZABETH THE SECOND, Queen of Ceylon and of Her  
Other Realms and Territories, Head of the Commonwealth  
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Ernest Christopher Perera, Station Master, C.G.R.,  
Beruwala.....2nd Defendant-Appellant.

*vs.*

- 1. Jinadasa Halwatura of the Government Rail-  
way, Mirigama.....Plaintiff-Respondent,
- 2. Valin Karunawathie Halwatura, *nee* Pitigala,  
presently of Hantane Estate, Kandy.....  
.....1st Defendant-Respondent.

30

Action No. D. 754.

District Court of Kandy,

This cause coming on for hearing and determination on the 13th day of March, 1956, and on this day, upon an appeal preferred by the 2nd defendant-appellant before the Hon. E. H. T. Gunasekara, Puisne Justice and the Hon. M. F. S. Pulle, Q.C., Puisne Justice of this Court, in the presence of Counsel for the appellant and respondent,



No. 12  
Decree of the  
Supreme Court  
13.3.56—  
*Continued*

It is considered and adjudged that this appeal be and the same is hereby dismissed with costs.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the twenty-seventh day of March, in the year One thousand Nine hundred and Fifty-six and of Our Reign the Fifth.

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, S.C.*

No. 13  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council  
10.4.56

**No. 13**

**Application for Conditional Leave to Appeal  
to the Privy Council**

10

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

Jinadasa Halwatura of the Ceylon Government  
Railway, Mirigama..... *Plaintiff*

*vs.*

No. D. 754.  
District Court,  
Kandy.

1. Valin Karunawathie Halwatura, *nee* Pitigala presently of Hantane Estate, Kandy.
2. E. Christy Perera, Station Master, C.G.R., Beruwala ..... *Defendants.*

Ernest Christopher Perera, Station Master, C.G.R., Beruwala, presently Station Master, C.G.R., Kurunegala.....  
.....*2nd Defendant-Appellant-Petitioner*

No. S.C. 577/54.

*vs.*

1. Jinadasa Halwatura of the Government Railway, Mirigama.....*Plaintiff-Respondent.*
2. Valin Karunawathie Halwatura, *nee* Pitigala of Hantane Estate, Kandy, presently of Abergeldie Estate, Watawala.....  
.....*1st Defendant-Respondent.*

To the Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court of the Island of Ceylon.

On this 10th day of April, 1956.

The petition of the 2nd defendant-appellant abovenamed appearing by Archibald John Albert Drieberg, his proctor, states as follows:—

1. That being aggrieved by the judgment and decree of this Court pronounced on the 13th day of March, 1956, the 2nd defendant-appellant-petitioner is desirous of appealing therefrom to Her Majesty The Queen in Council.

2. The said judgment is a final judgment, and the matter in dispute on the appeal is far in excess of the value of Rupees Five Thousand (Rs. 5,000/-) and involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or in excess of the value of Rupees Five Thousand (Rs. 5,000/-). The question involved in appeal is one which by reason of its general or public importance or otherwise ought to be submitted to Her Majesty the Queen in Council for decision.

No. 13  
Application for  
Conditional  
Leave to Appeal  
to the Privy  
Council  
10.4.56—  
*Continued*

3. That notice of the intended application for leave to appeal was given to the plaintiff-respondent and the 1st defendant-respondent in terms of Rule 2 of the Rule to the Schedule to Appeals (Privy Council) Ordinance on the 21st day of March, 1956, as set out in (a) below and on the 23rd day of March, 1956, as set out in (b) below by sending Notices marked "A" and "B" with a copy of the petition annexed to each by—

(a) Registered post and ordinary post posted to each of the following addresses :—

*To the Plaintiff-Respondent.*

- 20
- (1) No. 266 Kegalle Road, Polgahawela, being his present place of residence as ascertained from his employer, The Ceylon Government Railway.
  - (2) Ceylon Government Railway (Relief Clerk) Polgahawela (being his present place of work).
  - (3) The Divisional Transportation Superintendent, Ceylon Government Railway, Colombo, to be forwarded through him to the plaintiff-respondent, his subordinate officer.

*To the 1st Defendant-Respondent.*

- 30
- (4) C/o. M. J. Pitigala, Clerk, Abergeldie Estate, Watawala, being the present place of residence as ascertained by the petitioner.

