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14, 1954

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**Supreme Court of Ceylon
No. 56 (Interlocutory) of 1949**

**District Court, Colombo
No. 10504**

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

**IN THE MATTER OF THE LAST WILL AND TESTAMENT OF JAMES
ALBERT RATNAYAKE OF BANK HILL ESTATE, TALANGAMA, *Deceased***

BETWEEN

MURIEL AMARASEKERA nee WIJESINGHE of Deal Place, Colombo. *Appellant.*

AND

- 1. HETTIARATCHIGE DONA ADLIET RATNAYAKE**
- 2. PERCY ARNOLD RATNAYAKE**
- 3. PEARL BANDARA MENIKE RATNAYAKE, all of Bank Hill Estate,
Talangama**
- 4. HETTIARATCHIGE DON HERATH of Piliyandala, Guardian-ad-litem
of the 2nd and 3rd Respondents.....*Respondents.***

**RECORD
OF PROCEEDINGS**

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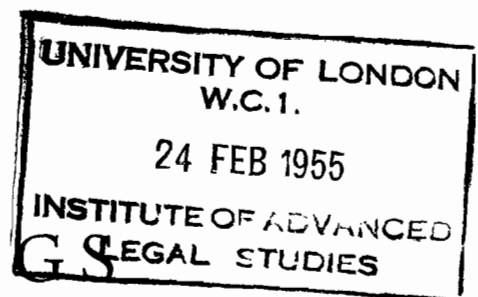
MURIEL AMARASEKERA *nee* WIJESINGHE of Deal Place, Colombo.
Appellant.

AND

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE
2. PERCY ARNOLD RATNAYAKE
3. PEARL BANDARA MENIKE RATNAYAKE, all of Bank Hill Estate,
Talangama
4. HETTIARATCHIGE DON HERATH of Peliyandala, Guardian-ad-litem
of the 2nd and 3rd Respondents.....*Respondents.*

37703

RECORD
OF PROCEEDINGS



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* Please see motion dated 22nd October 1951 at page 351.

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PART II.

EXHIBITS

2nd Petitioner's and 4th, 5th and 6th Respondents' Documents.

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R 3	Pass Book	1939-1943	Not printed*
R 4	Pass Book	1938-1943	Not printed*
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R 6	Register of Criminal Cases of the District Court, Colombo	17- 3-25	Not printed*
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R 13	Photograph of the signature of the Deceased on Cheques	31- 3-43	Not printed*
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PART I.

NO. 1

JOURNAL ENTRIES

IN THE DISTRICT COURT OF COLOMBO

No. 1
Journal Entries
5-7-43
to
7-7-50

In the Matter of the Estate of the Late JAMES ALBERT RATNAYAKE
of Bank Hill Estate, Talangama.....*Deceased.*

between

HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Es-
tate, Talangama and another.....*Petitioners.*

10

and

PERCY ARNOLDA RATNAYAKE and five others.....*Respondents.*
This 5th day of July 1943.

Mr. Paulus Cornelis Seneviratne files Proxy, Affidavit, and Petition
of the Petitioner together with Last Will and affidavit praying for Probate
and moves that an Order Nisi be entered declaring the status of the Petitioner
and their right to take out Probate.

The proxy is signed by both the parties who are the Executors and
the affidavit is by one of the Executors asking for Probate.

File proper papers and move.

20

Intd.
D. J.

8-7-43. Manager of National Bank of India Limited forwards
certificates, in duplicate, of amounts held by them in
current and fixed deposit in name of the deceased, to
be filed in Courts.
Note and filed.

Intd.
D. J.

30

9-7-43. Proctor for Petitioners files amended Petition and moves
that Court be pleased to issue Probate to the Petitioners.
Enter Order Nisi for 5-8-43 for publication in Daily News
and Gazette.

Intd. Illegible.
A. D. J.

13-7-43. At the request of Mr. P. C. Seneviratne, Proctor, Agent,
Hongkong and Shanghai Banking Corporation, Col-
ombo, forwards copies of correspondence in this Case.
File.

Intd. Illegible
A. D. J.

40

20-7-43. Order Nisi entered.

5-8-43. Mr. P. C. Seneviratne for Petitioners.

- 1. Gazette
 - 2. Papers
- } filed.

3rd respondent to be present on 26-8.

6th respondent's proxy filed. His objections 26-8.

No. 1
Journal Entries
5-7-43
to
7-7-50.
—Continued.

- 12-8-43. As he refuses to act as executor nominated in the writing Felix Wijeyesinghe, the 2nd Petitioner, moves to revoke the joint proxy granted by him to Mr. P. C. Seneviratne, Proctor, Colombo. He further moves for a notice on Mr. P. C. Seneviratne to show cause if any on 26-8-43 why the said proxy should not be revoked.
Notice Proctor for 16-9.
Intd. S. C. S.
A. D. J.
- 26-8-43. Mr. P. C. Seneviratne for Petitioners. 10
Mr. S. R. Ameresekere for 6th Respondent.
1. 3rd Respondent.
2. Objections of 6th Respondent.
3. Notice to revoke Proxy not taken out by 2nd Petitioner. Proxy in favour of Mr. Seneviratne revoked, his right to recover costs being revoked.
Mr. Ameresekere files proxy of 2nd Petitioner and 4th and 5th Respondents.
× × × (torn) × × ×
- 30-8-43. As the document purported to be the Last Will and Testament of the deceased filed in this case has now been impugned as a forgery, Proctor for 2nd petitioner and 4th and 5th and 6th respondents moves that the said document be impounded. 20
Already done Vide note under Journal Entry dated, 26-8-43.
Intd.
A. D. J.
- 2-9-43. Proctor for 4th, 5th and 6th respondents moves that Court be pleased to direct the Secretary to allow the document filed in this case purported to be the Last Will of the deceased to be photographed as it is now impugned as a forgery. 30
Allowed.
Intd.
A. D. J.
- 16-9-43. Proctor for 2nd Petitioner and 4th and 5th Respondent files Petition and Affidavit of the 2nd Petitioner and with writing marked A consent of Public Trustee, and for reasons stated in Petition and Affidavit moves that the the Public Trustee, Ceylon, be directed to take charge 40 of the Estate of the deceased and collect assets and pay debts till it is determined who is legally entitled to the succession thereto. Proctor for 1st Petitioner received notice for 16-9-43.
Objections, if any on 30th instant.
Intd. S. J. C. S.
A. D. J.

Call case on roll on 23-9-43 with notice to Proctors to decide on dates of inquiry.

Intd. S. J. C. S.
A. D. J.

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

20-9-43. Proctors informed by letters. Copy filed.

23-9-43. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 6th respondent.
Case called.
Date of inquiry to be fixed on 30th instant.

10

Intd. S. J. C. S.
A. D. J.

30-9-43. Case called.

1. Re appointment of the Public Trustee to take charge of the Estate and collect assets and pay debts till Probate or Letters of Administration is issued to the party entitled.
Objections of 1st Petitioner filed. Inquiry into them on 5-10-43.
2. Re-fixing dates for inquiry.
Further affidavit of 2nd Petitioner filed.
Call 5-10-43.

20

Intd. S. J. C. S.

5-10-43. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekere, for 6th Respondent.
1. Inquiry into appointment of Public Trustee.
Vide proceedings and order.
2. Case called to fix dates for inquiry.
Inquiry fixed for 3rd November.

30

Intd. S. J. C. S.
A. D. J.

7-10-43. Letters Pendente Lite entered in favour of the Public Trustee.
Inventory on 25-11-43.

Intd. S. J. C. S.
A. D. J.

23-10-43. Public Trustee sends an application dated 22-10-43 and requests that it be filed early and he be informed of the Order made thereon. He wants this treated as urgent. The Application states that the Public Trustee had been appointed Administrator pendente lite of the estate of deceased in above case. Among the assets disclosed to the Public Trustee was the business of the Firm of J. A. Ratnayake & Co. (including the cafe). In accordance with the Order of Court he made an Inventory of the stock-in-trade and duly sealed up the premises. It has now been revealed by the Manager of the business of J. A. Ratnayake & Co., Mr. Felix Wijesinghe, that

40

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

considerable loss is likely to result from the closure. The said Felix Wijesinghe has been devised the following under the impugned Last Will:—

- (a) the estate supplies and trading business, assets and liabilities, the house property at Yatiyantota;
- (b) share of premises at Magamma and 2 rooms at Dehiowita;
- (c) a 1/16 share of cash balance in Banks.

He is a son of deceased's sister and in event of Last Will not being admitted to probate he would be entitled to share with his 3 sisters the intestate estate of deceased. The 3 sisters have consented to his being entrusted with the conduct of the business. The written consents are annexed. The Public Trustee has no objection to allow him to conduct the business on a proper document of indemnification being executed by him and his 3 sisters, indemnifying the Public Trustee against any losses that may be incurred in the course of the conduct of the business. Wherefore the Public Trustee applies to Court for directions on the question. Move with notice to 1st petitioner's proctor.

Intd. S. J. C. S.,
A. D. J.
26-10-43.

27-10-43. The Public Trustee written to.

28-10-43. Proctor for Petitioner moves to file Petitioner's List of Witnesses and Documents and moves for summons on them. Proctor for Respondents received notice. Allowed.

Intd. S. S.,
A. D. J.

28-10-43. Proctor for 2nd Petitioner, 4th and 5th and 6th Respondents moves to file List of Witnesses and Documents. Procto: for 1st Petitioner received notice. Allowed.

Intd. S. S.,
A. D. J.

2-11-43. Mr. P. C. Seneviratne moves to file Petitioner's additional list of witnesses and moves for summons on them. Proctors for 2nd Petitioner and Respondents received notice.

Allowed.

Intd.....
A. D. J.

- 3-11-43. Mr. Advocate Obeyesekere with Mr. Advocate Jansz instructed by Mr. P. C. Seneviratne for 1st Petitioner Mr. Advocate Wickramayake instructed by Mr. S. R. Amerasekera for 6th respondent.

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

Inquiry.

Counsel state that this matter may be settled and ask for another date.

Of consent call case on 18th November to see whether the matter is settled. If not settled, a date of inquiry will then be fixed.

10

With reference to the Public Trustee's application of 23-10-43 Mr. Obeyesekere states that the 1st petitioner has no objection.

The Public Trustee is granted the permission applied for in (a) of the last paragraph of his motion. As the Deputy Public Trustee has attended Court today in connexion with the application the cost of his railway warrant will be borne by the estate.

Sgd. S. J. C. SCHOKMAN,

20

A. D. J.

3-11-43.

- 12-11-43. Mr. P. C. Seneviratne moves that Court do allow the Last Will which is impugned as a forgery to be photographed for the purpose of ascertaining the truth or otherwise of the allegation.

Allowed in the presence of the Secretary.

Intd. S. S.,

A. D. J.

- 18-11-43. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Amerasekera for 6th Respondent.
Case called for settlement. Not settled.
Call 22/11 to fix date of inquiry.

30

Intd. S. S.

A. D. J.

- 22-11-43. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Amerasekera for 6th Respondent.
Case called to fix a date of inquiry.
Inquiry on 27-3-44.

40

Intd. S. S.,

A. D. J.

- 25-11-43. The Public Trustee to file Inventory.
Inventory on 24-2-44.

- 24-2-44. The Public Trustee for Petitioner.
Inventory not filed.

Later: Vide motion for extension of time.
Stand over for 25-5-44.

Intd. S. S.,

A. D. J.

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

- 14-3-44. Mr. P. C. Seneviratne for Petitioner moves to file Petitioner's additional list of witnesses in above case and moves for Summons.
Proctor for respondents received notice.
Issue summons.
Intd. S. S.,
A. D. J.
- 18-3-44. Two sub-poenas issued and 1 sub-poena on witness No. 7 in list re-issued.
- 23-3-44. Two sub-poenas on witnesses 1 and 2 in 2nd, 4th, 5th and 6th Respondent's list of witnesses issued to Fiscal, W.P. 10
- 27-3-44. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekere for 2nd Petitioner and 4th, 5th and 6th Respondents.
The Public Trustee in person.
Inquiry.
Vide proceedings. For want of time further hearing is adjourned for 22nd and 23rd August, 1944.
Witnesses present in Court today are warned to appear on the next date without summons. 20
Intd. S. S.,
A. D. J.
- 27-3-44. Mr. P. C. Seneviratne for Petitioner moves to file additional list of witnesses and documents of Petitioner. Notice left at office of Proctor for Respondents.
Move with proper notice to the other side.
Intd. S. S.,
A. D. J.
- 11-4-44. Mr. P. C. Seneviratne for Petitioner moves to file the additional list of witnesses of Petitioner in above case and moves for summons. Proctor for Respondents received notice. 30
File.
Intd. R. F. D.,
D. J.
- 24-4-44. Trus Officer for Public Trustee forwards latter's application as Administrator pendente lite for directions of the Court to sell the car which is one of the assets of the Estate, preferably by tender.
He forwards letters of consent from two out of the five beneficiaries. The others, M. Ameresekere, G. Wijesinghe and H. Wijesingha have not given their consent. 40
Support.
Intd. R. F. D.,

- 6-5 44. The Public Trustee invites attention to his letter No. D. 214 TT. and wishes to be informed of the Order of Court. Notice the beneficiaries who have not consented to show cause if any, against the sale of the car on 22/6.
Intd. S. S.
- 25-5-44. The Public Trustee.
Inventory. Vide motion for extension of time till 23-11-44.
Allowed.
Intd. S. S.
- 10 29-5-44. Reference Order of Court on his Application in above case, Public Trustee wishes to know on what date he could support his application. Support on 22/6.
Intd. S. S.
- 22-6-44. Case called. Vide above order.
Public Trustee to support.
Deputy Public Trustee in support.
Notice 4th, 5th and 6th Respondents to show cause, if any, against the Public Trustee's application on 13-7-44.
Intd. S. S.
- 20 26-6-44. See Journal Entry of 24-4-44. Notices issued to Fiscal Western Province and Central Province.
- 13-7-44. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekere for 2nd Petitioner and 4th, 5th and 6th Respondents.
The Public Trustee. Applicant.
Notices re sale of car served on 1st, 2nd and 3rd Respondents. They are absent.
The application of the Public Trustee to sell the car after calling for tenders is allowed.
Intd. S. S.
- 30 1-8-44. Mr. S. R. Ameresekere for Respondents moves that Court do allow the Last Will to be photographed by Messrs. Samarakone Bros., Photographers, in the presence of the Secretary of this Court. The Handwriting Expert, Mr. L. Mutukrishna wishes so.
Allowed in the presence of the Secretary.
Intd. S. S.
- 19-8-44. 2 sub-poenas on witnesses 2 and 3 issued
- 40 22-8-44. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekere for 2nd Petitioner, 4th 5th, and 6th Respondents.
The Public Trustee. Administrator Pendente Lite.
Adjourned inquiry.
Vide Proceedings. Adjourned for 23-8-44.

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

- 23-8-44. Adjourned enquiry.
Vide proceedings. Further hearing postponed for 17th,
22nd and 26th January, 1945. Intd. S. S.,
A. D. J.
- 8-9-44. Reference the summons served on 19-8-44, the Agent,
The Hongkong & Shanghai Banking Corporation for-
wards to Court cheques Nos. 227653-227656 for Rs.
115/70, Rs. 30/-, Rs. 149/59, Rs. 121/38 drawn by the late
Mr. J. A. Ratnayake. File. 10
Intd. S. S.,
A. D. J.
- 17-11-44. Mr. S. R. Ameresekere for 2nd Petitioner and 4th, 5th
and 6th Respondents moves that Court do allow Mr.
Mutukrishna, the Handwriting Expert, who is a witness
for 2nd Petitioner, 4th, 5th and 6th Respondents to
take photographs of the impounded Last Will of deceased
as the photographs already taken have been misplaced.
Allowed in the presence of the Secretary. 20
Intd. S. S.,
A. D. J.
- 23-11-44. The Public Trustee. Administrator Pendente Lite.
Inventory not filed.
Vide Motion. Stand over for 24-5-. 45
Intd. S. S.,
A. D. J.
- 9-1-45. Mr. S. R. Ameresekere for Respondents moves that Court
do allow Mr. Mutukrishna to take photographs of the
cheques issued by deceased and produced in evidence 30
in this case as they are very material for the prosecution
of he Respondent's case.
Allowed in the presence of the Secretary.
Intd. S. C. S.,
A. D. J.
- 17-1-45. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Amerasekera for 2nd Petitioner, and 4th—
6th Respondents.
The Public Trustee. Administrator Pendente Lite. 40
Adjourned enquiry.
Vide proceedings. Further hearing adjourned for 22-1-45.
Intd. S. S.,
A. D. J.
- 22-1-45. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekere for 2nd Petitioner and 4th—
6th Respondents.

The Public Trustee. Administrator Pendente Lite.
 Adjourned enquiry.
 Vide proceedings. Further hearing on 26th instant.

Intd. S. S.,
A. D. J.

No. 1
 Journal Entries
 5-7-43
 to
 7-7-50
 —Continued.

26-1-45. Adjourned enquiry.
 Vide proceedings. For want of time further hearing is
 postponed for 6th and 7th March 1945 and if necessary
 on the 8th also.

Intd. S. S.,
A. D. J.

6-3-45. Mr. P. C. Seneviratne for 1st Petitioner.
 Mr. S. R. Amerasekera for 2nd Petitioner and 4th-6th
 Respondents.
 The Public Trustee—Administrator Pendente Lite.
 Adjourned enquiry.
 Vide proceedings. Further hearing for 7-3-45.