(b) Telegrams :—

*To the Plaintiff-Respondent.*

- 40
- (1) To his present place of work, namely, Ceylon Government Railway (Relief Clerk), Polgahawela.
  - (2) To his present place of residence as ascertained from his employer, The Ceylon Government Railway, namely, No. 266, Kegalle Road, Polgahawela.

No. 13  
Application for  
Conditional  
Leave to  
Appeal to the  
Privy Council  
10.4.56—  
*Continued*

*To the 1st Defendant-Respondent.*

(3) To her present place of residence as ascertained by the petitioner, namely, C/o. M. J. Pitigala, Clerk, Abergeldie Estate, Watawala.

4. None of the letters referred to in paragraph 3 (a) nor the telegrams referred to in paragraph 3 (b) has been returned to the petitioner undelivered.

Wherefore the 2nd defendant-appellant-petitioner prays :—

(a) That Your Lordships' Court be pleased to grant him Conditional Leave to appeal against the judgment and 10 decree of this Court dated 13th March, 1956, to Her Majesty the Queen in Council, and

(b) For such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) A. J. A. DRIEBERG,  
*Proctor for 2nd Defendant-Appellant-Petitioner.*

No. 14  
Decree Granting  
Conditional  
Leave to Appeal  
to the Privy  
Council  
27.4.56

**No. 14**

**Decree Granting Conditional Leave to Appeal  
to the Privy Council**

ELIZABETH THE SECOND, Queen of Ceylon and of Her 20  
Other Realms and Territories, Head of the Commonwealth  
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application dated 10th April, 1956, for Conditional Leave to Appeal to the Privy Council by the 2nd defendant-appellant against the decree dated 13th March, 1956.

Ernest Christopher Perera, Station Master, C.G.R.,  
Beruwala, presently Station Master, C.G.R., Kuru-  
negala.....2nd *Defendant-Appellant-Petitioner*

*vs.* 30

1. Jinadasa Halwatura of the Government Railway,  
Mirigama.....*Plaintiff-Respondent.*
2. Valin Karunawathie Halwatura *nee* Pitigala of  
Hantane Estate, Kandy, presently of Aber-  
geldie Estate, Watawala.....  
.....1st *Defendant-Respondent*

Action No. D. 754 (S.C. 577/'54 Final) District Court of Kandy.

This cause coming on for hearing and determination on the 27th day of April, 1956, before the Hon. H. H. Basnayake, Q.C., Chief Justice and the Hon. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the 2nd defendant-appellant and plaintiff-respondent and there being no appearance for the 1st defendant-respondent.

No. 14  
Decree Granting  
Conditional  
Leave to Appeal  
to the Privy  
Council  
27.4.56—  
*Continued*

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 :—

10 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).

20 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.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the Ninth day of May, in the year One thousand Nine hundred and Fifty-six and of Our Reign the Fifth.

(Sgd.) W. E. WOUTERSZ,  
*Deputy Registrar, S.C.*

**No. 15**

**Application for Final Leave to Appeal to the Privy Council**

30 **IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

No. 15  
Application for  
Final Leave to  
Appeal to the  
Privy Council  
18.5.56

In the matter of an application for Final Leave to appeal under the provisions of the Appeals (Privy Council) Ordinance (Chapter 85).

No. D. 754. Jinadasa Halwatura of the Ceylon Government District Court, Railway, Mirigama..... *Plaintiff*  
Kandy. *vs.*

1. Valin Karunawathie Halwatura *nee* Pitigala of Hantane Estate, Kandy.

Action No. D. 754 (S.C. 577/'54—Final).

No. 15  
Application for  
Final Leave to  
Appeal to the  
Privy Council  
18.5.56--  
*Continued*

No. S.C. 577/54.

2. E. Christy Perera, Station Master, C.G.R.,  
Beruwala ..... *Defendants.*

Ernest Christopher Perera, Station Master, C.G.R.,  
Beruwala, presently Station Master, C.G.R., Kurunegala.....*2nd Defendant-Appellant*

*vs.*

1. Jinadasa Halwatura of the Government Railway,  
Mirigama ..... *Plaintiff-Respondent.*

2. Valin Karunawathie Halwatura, *nee* Pitigala of  
Hantane Estate, Kandy..... **10**  
.....*1st Defendant-Respondent.*

No. S.C. Applica-  
tion 116.