Intd. S. S.,
A. D. J.

7-3-45. Mr. P. C. Seneviratne for 1st Petitioner.
 Mr. S. R. Amerasekera for 2nd Petitioner and 4-6 Res-
 pondents.
 The Public Trustee—Administrator Pendente Lite.
 Further Hearing.
 Vide proceedings. Further hearing for 8-3-45.

Intd. S. S.,
A. D. J.

8-3-45. Adjourned enquiry
 Vide proceedings. Further hearing for 19-3-45.

Intd. S. S.,
A. D. J.

19-3-45. Further hearing.
 Vide proceedings.
 Judgment reserved.

Intd. S. S.,
A. D. J.

28-3-45. Mr. S. R. Amerasekera for 2nd Petitioner and 4th, 5th and
 6th Respondents, files documents R 1-R 20 with the
 List.

Mr. P. C. Seneviratne for 1st Petitioner files documents
 P 1 to P 13 with the list.

31-7-45. The District Judge, Jaffna returns record with the pro-
 ductions and his Judgment (in sealed envelope) for
 delivery of judgment on 2-8-45.
 Call on 2-8-45.

Signed V. R. RAJAKARIER,
A. D. J.

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No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

- 2-8-45. Mr. P. C. Senevirate for 1st Petitioner.
Mr. S. R. Amerasekera for 2nd Petitioner and 4th, 5th and
6th Respondents.
The Public Trustee Administrator Pendente Lite.
Judgment.
Vide Judgment delivered.
The application of the 1st Petitioner for Probate is refused
and the Order Nisi entered in this case is discharged.
The Petitioner to pay the objector's costs of this enquiry.
Signed V. E. RAJAKARIER, 10
A. D. J.
- 13-8-45. Petition of Appeal of the 1st Petitioner-Appellant filed by
his Proctor, Mr. P. C. Seneviratne with stamps of the
value of Rs. 36/- for the certificate in appeal.
Usual steps.
Intd. M. A. S.,
A. D. J.
- 13-8-45. Mr. P. C. Seneviratne for appellant moves to allow appel-
lant to deposits Rs. 250/- on or before 17-8-45 as security 20
for 1st, 5th, 6th and 7th Respondent's costs of appeal.
He also moves to allow the petitioner-appellant to exe-
cute the security bond hypothecating the said sum of
Rs. 250/- and to tender sufficient stamps to cover the
expenses of serving notice of appeal.
Proctor for 1st, 5th, 6th and 7th Respondents received
notice.
Allowed. Issue notice of security on 4th Respondent for 17-8-45.
Intd. M. A. S.,
A. D. J.
- 14-8-45. The 4th Respondent moves to allow the 1st Petitioner- 30
Appellant to deposit Rs. 250/- on or before 17-8-45 a
security for 1st, 5th, 6th and 7th Respondents' Costs
of Appeal. He further moves to allow Petitioner-App-
pellant to execute security bond hypothecating the said
sum of Rs. 250/- and to tender sufficient stamps to cover
expenses of serving notice of appeal on the said respo-
dent.
Allowed.
Security on 17-8-45.
Signed V. E. RAJAKARIER, 40
A. D. J.
- 20-8-45. Mr. P. C. Seneviratne files Bond to Prosecute Appeal with
Kachcheri receipt for Rs. 250/- security for costs of appeal,
Application for type written copies and notice of appeal
on the respondents-respondents.
1. File.
2. Issue notice of appeal.
Signed V. E. RAJAKARIER,
A. D. J.

- 21-8-45. Vide Journal entry of 20-8-45.
 1. Paying-in Voucher for Rs. 8/- entered.
 2. Notice of Appeal issued on Proctor for 1st, 5th, 6th and 7th Respondents and on 4th Respondent guardian-ad-litem over 2nd and 3rd Respondents.

No. 1
 Journal Entries
 5-7-43
 to
 7-7-50
 —Continued.

Intd.

- 22-8-45. Kachcheri Receipt No. A 894 for Rs. 8/- filed.

- 20-9-45. Mr. P. C. Seneviratne for Appellant.
 Mr. S. R. Amerasekera for 2nd Petitioner and 4th to 6th Respondents.

10

1. Notice of Appeal served on 4th Respondent. He is present and takes notice.
 2. No return to notice on Proctor for 1st, 5th, 6th and 7th Respondents.

Mr. Amerasekera takes notice for 1st, 5th, 6th and 7th Respondents. 2nd Petitioner is the 1st Respondent to appeal.

Forward Record to Supreme Court.

Signed V. E. RAJAKARIER,

20

A. D. J.

- 21-9-45. Mr. S. R. Amerasekera, for 2nd Petitioner and 4th to 6th Respondents under the circumstances explained in motion moves for a notice on 1st Petitioner and 3rd Respondent, guardian-ad-litem of 1st and 2nd Respondents and the Public Trustee, Administrator pendente lite to show cause if any, why for the present, one-fourth of Rs. 70,127/- deposited by deceased in National Bank and Hongkong and Shanghai Bank, should not be paid to 2nd Petitioner and 4th, 5th, and 6th Respondents jointly less the share due from them as estate duty and fees of the Public Trustee.

30

Call on 27-9-45.

Intd. V. E. R.

A. D. J.

- 21-9-45. Mr. P. C. Seneviratne for Petitioner moves that the Public Trustee be authorised to continue payment of the allowance to Petitioner for Rs. 100/- pending Appeal from order in this case.

40

Mr. S. R. Amerasekera received notice for 27th instant and has cause to show.

Call on 27-9-45.

Signed V. E. RAJAKARIER,

A. D. J.

- 27-9-45. Mr. P. C. Seneviratne for appellant.
 Mr. S. R. Amerasekera for 2nd Petitioner and 4th to 6th Respondents.

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

Case called. Vide order of 21-9-45 above.
Vide proceedings. Consideration of both motions of
21-9-45 on 17-10-45.

Intd. V. E. R.,
A. D. J.

- 17-10-45. Mr. P. C. Seneviratne for Petitioner-Appellant.
Mr. S. R. Amerasekera for 2nd Petitioner and 4th to 6th
Respondents.
Case called. Vide above order.
Vide proceedings. 10
Notice to issue on Public Trustee with regard to two appli-
cations for 5-11-45.
Notice also to state that the matter will be enquired into
on that date.
Intd. V. E. R.,
A. D. J.
- 18-10-45. Notice issued on Public Trustee to Deputy Fiscal, Ne-
gombo.
- 31-10-45. Mr. S. R. Amerasekera moves to file the list of witnesses 20
for 2nd Petitioner and 4th, 5th and 6th Respondents re the inquiry filed in this case.
Proctor for 1st Petitioner received notice.
File.
Signed V. E. RAJAKARIER,
A. D. J.
- 1-11-45. Reference notice served on him to shew cause why the
applications therein referred to should not be allowed,
the Public Trustee states that he has no objection to
said applications being allowed subject to the payment
of estate duty and administration expenses. 30
Note and filed.
Intd. V. E. R.,
A. D. J.
- 5-11-45. Mr. P. C. Seneviratne for Petitioner-Appellant.
Mr. S. R. Amerasekera for 2nd Petitioner and 4th to 6th
Respondents.
1. Notice served on Public Trustee.
2. Inquiry re Applications above.
Vide proceedings. Application of 2nd Petitioner and 4th
to 6th Respondents is allowed and the Public Trustee 40
is directed to pay them jointly Rs. 15,031/- less a sum of
Rs. 7,500/-.
The application of the 1st Petitioner is also allowed. The
Public Trustee is directed to continue to pay her the
monthly allowance of Rs. 100/-.,
Signed V. E. RAJAKARIER,
A. D. J.

- 9-11-45. Proctor for 1st, 5th, 6th and 7th Respondents files applications for typewritten copy of record and moves for a paying-in voucher for Rs. 25/-.
1. File.
2. Issue paying-in voucher for Rs. 8/-.
Intd. V. E. R.,
A. D. J.
- 9-11-45. Vide above. Paying-in voucher entered.
Intd.
- 10 21-11-45. The appeal brief in this case consists of 269 pages. Call for Additional fees Rs. 32/- from the appellant's Proctor, Mr. P. C. Seneviratne and Rs. 40/- from 1st, 5th, 6th and 7th Respondents, Mr. S. R. Amerasekera.
Intd. V. E. R.,
A. D. J.
- 22-11-45. Additional fees and fees called for.
- 26-11-45. Kachcheri receipt No. A. 1014/46022 of 19-11-45 for Rs. 8/- being fees for typewritten copy of brief from Proctor for 1st Respondent filed.
- 20 27-11-45. Kachcheri receipt No. A. 1538 of 26-11-45 for Rs. 32/- additional fees for a typewritten copy from Proctor for respondent filed.
Intd.
- 1-12-45. The Public Trustee sends motion asking for an extension of time till 21-2-46 to file Inventory.
Stand over for 21-2-46.
Signed V. E. RAJAKARIER,
A. D. J.
- 30 4-12-45. Kachcheri receipt No. A. 1885/47794 of 30-11-45 for Rs. 32/- additional fees for typewritten copy from Proctor for appellant filed.
Intd.
- 21-2-46. The Public Trustee to file Inventory.
Inventory not filed.
Vide motion. Stand over for 22-8-46.
Intd. V. E. R.,
A. D. J.
- 28-2-46. Record forwarded to Supreme Court.
1-3-46. Intd.
- 40 22-8-46. Record of this case has since been sent up in appeal to Supreme Court.
Inventory due from the Public Trustee.
Await decision of the case in appeal.
Intd.
A. D. J.

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

- 23-8-46. The Public Trustee forwards a motion (in duplicate for an extension of time till 21-11-46 to file Inventory for 21-11-46. Intd., A. D. J.
- 11-9-46. Public Trustee informed.
21-11-46. Inventory not filed.
Stand over 30-1-47. Intd., A. D. J. 10
- 25-11-46. Public Trustee forwards motion in duplicate applying for extension of time to file Inventory till 15-5-47 and requests one copy to be returned to him with order transcribed.
26-11-46. Inventory for 8-5-47. Intd. S. C. S., A. D. J.
- 18-3-47. Record received from the Supreme Court. Order of this Court of 2-8-45 is set aside and case sent back for trial before another Judge. If the parties agree the evidence already recorded may be utilized but it is desirable that all witnesses be presented again for cross-examination. 20
1. Note in appeal Register.
2. Call on Bench on 27-3-47 to fix date for inquiry.
Signed M. SINNETHAMBY,
A. D. J.
- 27-3-47. Mr. P. C. Seneviratne for Petitioner. Mr. S. R. Ameresekera for 2 Petitioner 4th to 6th Respondents. 30
Case called. Vide order.
Mr. Jansz for Petitioner.
Trial on issues already framed for 1, 2, 3, September.
Intd. N. S.,
A. D. J.
- 27-2-47. Mr. P. C. Seneviratne moves for an O. P. in his favour for Rs. 250/- being the security of costs in appeal of the Petitioner-Appellant. Proctor for Respondent received notice. Issue requisition in favour of the Appellant for Rs. 250/-. 40
Intd. N. S.,
A. D. J.
- 28-3-47. Requisition for Rs. 250/- issued to Mrs. D. A. Ratnayake. Intd. N. M. P., Secretary, Intd. N. S., A. D. J.

- 1-4-47. Proctor for Petitioner-Appellant files 1st Petitioner's Bill of costs taxed by S. C. and moves that the P. T. be authorised to pay him Rs. 573 out of the proceeds lying in his hands.
1st Petitioner and Proctor for 1st to 5th and 7th Respondents' consent.
P. T. is authorised to pay the taxed costs out of the shares of 1st to 5th and 7th Respondents in the hands of the Public Trustee.
- 10 Intd. N. S.,
A. D. J.
- 8-5-47. Inventory not filed.
Call for it from the Public Trustee.
S. O. 26-6-47.
- Intd. N. S.,
A. D. J.
- 9-5-47. Letter to Public Trustee.
Public Trustee forwards motion in dupl asking for extension of time till 14-8-47 to file the Inventory.
Inventory for 28-8-47.
- 20 Intd. N. S.,
A. D. J.
- 18-7-47. C. E. D. informs Court of issue of notice of assessment.
Intd.
- 11-8-47. Public Trustee forwards motion in duplicate applying for extension of time till 13-10-47 to file Inventory and requests duplicate copy to be returned to him with Court's Order.
Allowed S. O. 13-11-47.
- 30 Intd. V. E. R.,
A. D. J.
- 13-8-47. Mr. P. C. Seneviratne for Petitioner moves to file Petitioner's list of witnesses and documents and moves for summons on them.
Proctor for Respondents received notice.
1. Allowed.
2. Re No. 14 obtain certified copy.
- Intd. V. E. R.,
A. D. J.
- 40 27-8-47. Summons to witness No. 2 issued to Western Province.
- 27-8-47. Mr. S. R. Amerasekera for 2nd Petitioner 4th and 5th and 6th Respondents moves to file list of witnesses and documents for the 2nd Petitioner and 4th and 5th and 6th Respondents and moves for summons.
Proctor for 1st Petitioner received notice with copy.
Re 16 obtain certified copy subject to this allowed.
- Intd. N. S.,
A. D. J.

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

- 28-8-47. Mr. S. R. Ameresekera for 2nd Petitioner and 4th, 5th and 6th Respondents moves for leave of Court to take out the documents R 1 to R 20 except R 5a and R 5B to be produced again at the inquiry fixed for 1-9-47 to enable Counsel to conduct case.
Take copies.
Intd. N. S.,
A. D. J.
- Mr. Ameresekera in support. Application allowed.
Mr. Ameresekera undertakes to retender them again. 10
Intd. N. S.,
A. D. J.
- 29-8-47. Summons issued on witness No. 9 to Western Province.
- 1-9-47. Mr. P. C. Seneviratne for Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th Respondents.
Inquiry.
Vide proceedings adjourned for 2-9-47.
Intd. N. S.,
A. D. J. 20
Proceedings in Volume II.
- 2-9-47. Mr. P. C. Seneviratne for Petitioner.
Mr. S. R. Ameresekera for 3rd Petitioner.
Adjourned Inquiry.
Vide proceedings adjourned for 3-9-47.
Intd. N. S.,
A. D. J.
- 3-9-47. Adjourned Inquiry.
Vide proceedings. Further hearing postponed for 10, 11 and 12, December and 27, 28 and 29th January, 1948. 30
Intd. N. S.,
A. D. J.
- 9-9-47. Mr. S. R. Ameresekera for 2nd Petitioner and 4th, 5th and 6th Respondents move to file the additional list of witnesses.
Proctor for 1st Petitioner received notice as Mr. P. C. Seneviratne refused to take notice copy posted.
File proof of posting and move.
Intd. N. S.,
A. D. J. 40
- 24-9-47. Mr. S. R. Ameresekera for Petitioner moves that Mr. L. Muttukrishna be allowed to take photographs of impugned will.
Allowed in presence of Secretary.
Intd. N. S.,
A. D. J.

7-11-47. Public Trustee forwards motion in duplicate applying for extension of time till 12-2-48 to file Inventory.
Inventory 12-2-48.

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

2-11-47. Mr. S. R. Ameresekera for applicants files Petition and Affidavit from the applicants and for reasons stated moves that:

1. To order indemnity bond to be cancelled.
2. to order the Public Trustee to pay to the applicants Rs. 7,500.

Notice Public Trustee and the Respondents for 5-12.

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

2-12-47. Notice issued on 1st, 2nd and 3rd Respondents to Western Province.

5-12-47. Mr. P. C. Seneviratne for Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th Respondents.

Vide 2-12-47. Notice issued on 1st, 2nd and 3rd Respondents.

Notice not served on 2nd Respondent.

Re issue on 2nd for 8-12.

Later. Notice served on 1st and 3rd Respondents.

They are:

Mr. Advocate Kottegoda. for 1st Respondent.

3rd Respondent Deputy Public Trustee does not oppose application provided the applicant absolved him from responsibility. Mr. Advocate Mahadevan instructed by Mr. Ameresekera for the applicants agrees to absolve the Public Trustee from any responsibility.

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

5-12-47. Notice reissued on 2nd Respondent.

8-12-47. Mr. P. C. Seneviratne for Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th Respondents.

Notice issued on 2nd Respondent . No return

He is —

Later

Notice not served on 2nd Respondent for want of time.

Re-issue notice for 12-12-47.

Intd. V. E. R.,
A. D. J.

9-12-47. Notice re-issued on 2nd Respondent.

10-12-47. Mr. P. C. Seneviratne for Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner 4th to 6th Respondents.

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

- Adjourned inquiry. Vide 3-9-47.
Call 11-12. For inquiry before D. Court.
Intd. V. E. R.,
A. D. J.
- 11-12-47. Mr. P. C. Seneviratne for Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th
Respondents.
Adjourned inquiry.
Vide proceedings—adjourned for 12-12-47.
Intd. N. S., 10
A. D. J.
- 12-12-47. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th
Respondents.
Notice served on 2nd Respondent.
He is absent.
Adjourned inquiry.
Vide proceedings. Adjourned for 27-1-48.
Call case on 19-12-47 for objection 2-12-47
Intd. N. S., 20
A. D. J.
- 19-12-47. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th
Respondents.
Case called for objections to 2-12-47
Mr. P. C. Seneviratne for 1st Petitioner.
Objections filed.
Inquiry 13-1.
Intd. N. S., 30
A. D. J.
- 13-1-48. Inquiry.
Vide proceedings and order. Rs. 2,500 to be paid to 2nd
Petitioner.
Intd. N. S.,
A. D. J.
- 22-1-48. Mr. S. R. Ameresekera for 2nd Petitioner moves to file
certified copy of Indemnity Bond produced by the 2nd
Petitioner.
File.
Intd. N. S., 40
A. D. J.
- 23-1-47. Summons to witness issued to Western Province.
- 27-1-48. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th
Respondents.
Adjourned inquiry.
Vide proceedings. Adjourned for 28-1-48.
Intd. N. S.,
A. D. J.