Ernest Christopher Perera presently Station Master,  
C.G.R., Kurunegala.....  
..... *2nd Defendant-Appellant-Petitioner*

*vs.*

1. Jinadasa Halwatura presently Relief Clerk,  
C.G.R., Polgahawela....*Plaintiff-Respondent.*

2. Valin Karunawathie Halwatura, *nee* Pitigala  
presently of Abergeldie Estate, Watawala...  
.....*1st Defendant-Respondent. 20*

To the Honourable the Chief Justice and the Other Judges  
of the Honourable the Supreme Court of the Island of Ceylon.

On this 18th day of May, 1956.

The petition of the 2nd defendant-appellant-petitioner above-  
named appearing by Archibald John Albert Drieberg, his proctor,  
states as follows :—

1. The petitioner abovenamed obtained Conditional Leave to  
Appeal to Her Majesty the Queen in Council from the judgment and  
decree of this Court dated the 13th day of March, 1956.

2. The petitioner has in compliance with the Conditions upon **40**  
which such leave was granted deposited a sum of Rupees Three  
thousand (Rs. 3,000/-) with the Registrar of the Honourable the  
Supreme Court of the Island of Ceylon being security for costs of the  
respondents on the 18th day of May, 1956, and mortgaged and  
hypothecated the said sum of Rupees Three thousand (Rs. 3,000/-)  
with the said Registrar of the said Supreme Court of the Island of  
Ceylon on the 18th day of May, 1956.

3. The petitioner has further deposited with the said Registrar  
of the said Supreme Court a further sum of Rupees Three Hundred  
(Rs. 300/-) in respect of the amount and fees mentioned in section 4 (b) **40**  
and (c) of the Privy Council Ordinance (Chapter 85) on the said 18th  
day of May, 1956.

4. The petitioner has given notice of this application to the respondents by posting to each of them to their present addresses copies of the motion, petition and affidavit and produces herewith the undermentioned proof of the giving of such notice :—

No. 15  
Application for  
Final Leave to  
Appeal to the  
Privy Council  
18.5.56—  
*Continued*

- (a) Certificates of posting to each of the respondents, and
- (b) Registered Postal Article Receipt Nos. 148 and 149.

Wherefore the petitioner prays that Your Lordships' Court be pleased to grant the petitioner :—

- 10 (a) Final Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of this Court dated 13th March, 1956 ;
- (b) costs of this application ; and
- (c) such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) A. J. A. DRIEBERG,  
*Proctor for 2nd Defendant-Appellant-Petitioner.*

**No. 16**

**Decree Granting Final Leave to Appeal to the Privy Council**

No. 16  
Decree Granting  
Final Leave to  
Appeal to the  
Privy Council  
20.6.56

20 ELIZABETH THE SECOND, Queen of Ceylon and of Her Other Realms and Territories, Head of the Commonwealth

**IN THE SUPREME COURT OF THE ISLAND OF CEYLON**

In the matter of an application by the 2nd defendant-appellant dated 18th May, 1956, for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 13th March, 1956.

Ernest Christopher Perera, Station Master, C.G.R.,  
Beruwala, presently Station Master, C.G.R., Kuru-  
negala.....*2nd Defendant-Appellant-Petitioner*

30

*vs.*

1. Jinadasa Halwatura of the Government Railway,  
Mirigama..... *Plaintiff-Respondent.*

No. 16  
Decree Granting  
Final Leave to  
Appeal to the  
Privy Council  
20.6.56—  
*Continued*

2. Valin Karunawathie Halwatura *nee* Pitigala of  
Hantane Estate, Kandy, presently of Aber-  
geldie Estate, Watawala.....  
..... 1st *Defendant-Respondent*.

Action No. D. 754 (S.C. 577/'54. Final).

District Court of Kandy.

This cause coming on for hearing and determination on the 20th day of June, 1956, before the Hon. H. N. G. Fernando, Puisne Justice and the Hon. T. S. Fernando, Q.C., Puisne Justice of this Court, in the presence of Counsel for the applicant and plaintiff- 10 respondent.

The applicant has complied with the conditions imposed on him by the order of this Court dated 27th April, 1956, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application for Final Leave to appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 29th day of June, in the year One thousand Nine hundred and Fifty-six and of Our Reign the Fifth. 20

(Sgd.) W. G. WOUTERSZ,  
*Deputy Registrar, S.C.*



**PART II**

**EXHIBITS**



PART II  
EXHIBITS

Exhibits

P1

Letter from  
C. P. Wijesinghe  
to Mrs. Sharpe  
21.11.51

P1

Letter from C. P. Wijesinghe to Mrs. Sharpe

P1.

Hikkaduwa,

21.11.51.

Dear Madam,

Thanks for your letter. My wife is ill after a miscarriage and she  
10 wants a change for a few months. I shall bring her immediately.  
I make suitable arrangements for my board, etc., here. She is a  
very shy person and this is the first time she is going to be out alone.  
Kindly let me know whether you can get all her meals served in her  
room. What about the dhoby, please? Are there any other boarders  
also. We are Sinhalese and very simple. I hope to bring her in mid  
December or earlier if possible.

I shall send you the money in advance when I decide to bring  
her. Please let me know how far it is from Bandarawela and the  
approach.

20 Thanking you.

Yours faithfully,

(Sgd.) C. P. WIJESINGHE.

Mr. C. P. Wijesinghe,  
C/o. Mr. B. E. Perera,  
Hettigoda,  
Hikkaduwa.

Exhibits

P. 2

Letter from  
C. P. Wijesinghe  
to Mrs. Sharpe  
5.12.51

P2

Letter from C. P. Wijesinghe to Mrs. Sharpe

P2.  
Hikkaduwa,  
5.12.51.

Dear Mrs. Sharpe,

Thanks for yours safely to hands. I will bring my wife there on Wednesday morning and I shall return on Thursday morning.

This is the first time she is out of home. Kindly see that she will feel homesick. 10

Shall settle all accounts on arrival.

Thanking you.

Yours faithfully,  
(Sgd.) C. P. WIJESINGHE.

C. P. Wijesinghe,  
C/o. B. E. Perera,  
Hettigoda,  
Hikkaduwa.

Page 688 of the Register of Visitors of the Resthouse at Avissawella

FEEES PAID TO THE URBAN COUNCIL OF AVISSAWELLA AT THE AVISSAWELLA RESTHOUSE

Travellers are particularly requested to enter the amount paid by them under the proper headings, and the Resthouse-keeper has strict orders not to give credit for these fees.

Charges payable to the Resthouse-keeper (*i.e.*, for refreshments) should not be entered in this book.

**N.B.**—(1) Exact time of arrival and departure must be stated in the proper column.

(2) Children under 12 years pay half rates.

ARRIVAL		DEPARTURE		IMPORTANT	OCCUPATION	GARAGE	TOTAL	BILL No.	
Date	Time	Date	Time						
11.12.51	8.30 p.m.	11.12.51	9.30 p.m.	Every visitor shall on his admission to a resthouse legibly write his correct name and address in the Resthouse Visitors' Book.  Name Address Mr. and Mrs. C. Wijesinghe Colombo	Consolidated fee: 15 cents per hour, Mini-motor charges, 30 cents-cyclé garaged or far when any meal is tak-each horse stabled. en. Maximum charge: For 6 hours: 25 cts. Rs. 2.40 for a conti-nuous period of 24 hours. This fee includes the use of towels, table linen, beds, bed linen, and mosquito curtains		Rs. Cts. 60	Rs. Cts. 60	2388

Exhibits  
P3

Letter from  
C. P. Wijesinghe  
to Mrs. Sharpe  
14.12.51

**P3**

**Letter from C. P. Wijesinghe to Mrs. Sharpe**

P3.

Hettigoda,  
Hikkaduwa.

14.12.51.

Dear Mrs. Sharpe,

Hope my wife is keeping quite fit and happy. As things stand here she may have to stay with you for 7 or 8 months. I am sure you will be happy to keep her. Kindly see that no one turns up to 10 see her. Should anyone come please turn them away saying that there is no such lady in your house. Further details when I come with the money end of the month. I shall bring the juggary also.

Thanking you.

Yours sincerely,

(Sgd.) C. P. WIJESINGHE.

P6

Letter from 2nd  
Defendant to  
1st Defendant  
6th Aug.

**P6**

**Letter from 2nd Defendant to 1st Defendant**

P6.

Aug. (6) Sunday 20

My very fondest and sweetest darling girl.