- 28-1-48. Inquiry.
Vide proceedings. Adjourned for 4th, 5th, 6th and 11th
May 1948. Intd. N. S.,
A. D. J.
- 12-2-48. The Public Trustee to file Inventory.
Inventory filed. Intd. N. S.,
A. D. J.
- 10 3-5-48. Summons issued to witness No. 14 to Western Province.
- 4-5-48. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th
Respondents.
Inquiry. Vide proceedings.
Inquiry adjourned for 6th, 7th and 8th July 1948.
Intd. ,
A. D. J.
- 20 6-5-48. An extract of Attendance Register of the Christian College
Kotte received from P. S. D. L. Karunaratne and filed
of record.
- 18-5-48. Bill of Costs on 4-5-48, etc. filed with copy of Order for
Costs
- Eodie.* Objections to Bill filed.
- 19-5-48. Bill taxed at.
Incurred Rs. 615.45
Prospective Rs. 104.84

Rs. 720.29
- 30 19-5-48. At 10-50 a.m.
Mr. S. R. Ameresekera files a letter embodying further
objections.
- 20-5-48. Vide A. D. J.'s Order on letter addressed to him by Mr. S.
R. Ameresekera and minute thereon. I direct him to re-
tax the bill taking into consideration the objections
contained in letter marked B.
Intd. N. S.,
A. D. J.
- 40 26-5-48. A. D. J.
As directed I fixed the bill for retaxation for 26-5-48, at
9-30 a.m. and I gave notice of the date and time to the
Proctor for Petitioner personally in Court on 20-5-48,
and sent a letter to Proctor for Respondents. Proctor for
Respondents was present; Proctor for Petitioner came a
few minutes later,

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

Costs were ordered to be paid to the 1st Petitioner for the 4th May, on which date the inquiry was partly heard and for 3 subsequent dates for which the case was specially fixed.

The bill tendered has been prepared on the basis that the inquiry was held on all the dates. The contention by the respondent's Proctor is that the Bill is not in conformity with the order of the Court as no inquiry was held on the following 3 days and as such only a retainer fee and not a refresher fee should be allowed. 10

In the absence of any definite order or indication that the following 3 days should be differentiated from the 1st day in which the inquiry was held I had to accept the bill as prepared to be correct and I taxed the bill accordingly on that basis.

As regards the contention that only one consultation fee can be charged I do not agree. The authority cited is 35 N.L.R., page 384. I submit that it was in a case in S. C. appeal where argument was continued for more than one day. The correct ruling on the question applicable to the point at issue is found at page 27 of the same N.L.R. by the same judge. It runs as follows:— 20
“The number of consultations necessary would depend on the nature of the case and a consultation may become necessary as a result of something which occurs during the hearing of the appeal” Allowance of a further brief fee is in the discretion of the taxing officer. “The whole principle that the taxing officer is to apply is to allow all such costs charges and expenses as shall appear to him to have been necessary and proper for the attainment 30
of Justice.”

In view of what I have stated above I hold that the Advocate is entitled to a refresher fee and not a retainer.

Thus I do not see any item which requires a retaxation on the objections raised.

Intd. S. K. SADASHIVAM,
Taxing Officer,
26-5-48.

28-5-48. Mr. S. R. Ameresekera requests that the 1st Petitioner's bill of costs be placed before the Court for review of 40
taxation and annexed statement of objection and also requests that the following dates be not fixed, June 2nd, 3rd, 8th, 24th and 29th and July 9th, 15th and 29th.
Notice Proctor for Petitioner for 24-6.

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

4-6-48. Proctor for 1st Petitioner moves that the inquiry re the review of taxation be fixed for an early date. Proctor for 2nd, 4th, 5th and 6th Respondents have received notice and moves that the inquiry be refixed for 10-6-48. Call on Bench on 14-6 to fix the date.

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

10 14-6-48. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Amarasekera for 2nd Petitioner and 4th to 6th Respondents.
Inquiry on 6-7.

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

20 6-7-48. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th Respondents.
Vide proceedings.
Inquiry postponed for 11th, 12th, 18th and 22nd October, 1948.

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

30 3-8-48. Proctor for 1st Petitioner moves that the Court be pleased to allow a sum of Rs. 500 in satisfaction of the taxed costs of the 4th, 5th 6th and 11th May 1948 when Proctor consents.
Further he moves that the Court be pleased to direct the Public Trustee to pay this sum out of the sum of Rs. 10,000 reserved in his hands out of the share that would eventually go to the 2nd Petitioner, 4th, 5th and 6th Respondents.
Proctor for 4th, 5th and 6th Respondents and 2nd Petitioner consents.
Has the Public Trustee, got any money in his hands? File his consent. Costs fixed at Rs. 500 approved.

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

Mr. Senevirate in support.
Notice Public Trustee re application (16) for 27-8.

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

40 7-8-48. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th Respondents.
Notice on Public Trustee not taken out.
No Order,

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

No. 1
Journal Entries
5-7-43
to
7-7-50
---Continued.

- 28-8-48. Proctor for 1st Petitioner applies for execution of Decree by issue of writ against 2nd, 4th, 5th and 6th Respondents.
Allowed.
Intd. N. S.,
A. D. J.
- 28-9-48. Proctor for 1st Petitioner moves that the payment of Rs. 210 by 2nd Plaintiff and 4th, 5th and 6th Respondents be certified of record. Payment is certified.
Intd. N. S., 10
A. D. J.
- 11-10-48. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th Respondents.
Case called.
Vide proceedings.
Intd. N. S.,
A. D. J.
- 12-10-48. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th 20 Respondents.
Vide proceedings filed.
Vide motion and medical certificate.
Intd. N. S.,
A. D. J.
- 18-10-48. Mr. P. C. Seneviratne for 1st Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th Respondents.
Vide proceedings.
After Lunch. 30
Intd. N. S.,
A. D. J.
- 22-10-48. Further hearing.
Vide proceedings.
Intd. N. S.,
A. D. J.
- 29-10-48. Further evidence read.
Vide proceedings.
Intd. N. S.,
A. D. J. 40
- 25-11-48. Addresses.
Vide proceedings filed.
Jt. on 25-1-49.
Intd. N. S.,
A. D. J.
- 2-12-48. Proctor for 2nd Petitioner and 4th, 5th and 6th Respondents files documents marked Y 1 to Y 9 and R 1 and R 7, and R 1 to R 20.
He tenders stamps to the value of Rs. 94/50,

7-12-48. Mr. P. C. Seneviratne files list of witnesses. List is in proceedings Volume. File.

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

21-1-49. B. A. W. Silva files Petition and wants to know whether D. A. Athale has deposited the proceeds of the sale of paddy in Court to the credit of this case.

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He also moves that the Court be pleased to issue a prohibitory notice on the said Athale and his party of cultivators to cease at once cultivating of the field known as Delgahawatte and Kotuwe Kumbure or in the alternative the said Athale moves that the Court be pleased to inform him what legal steps be shall take to declare his rights to proceeds of paddy realised from the sale of same by the said M. Athale or to make B. A. W. Silva Petitioner a necessary party in this case.

Refer to legal remedy.

25-1-49. Mr. P. C. Seneviratne for Petitioner.
Mr. S. R. Ameresekera for 2nd Petitioner and 4th to 6th Respondents.

20

Judgment filed.

Jt. Pronounced in open Court in the presence of Mr. P. C. Seneviratne for Petitioner and Mr. Seyed Hamid takes notice on behalf of Mr. Ameresekera for the Respondents.

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

5-2-49. Mr. S. R. Ameresekera Proctor for Appellant files Petition of Appeal against the Order of the Court, dated 25th January 1949 together with stamps of Rs. 36 for certificate in appeal and Rs. 40/80 costs of serving notice of appeal on Respondents and moves to issue notice of filing of Petition of Appeal and of giving security through Court on Mr. P. C. Seneviratne, Proctor for 1st Respondent and on 4th Respondent guardian ad litem of 2nd and 3rd Respondents.

30

1. Accept petition of appeal.
2. Issue notice of security for 11-2-49.

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

5-2-49. Notice of security issued on Mr. P. C. Seneviratne and 4th Respondent.