Honey I sent you a letter yesterday also darling. My own I dreamt of you this morning dear. It was not a pleasant dream because I dreamt you left me and went back. You were with him honey and when you saw me you turned the other way. Anney darling I could not sleep after that and I was awfully upset. Now very very suddenly Anney Putha the paper prediction is also that you will go back to him. Sweetheart will you ever leave me Honey. Anney sweetheart if you are going back to him then kill me before you go sweet one. Oh I am very very sad and worried dear. Beloved 30 don't leave me and go darling. In a few months you will be in my house dear. Bear up these 2 months for my sake sweet one. I think he is filing action this month. Angel today is Sunday will your father come and take you back to him. Ah dear will you leave me and go darling. What is this sad dream I saw Fond one. I love you darling Sweetheart. Anney die with me dear never never leave

me sweetheart. I will be with you in a week's time Angel. Then we can talk about other arrangements. My own we will run a house here close by in an estate of a friend of mine. Sweetheart, you promised me that you will never leave me. I wrote to your brother that you will never never leave me. Anney darling don't leave me Fond one. I love you dearly sweetheart. I will always keep you like a Queen Honey. Aiyo how can I live without you dear—darling darling don't go my Angel. I think he will file action soon. I will find a place close to me as you don't like to stay there. This week is  
 10 bad for me. Will you also turn away from me with all my great and loyal love for you sweet one. My Queen my own honour your promise and assure me that you will die rather than leave me. Putha don't leave me Fond one. I love you dearly. I want you and you only for my happiness. Anney what is the use of my living if you also leave me Angel. Allright dear if you cannot stay there I will do something and bring you closer to me for these few months. Fond one next Monday I will see Bulath Sinhala at 9 a.m. Anney dear let any one come, refuse to go with any one. Because they will take you back to him and I will never get you back. Sweet one my own  
 20 you are my very life Angel. Will you like to kill me because I love you so dearly and want you for me and me only. Don't forget your sweet *Promise to ME* never go back to him Putha. I love you darling I love you dearly. Write to me soon and comfort me darling. God bless you and keep you safe for ME. Accept fondest love and sweetest kisses and hugs.

Ever your own,  
 TRUE ONE.

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2D1

**Letter from Weerasooriya & Yasin, Proctors, to Plaintiff**

Galle, 13th May, 1952.

30 J. Halwatura, Esq.,  
 O.I.C.,  
 C.G.R., Mirigama.

2 D1  
 Letter from  
 Weerasooriya  
 and Yasin,  
 Proctors to  
 Plaintiff  
 13.5.52

Dear Sir,

We are instructed by our client Mr. E. C. Perera, Station Master, Gintota, to demand of you the immediate payment of the sum of Rs. 15,000/- being damages sustained by him in consequence of his having suffered pain of mind, humiliation and loss of reputation, due to your deliberate, wilful and malicious statements made to the railway  
 40 management, police and general public, that our client eloped with your wife.

Yours faithfully,  
 (Sgd.) WEERASOORIYA & YASIN.

Exhibits

2 D1

Letter from  
Weerasooriya  
and Yasin,  
Proctors to  
Plaintiff  
13.5.52---  
*Continued*

*P.T.O. for Reply*

30.5.52.

Gentlemen,

With reference to your letter of demand dated 13.5.52, I have to state that I deny liability.

(Sgd.) J. H.

P 10

Page 37 of the  
Visitors' Book  
of Highcliffe,  
Bandarawela  
1.7.52

**P10****Page 37 of the Visitors' Book of Highcliffe, Bandarawela**

Name	Address	Arrival		Departure	
		Date	Time	Date	Time
V. Kanagaratnam ..	75, Hampden Lane, Wellawatte	26/6	9.30 a.m.	27/6	6.30 a.m.
A. H. M. A. Aseez and party ..	Everest Hotel, Ratnapura	27/6	12.30 p.m.	28/6	4.00 p.m.
W. E. Boteju ..	C.G.R., Kandy	30/6	7.00 a.m.	4/7	6.00 a.m.
W. D. S. Hewawitharana	Bambalapitiya	30/6	6.00 a.m.	1/7	8.00 a.m.
T. Perera ..	Kalutara, Kalamulla	1/7	7.00 a.m.	1/7	7.30 p.m.
Mrs. C. P. Wijesinghe ..	Hettigoda, Hikka- duwa	1/7	11.00 a.m.	18/7	9.00 a.m.
Mr. C. P. Wijesinghe ..	do.	1/7	11.7 a.m.	18/7	10.35 a.m.
Mr. C. J. Seneviratne ..	43, Indiya Road, Mt. Lavinia	3/7	1.00 p.m.		
N. Sabaratnam ..	No. 47, Fernando Road, Wellawatte	3.7.52	6.30 a.m.	5/7	8.45 p.m.
P. R. Phillip ..	Diyagama, Agra- patna	6/7	6.30 p.m.	7/7	8.30 a.m.
A. B. Rasiah ..	do.	6/7	6.30 p.m.	7/7	8.30 a.m.
Mrs. Martynstyne ..	Mceriyabedda, Kos- landa	6/7	6.30 p.m.	7/7	8.30 a.m.