8-2-49. Proctor for appellants files affidavit of J. H. Amarasekera and moves for substituted service of notice of filing Petition of Appeal and of giving security in the sum of Rs. 250 for the prosecution of the appeal on the 4th

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

- Respondent by affixing notice to residence of the 4th Respondent to show cause if any.
Allowed. Issue for service by affixing on front door of the 4th Respondent's residence at Mampe also by registered letter for 11-2.
Intd. N. S.,
A. D. J.
- 9-2-49. Deputy Fiscal returns notice served on 1st and 2nd Respondents and states that the 2nd Respondent is evading personal service of the notice. 10
Intd. S. K. S.,
A. D. J.
- 9-2-49. Notice re-issued for substituted service on respondents and also by registered letter.
- 11-2-49. Mr. S. R. Ameresekera for Appellants.
Mr. P. C. Seneviratne for 1st Respondent.
Notice of security served on Mr. P. C. Seneviratne and 4th Respondent.
Mr. Seneviratne pt.
Mr. F. G. de Silva files proxy of 4th Respondent personally and as G. A. L. of 2nd and 3rd Respondents. 20
I accept the security offered.
Issue of notice of Appeal in Bond being perfected for 7-3.
Intd. N. S.,
A. D. J.
- 11-2-49. Deposit note for Rs. 250 issued.
- 16-2-49. Mr. S. R. Ameresekera, Proctor for appellants tenders security bond for Rs. 250 together with Kachcheri Receipt and notice of appeal to be issued on the Respondents Proctor and an application for typewritten copy of the record. 30
1. File security bond and K. R.
2. Issue notice of appeal for 7-3.
3. Issue paying in voucher for Rs. 12 as prayed for.
Intd. N. S.,
A. D. J.
- 16-2-49. Paying in voucher for Rs. 12 issued.
- 17-2-49. Notice of Appeal issued to Western Province on Mr. P. C. Seneviratne and Mr. F. G. de Silva.
166B K/R, X/7 No. 94827/1317 for Rs. 250 filed. 40
- 17-2-49. K.R. X/7 53608/189-1 for Rs. 12 filed.
- 7-3-49. Mr. S. R. Amarasekera for Appellants.
Mr. P. C. Seneviratne for 1st Respondent.
Mr. F. G. de Silva for 4th Respondent.
Notice of Appeal served on Messrs. Seneviratne and F. G. de Silva.

They are absent.
Forward record.

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

No. 1
Journal Entries
5-7-43
to
7-7-50
—Continued.

25-3-49. P. M. G. requires this record for reference and return.
Ask him to comply with Section 35 of J.O.M.

1-4-49. Letter written to P.M.G.

20-4-49. P.M.G. states that this record is required to verify certain
statements made by Mr. J. H. Amarasekera.
He undertakes to return the record within a week.
Send for ref. and return within a week.

Intd. H. A. de S.,
D. J.

22-4-49. Record forwarded to Postmaster-General.

Intd.,

21-6-49. Vide motion from Appeal Branch to call for additional
fees for typewritten copies.

Call for Rs. 36/- from Mr. S. R. Amerasekera, Proctor
for Appellant.

Call for Rs. 48/- from Mr. P. C. Seneviratne for 1st Res-
pondent.

Call for Rs. 48/- from Mr. F. G. de Silva for 4th Res-
pondent.

Intd.,

A. D. J.

Fees called for.

Intd.,

21-6.

30-6-49. Proctor for appellant files Kachcheri Receipt for Rs. 36/-
being additional charges for the typewritten copies
applied for by the appellant.

File.

Intd.,

A. D. J.

5-7-49. Kachcheri Receipt for Rs. 36/- filed.

15-7-49. Kachcheri Receipt for Rs. 48/- filed.

31-1-50. Case received from Supreme Court with the Judgment
stating that the appeal is dismissed with costs. Parties
to note S.C. decision.

Intd.,

A. D. J.

6-2-50. Proctor for 1st Petitioner files application for execution
of Decree.

Notice allowed for 30-3.

Intd.,

A. D. J.

No. 1.
Journal Entries
5-7-43
to
7-7-50
—Continued.

- 30-3-50. Mr. P. C. Seneviratne for 1st Petitioner.
Notice not issued. Issue for 18-5-50.
Intd.,
A. D. J.
- 11-5-50. Notice issued on 2nd Petitioner and 4th 5th, and 6th Res-
pondents.
Intd.
- 18-5-50. Mr. P. C. Seneviratne for 1st Petitioner.
Notice of writ on 2nd Petitioner and 4th, 5th and 6th Res-
pondents not served. 10
Re-issue for 6. 7. 50.
Intd.,
A. D. J.
- 12-6-50. Notices re-issued on 2nd Petitioner and 4th, 5th and 6th
Respondents.
Intd.,
- 6-7-50. Notice of writ served on 6th Respondent.
She is absent. Issue writ against her only.
Not served on 4th and 5th Respondents and 2nd Petitioner.
Re-issue for 24-8-50. 20
Intd.,
A. D. J.
- 7-7-50. Registrar, S.C. requests that this record be sent to him
per bearer as Final Leave to Appeal to the Privy Council
has been allowed by Supreme Court.
Send case.
Maintain a sub-file.
Intd.,
A. D. J.

No. 2
Petition of the
Petitioner
5-7-43

No. 2. 30

PETITION OF THE PETITIONER

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RAT-
NAYAKE of Bank Hill Estate, Talangama.....*Deceased.*

- 1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill
Estate, Talangama.
- 2. FELIX WIJESINGHE of Dehiowita.....*Petitioners.*
No. 10504 Testamentary.

and

- 1. PERCY ARNOLDA RATNAYAKE, 40
- 2. PEARL BANDARA MENIKA RATNAYAKE both of Bank Hill
Estate, Talangama, minors by their Guaridan-ad-litem—3rd Respon-
dent,
- 3. HETTIARATCHIGE DON HERATH of Peliyandara,
- 4. ELLEN WIJESINGHE,

5. GERTIE WIJESINGHE both of "Reverton," Matale Road, Kandy,
 6. MURIAL AMERASEKERA *nee* WIJESINGHE of Deal Place in Colombo. Respondents.

No. 2
 Petition of the
 Petitioner
 5-7-43
 --Continued.

On this 5th day of July, 1943.

The Petition of the Petitioner abovenamed appearing by Paulus Cornelis Seneviratne her Proctor states as follows:—

1. The Petitioner abovenamed is the wife of the deceased.
 2. The abovenamed deceased James Albert Ratnayake duly executed his Last Will and Testament on the 23rd day of May 1943.
 3. The said James Albert Ratnayake died on the 3rd day of June 1943 at Talangama within the jurisdiction of this Court.
 4. The said Last Will since its execution was in her custody and is now produced in Court.
 5. To the best of the Petitioner's knowledge and information the property left by the deceased in so far as the Petitioner is able to ascertain appears in the schedule.
 6. The Petitioner abovenamed claims for Probate as one of the Executors appointed in the said Last Will.

The Schedule Above Referred To

		Value
		Rs. cts.
IMMOVABLE PROPERTY		
1.	Premises No. 7, 7A, 7B, 7C, 7D situated at Dehiowita	2,500-00
2.	Premises No. 31 and 32 Dehiowita	3,000-00
3.	Premises No. 33 at Dehiowita	1,500-00
4.	Premises No. 76, 76A, 76B, 76C, 76D, 76E, 76F and 76G at Dehiowita (6 rooms 2 garages)	7,500-00
5.	Premises No. 77 and 77A at Dehiowita	4,000-00
6.	Paddy Field at Dehiowita	100-00
7.	Premises at Magamma and Paddy Field	1,500-00
8.	Premises at Yatiyantota called "Hope Lodge"	2,000-00
9.	Paddy Field at Talduwa	100-00
10.	Premises situated Kerawalapitiya in Hendala	9,000-00
11.	Bank Hill Estate, Talangama South	30,000-00
Total ..		61,200-00

MOVABLE PROPERTY

1.	Gold Watch with Chain and Gold Ring	250-00
2.	To Value of Furniture at Bank Hill Estate	1,000-00
3.	To Goods at Barthland House	383-92
4.	Goods at Estate Supplies Agency Department	1,935-25
5.	To Goods at Sundry Department	1,433-20
6.	To Value of Motor Car No. Z 1570	2,000-00

No. 2
Petition of the
Petitioner
5-7-43
—Continued.

MONIES IN THE BANK

7. To Fixed Deposit and Current Account at National Bank Ltd., Colombo	65,551-71	
8. To Hongkong & Shanghai Bank Ltd.	4,360-16	76,914-24
	Total ..	138,114-24

Wherefore the Petitioner prays that the Court may be pleased to issue Probate to the Petitioner abovenamed to the Estate of the deceased as a wife of the deceased and for such other and further relief as to this Court shall seem meet.

Sgd. P. C. SENEVIRATNE, 10
Proctor for Petitioner.

No. 3
Affidavit of the
1st Petitioner
5-7-43

NO. 3.

AFFIDAVIT OF THE 1st PETITIONER

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama.....
Deceased.