## Letter from 1st Defendant to Her Brother

P8.

Exhibits  
P S  
Letter from  
1st Defendant  
to her Brother  
(undated)

19.4.

My Dear Brother,

Dear brother now don't get angry for writing you again my heart is like ice it is melting for a slightest thing but you all are not that I am born like that.

After writing you so many letters you never thought of going  
10 and seeing him at Kandy Station but he will never get angry for that  
he came all the way to meet you brother but you din't want to meet  
him and talk to him a few words if you talk to him only you will know  
how good and loving he is as for me he is thousand times better than him  
brother but I have no way of getting married to him without the help  
of you brother. Now ones for all I am writing to you again kindly  
reply for my letter don't keep quite now if you don't reply for my  
letter I am coming in search of you with Mrs. Sharpe she is there to do  
any kind of help to me she is more like a mother to me. Brother  
he has search you all over and could not find you then he has written  
20 to you a post card when and where can he meet you again, brother  
kindly write to him and say when you can meet him again. On the  
16 you were at Mirigama or where were you brother for the New Year  
did you go to Mirigama I don't mind where you go but kindly once  
in a way write to me and if you don't want to write and if you din't  
like me say that straight to my face never mind I will have to undergo  
anything if you all want allow us to get married say that brother and  
say what you all going to do to me and the other thing is whole  
through my life I cannot be at other places I must be with him  
brother and he has given in writing that when I am free he will marry  
30 me brother if you come at any time I can show you that brother  
I can send it to you but I dint like to send it because you all are to  
his side and you will put that poor man into trouble brother if you come  
I can show you and he has sign it also he is not a man to keep me for  
a few days and run away his love for me is truth so what is he telling  
brother what did he tell about me and him if you are not going to  
write to me for this letter I am coming never mind if I am caught  
I am here to face any kind of good or bad and well as any trouble  
never mind if I fall into trouble leaving him because he has done a  
lot and he is taking the trouble to come and see me three times a  
40 month even my father will never do such things now for this 4 months  
he has paid for my boarding alone 600/- rupees then why is he  
taking all this trouble if he does not want to marry me this time  
also he came and went he was very sorry because he could not meet  
you brother if you talk to him only you will know what saught of a

Exhibits  
P 8  
Letter from  
1st Defendant  
to her Brother  
(undated)--  
*Continued*

man he is other wise you will never know any thing about him and we saw to our horesopes also its very very good if I am with him I will never get children and we both will be very happy in our life God bless you brother.

Your loving Sister.

P 7  
Letter from  
1st Defendant  
to her Brother  
4.7.52

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**P7**

**Letter from 1st Defendant to Her Brother**

P7

My dear brother,

I had to leave " Killarney " because Aiya has come to know the 10 place and the Booking Clerk there is helping him and was trying to take photo's also I will let you know the new address soon. Mean- while you can write to me to this address, then he will give me the letter :—

Mr. B. E. Perera,  
Hettigoda,  
Hikkaduwa.

Has father come back and what did he say did you show him the promise, brother please hurry up with the case for me to be free soon. We are very anxious to get married. Please write to me in detail. 20 I am in good health and hope you the same. Please try to hurry this.

Your loving Sister,  
VALIN.

P 7A  
Promise of  
Marriage by  
2nd Defendant  
5.3.52

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**P7A**

**Promise of Marriage by 2nd Defendant**

P7A.

This is to assure on my honour that I promise to marry Dear Valin Pitigala the day she is free to be my wife.

(Sgd.) E. C. PERERA,  
*Station Master, Gintota. 30*



**P5****Promise of Marriage by 2nd Defendant**

P5.