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama,
2. FELIX WIJESINGHE of Dehiowita.....*Petitioners.* 20
and
1. PERCY ARNOLDA RATNAYAKE,
2. PEARL BANDARA MENIKA RATNAYAKE both of Bank Hill Estate, Talangama. Minors by their Guardian-ad-litem 3rd Resdpondent,
3. HETTIARATCHIGE DON HERATH of Peliyandara,
4. ELLEN WIJESINGHE,
5. GERTIE WIJESINGHE both of "Reverton," Matale Road, Kandy,
6. MURIAL AMERASEKERA *nee* WIJESINGHE of Deal Place, in Colpetty *Respondents.* 30

I, Hettiaratchige Dona Adliet Ratnayake, of Bank Hill Estate, Talangama South not being a Christian do hereby solemnly sincerely truly declare and affirm as follows:—

1. I am the wife of the abovenamed deceased.
2. The said James Albert Ratnayake duly executed his Last Will and Testament on the 23rd day of May 1943.
3. The said James Albert Ratnayake died on the 3rd day of June 1943, at Talangama within the jurisdiction of this Court.
4. The said Last Will since its execution was in my custody and is now produced in Court. 40
5. To the best of my knowledge the property left by the Deceased in so far as I have been able to ascertain appears in the Schedule annexed herewith.
6. I claim as one of the Executors appointed in the said Last Will,

The Schedule Above Referred To

IMMOVABLE PROPERTY

No. 3
Affidavit of the
1st Petitioner
5-7-43
—Continued.

Value
Rs. cts.

	1. Premises Nos. 7, 7A, 7B, 7C, 7D situated at Dehiowita	2,500-00	
	2. Premises Nos. 31 and 32 at Dehiowita	3,000-00	
	3. Premises No. 33 at Dehiowita	1,500-00	
	4. Premises Nos. 76, 76A, 76B, 76C, 76D, 76E, 76F and 76G at Dehiowita (6 rooms and 2 garages) ..	7,500-00	
10	5. Premises No. 77 and 77A at Dehiowita	4,000-00	
	6. Paddy Field at Dehiowita	100-00	
	7. Premises at Magamma and Paddy Field	1,500-00	
	8. Premises at Yatiyantota called " Hope Lodge "	2,000-00	
	9. Paddy Field at Talduwa	100-00	
	10. Premises situated at Karawalpitiya in Hendala	9,000-00	
	11. Bank Hill Estate, Talangama South	30,000-00	
	Total ..		61,200-00

MOVABLE PROPERTY

	1. Gold Watch and Chain and Gold Ring	250-00	
20	2. To Value of Furniture at Bankhill Estate	1,000-00	
	3. To Goods at Barthland House	383-92	
	4. To Goods at Estate Supplies Agency Department	1,935-25	
	5. To Goods at Sundry Department	1,433-20	
	6. To Value of Motor Car No. Z 1570	2,000-00	
	MONIES IN THE BANK		
	7. Fixed Deposit and Current Account at National Bank Ltd., Colombo	65,551-71	
30	8. Hong Kong & Shanghai Bank Ltd.	4,360-16	76,914-24
	Total ..		138,114-24

The foregoing affidavit was duly read over and explained by me to the affirmant and she appearing to understand the nature and contents thereof signed and affirmed to at Colombo on this 5th day of July, 1943.

Before me,
Sgd. Illegible.

J. P.

ADLIET RATNAYAKE.
Sgd. in Sinhalese.

40

NO. 4.

AFFIDAVIT OF THE WITNESSES TO THE LAST WILL
IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama South..... Deceased,

No. 4
Affidavit of the
Witnesses to the
Last Will
5-7-43

No. 4
Affidavit of the
Witnesses to the
Last Will
5-7-43
—Continued.

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama and another.....*Petitioners..*

No. 10504 and
Testy.

1. PERCY ARNOLDA RATNAYAKE and five others....*Respondents.*

We, John de Alwis Dissanayake of Talangama South, Welikadege Pawlis Perera of Talangama South, Weerasinghege James Alwis of Talangama South, Dissanayakege Joseph Richard de Alwis of Talangama South and Hettiaratchige Don Martin of Talangama South, not being Christians, do hereby solemnly sincerely truly declare and affirm as follows:—

10

1. We are well acquainted with the late James Albert Ratnayake who signed and executed the Last Will dated the 23rd day of May 1943 at Talangama South now deposited in this Court in the presence of us at the same time and place all being present at the same time and at his request we, the said John de Alwis Dissanayake, Welikadage Pawlis Perera, Weerasinghege James Alwis, Dissanayakage Joseph Richard de Alwis and Hettiaratchige Don Martin, subscribed our names as witnesses to the aforesaid Last Will bearing the above date and that the signature subscribed to the said Last Will is the proper and true signature of the said James Albert Ratnayake and of no one else.

2. The said Testator at the time of his subscribing his signature to the said Last Will and Testament we verily believe was of sound mind memory and understanding.

The foregoing affidavit was duly read over and explained by me to the affirmants in their own language in Sinhalese and they appearing to understand the nature and contents thereof signed and affirmed to at Colombo on this 5th day of July 1943.

Sgd. J. de A. DISSANAYAKE
Sgd. W. P. PERERA
Sgd. James De Alwis
In Sinhalese.
Sgd. A. DISSANAYAKE 30
Sgd. H. D. Martin
In Sinhalese

Before me,
Sgd. E. B. WEERAKOON
J.P.

NO. 5.

AMENDED PETITION OF THE PETITIONERS
IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNANAYAKE of Bank Hill Estate, Talangama South.....
Deceased.

- 1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama. 40
- 2. FELIX WIJESINGHE of Dehiowita.....*Petitioners.*

No. 10504
Testamentary vs.

1. PERCY ARNOLDA RATNAYAKE,

No. 5
Amended Petition
of the Petitioners
8-7-43

2. PEARL BANDARA MENIKARATNAYAKE both of Bank Hill Estate, Talangama. Minors by their Guardian-ad-litem, 3rd Respondent.
3. HETTIARATCHIGE DON HERATH of Peliyandara.
4. ELLEN WIJESINGHE.
5. GERTIE WIJESINGHE both of "Reverton," Matale Road, Kandy.
6. MURIAL AMERASEKERA *nee* WIJESINGHE of Deal Place in Colombo. Respondents.

No. 5
Amended Petition
of the Petitioners
8-7-43
—Continued.

On this 8th day of July 1943.

10 The amended Petition of the Petitioners abovenamed appearing by Paulus Cornelis Seneviratne their Proctor states as follows:—

1. The first named Petitioner is the wife and the second named Petitioner is the nephew of the deceased abovenamed.

2. The abovenamed deceased James Albert Ratnayake duly executed his Last Will and Testament on the 23rd day of May 1943.

3. The said James Albert Ratnayake died on the 3rd day of June 1934 at Talangama within the jurisdiction of this Court.

4. The said Last Will since its execution was in the custody of the first named Petitioner and is now produced in Court.

20 5. To the best of the Petitioners' knowledge and information the property left by the deceased in so far as the Petitioners are able to ascertain appears in the Schedule of the Petitioners' affidavit filed in Court.

6. The Petitioners abovenamed claim for Probate as Executors appointed in the said Last Will and Testament.

Wherefore the Petitioners pray that the Court may be pleased to issue Probate to the Petitioners abovenamed and for such other and further relief as to this Court shall seem meet.

Sgd. P. C. SENEVIRATNE,
Proctor for Petitioner.

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NO. 6.

ORDER NISI

IN THE DISTRICT COURT OF COLOMBO

Testamentary Jurisdiction No. 10504.

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama..... *Deceased.*

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama.

2. FELIX WIJESINGHE of Dehiowita..... *Petitioners.*

and

40

1. PERCY ARNOLDA RATNAYAKE.

2. PEARL BANDARA MENIKA RATNAYAKE both of Bank Hill Estate, Talangama.

3. HETTIARATCHIGE DON HERATH of Peliyandara.

4. ELLEN WIJESINGHE.

5. GERTIE WIJESINGHE both of "Riverton," Matale Road, Kandy.

No. 6
Order Nisi
20-7-43

No. 6
Order Nisi
20-7-43
—Continued.

6. MURIAL AMERASEKERA *nee* WIJESINGHE of Deal Place in Colombo Respondents.

This matter coming on for disposal before James Joseph, Esquire, Additional District Judge of Colombo, on the 9th day of July 1943, in the presence of Mr. P. C. Seneviratne, Proctor on the part of the Petitioner abovenamed and affidavit of (1) the 1st Petitioner abovenamed dated 5th July 1943, and (2) the attesting witnesses dated the 5th day of July 1943 having been read:

It is ordered that the Last Will and Testament of James Albert Ratnayake, deceased, the original of which has been produced and is now deposited in this Court be and the same is hereby declared proved and that the petitioners abovenamed are the Executors named in the said Will and they are hereby declared entitled to have Probate thereof issued to them accordingly unless the respondents abovenamed or any other person or persons interested shall on or before the 5th day of August 1943 show sufficient cause to the satisfaction of this Court to the contrary. 10

It is further ordered that the 3rd Respondent abovenamed be and he is hereby appointed Guardian-ad-litem of the minors the 1st and 2nd respondents to represent them for all the purposes of this action.