This is indeed a sincere promise that I am prepared to get married to Dear Valin Pitigala any day any time anywhere.

(Sgd.) E. C. PERERA,

18.7.52.

**Exhibits**

P 5

Promise of  
Marriage by  
2nd Defendant  
18.7.52

**P4****Letter from 2nd Defendant to Mrs. Sharpe**

P4.

Railway,

Gintota,

14.9.52.

P 4

Letter from  
2nd Defendant  
to Mrs. Sharpe  
14.9.52

10

Dear Mrs. Sharpe,

After all this she left me and has gone back to her people. In my absence her father had come and gone with her. Before that she got her brother down and I think it was a trick played by them. Any way I cannot bear this grief. You know how well I loved her and what great sacrifices I made for her. Oh the disappointment is  
20 terrible. Can a woman turn like this. What did I not do to please her. Now I wonder whether she will allow them to dismiss me by getting information. Kindly if you sympathize me please tell anyone who comes for information that it was her brother who brought her there and paid for her board. I of course will admit that. I went in search of her and gave her a promise of marriage long after she left her husband as my name was in vain dragged into it. But I deny having lived with her that is in case anything props up now that she had gone back to him. I am sending you a bunch of plantains in a few days time. I am leaving this on transfer to Beruwala on 1.X.52.  
30 Some day I shall see you when my grief is subdued.

My grateful thanks to your ma and self.

God Bless you,

Yours faithfully,

(Sgd.) E. C. PERERA,

Station Master,  
Gintota.

Exhibits  
P 9  
Statement of  
Leave taken by  
2nd Defendant  
1951-52

## P9

## Statement of Leave taken by 2nd Defendant

P9.

1951								
13/1 —15/1	..	..	..	..	..	..	.3 Casual	
2/2	..	..	..	..	..	..	=1 Casual	
1/3	..	..	..	..	..	..	=1 Casual	
5/3	..	..	..	..	..	..	=	1 Privilege
7/3 — 8/3	..	..	..	..	..	..	=	2 Sick
19/3 —20/3	..	..	..	..	..	..		2 Privilege 10
27/3 —29/3	..	..	..	..	..	..	.3 Casual	
10/4 —11/4	..	..	..	..	..	..	=	2 Privilege
18/4 —19/4	..	..	..	..	..	..		2 Sick
16/6 —18/6	..	..	..	..	..	..	3 Casual	
30/6	..	..	..	..	..	..	=	1 Privilege
1/7 — 3/7	..	..	..	..	..	..	=	2 Privilege
21/8	..	..	..	..	..	..	=	1 Privilege
3/10	..	..	..	..	..	..	-1 Casual	
18/10—19/10	..	..	..	..	..	..	=	2 Privilege
1/11—11/11	..	..	..	..	..	..	=	9 Sick 20
10/12—13/12	..	..	..	..	..	..	=	4 Privilege
17/12—18/12	..	..	..	..	..	..	2 Casual	
30/12—31/12	..	..	..	..	..	..		1 Sick
1952								
1/1 —2/1	..	..	..	..	..	..	=	2 Sick
3/1	..	..	..	..	..	..	=	1 Sick
10/1 —12/1	..	..	..	..	..	..	3 Casual	
7/2 — 9/2	..	..	..	..	..	..	.3 Casual	
19/2 —21/2	..	..	..	..	..	..	=3 Casual	
27/2 —29/2	..	..	..	..	..	..		3 Privilege 30
17/3 —19/3	..	..	..	..	..	..	3 Casual	
1/4 — 3/4	..	..	..	..	..	..	=	3 Privilege
17/4 —18/4	..	..	..	..	..	..	2 Casual	
30/4 —	..	..	..	..	..	..	=	1 Privilege
5/5 — 6/5	..	..	..	..	..	..	=	2 Privilege
13/5 —16/5	..	..	..	..	..	..	=	4 Privilege
10/6 —12/6	..	..	..	..	..	..	3 Casual	
2/7 — 4/7	..	..	..	..	..	..	=	3 Privilege
18/7 —19/7	..	..	..	..	..	..	=	2 Privilege
12/8 —13/8	..	..	..	..	..	..	=	2 Privilege 40
2/9 — 4/9	..	..	..	..	..	..	=	3 Privilege
13/9	..	..	..	..	..	..	=	1 Privilege
14/10—15/10	..	..	..	..	..	..	=	2 Privilege