Sgd. JAMES JOSEPH,
Additional District Judge. 20

The 20th day of July 1943.

NO. 7.

AFFIDAVIT OF THE 6th RESPONDENT

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama.....Deceased.

- 1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama.
 - 2. FELIX WIJESINGHE of Dehiowita.....Petitioners.
- and

30

- 1. PERCY ARNOLD RATNAYAKE
- 2. PEARL BANDARA MENIKA RATNAYAKE both of Bank Hill Estate, Talangama, Minors by their Guardian-ad-litem, 3rd Respondent.
- 3. HETTIARATCHIGE DON HERATH of Peliyandara.
- 4. ELLEN WIJESINGHE.
- 5. GERTIE WIJESINGHE.
- 6. MURIEL AMERASEKERA *nee* WIJESINGHE of Deal Place in Colombo..... Respondents.

I, Ada Muriel Amerasekera of Deal Place in Colombo being a Christian make oath and say as follows:—

40

- 1. I am the 6th Respondent abovenamed and a niece of the deceased abovenamed James Albert Ratnayake,
- 2. I have reasons to believe that Hettiaratchige Dona Adliet Ratnayake was not the wife of the deceased James Albert Ratnayake.
- 3. I have reasons to believe that the document dated 23rd May 1943 purported to be the Last Will and Testament of the deceased

No. 7
Affidavit of the
6th Respondent.
25-8-43

James Albert Ratnayake now filed in Court in the above case is a forgery and was never executed by the said deceased James Albert Ratnayake in terms of Ordinance No. 7 of 1840.

No. 7
Affidavit of the
6th Respondent
25-8-43
—Continued.

4. The said document purported to be the Last Will and Testament of the said deceased James Albert Ratnayake was not the act and deed of the said deceased.

Signed and sworn to at Colombo }
on this 25th day of August 1943. } Sgd. M. AMARASEKERA.
Before me,
Sgd. Illegible.
C. O.

10

NO. 8.

No. 8
Petition of the
2nd Petitioner
6-9-43

PETITION OF THE 2nd PETITIONER

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama.....Deceased.

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama.

2. FELIX WIJESINGHE of Dehiowita.....Petitioner.

20

and

1. PERCY ARNOLD RATNAYAKE.

2. PEARL BANDARA MENIKA RATNAYAKE both of Bank Hill Estate, Talangama.

3. HETTIARATCHIGE DON HERATH of Piliyandara.

4. ELLEN WIJESINGHE.

5. GERTIE WIJESINGHE both of "Riverton," Matale Road, Kandy.

6. MURIEL AMERASEKERE nee WIJESINGHE of Deal Place, Colombo Respondents.

On this 6th day of September 1943.

30

The Petition of the 2nd Petitioner abovenamed appearing by S. R. Amerasekera, his Proctor, states as follows:—

1. The 2nd Petitioner is the executor named in the Last Will and Testament dated 23rd May 1943 purported to have been executed by James Albert Ratnayake deceased abovenamed.

2. The 1st Petitioner is also named one of the executors in the said document.

3. The alleged Last Will is now impugned as a forgery as it is not the act and deed of the deceased.

40

4. The 1st Petitioner was not the wife of the deceased abovenamed.

5. The 1st Petitioner is not possessed of any property.

6. The deceased has left an estate of the value of nearly Rs. 113114/24 as shown in the schedule appended to the petition of the executors—Rs. 77114/24 value of movables and Rs. 61,000/- value of immovable.

7. The total income from the immovable property is nearly Rs. 750 per mensem.

No. 8
Petition of the
2nd Petitioner
6-9-43
—Continued.

8. The business at Dehiowita has goods of the value of Rs. 3,370 nearly and brings an income of nearly Rs. 200 per mensem.

9. The Petitioner apprehends that the estate of the deceased will deteriorate in value and will run to waste unless the Public Trustee, Ceylon, is directed to take charge of the estate of the deceased and collect assets and pay debts till it is determined who is legally entitled to the succession thereto.

10. The said Public Trustee Ceylon has by his writing annexed hereto marked "A" consented to collect and hold the said estate.

Wherefore the 2nd Petitioner prays that the Public Trustee, Ceylon, be directed to take charge of the estate of the deceased abovenamed and collect the assets and pay debts till it is determined who is legally entitled to the succession thereto, for costs and for such other and further relief as to this Court shall seem meet. 10

Sgd. S. R. AMERASEKERA,
Proctor for 2nd Petitioner.

No. 9
Affidavit of the
2nd Petitioner
6-9-43

NO. 9.

AFFIDAVIT OF THE 2nd PETITIONER

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RAT-NAYAKE of Bank Hill Estate, Talangama.....Deceased. 20

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama.

2. FELIX WIJESINGHE of Dehiowita.....Petitioners.
and

1. PERCY ARNOLD RATNAYAKE.

2. PEARL BANDARA MENIKA RATNAYAKE both of Bank Hill Estate, Talangama..

3. HETTIARACHCHIGE DON HERATH of Piliyandara.

4. ELLEN WIJESINGHE.

5. GERTIE WIJESINGHE both of "Riverton," Matale Roak, Kandy. 30

6. MURIEL AMERASEKERA nee WIJESINGHE of Deal Place, Colombo Respondents.

I, Felix Augustus Lionel Wijesinghe of "Bertlind House," Dehiowita, make oath and say as follows:—

1. I am the 2nd Petitioner and the executor named in the Last Will and Testament dated 23rd May 1943 purported to have been executed by James Albert Ratnayake deceased abovenamed.

2. The 1st Petitioner is also named one of the executors in the said document. 40

3. The alleged Last Will is now impugned as a forgery as it is not the act and deed of the deceased.

4. The 1st Petitioner was not the wife of the deceased abovenamed.

5. The 1st Petitioner is not possessed of any property.

6. The deceased has left an estate of the value of nearly Rs. 138,114/24 as shown in the Schedule appended to the Petition of the

executors—Rs. 77,114/24 value of movables and Rs. 61,000 value of immovable.

7. The total income from the immovable property is nearly Rs. 750 per mensem.

8. The business at Dehiowita has goods of the value of Rs. 3,370 nearly and brings an income of nearly Rs. 200 per mensem.

9. I apprehend that the estate of the deceased will deteriorate in value and will run to waste unless the Public Trustee, Ceylon, is directed to take charge of the estate of the deceased and collect assets and pay debts till it is determined who is legally entitled to the succession thereto.

10. The said Public Trustee, Ceylon, has by his writing annexed hereto marked "A" consented to collect and hold the said estate.

Signed and sworn to at Colombo on this }
6th day of September 1943 } Sgd. F. A. L. WIJESINGHE

Before me,

Sgd. R. C. PERERA,
C. O.

No. 9
Affidavit of the
2nd Petitioner
6-9-43
—Continued.

NO. 10.

CONSENT OF THE PUBLIC TRUSTEE

"A"

Estate of the late James Albert Ratnayake

I, the Public Trustee of Ceylon do hereby consent to collect and hold the estate of the late James Albert Ratnayake in terms of Section 29 (1) of the Public Trustee Ordinance, Chapter 73.

Sgd. A. G. RANASINGHA,
Public Trustee of Ceylon.

Negombo, 9th August 1943.

No. 10
Consent of the
Public Trustee
9-8-43

NO. 11.

STATEMENT OF OBJECTIONS OF THE 1st PETITIONER

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Talangama.....*Deceased.*

- 1. HETTIARACHCHIGE DONA ADLIET RATNAYAKE of Talangama,
- 2. FELIX WIJESINGHE of Dehiowita.....*Petitioners.*

and

- 1. PERCY ARNOLD RATNAYAKE.
- 2. PEARL BANDARA MENIKE RATNAYAKE both of Bank Hill Estate, Talangama.

- 3. HETTIARACHCHIGE DON HERATH OF Piliyandara.
- 4. ELLEN WIJESINGHE.
- 5. GERTIE WIJESINGHE both of "Riverton," Matale Road, Kandy.

No. 11
Statement of
Objections of the
1st Petitioner
30-9-43

No. 11
Statement of
Objections of the
1st Petitioner
30-9-43
--Continued.

6. MURIEL AMERASEKERA *nee* WIJESINGHE of Deal Place, Colombo Respondents.

On this 30th day of September 1943.

The statement of objections of the 1st named Petitioner to the Petition of the Petitioner appearing by Paulus Cornelis Seneviratne her Proctor states as follows:—

1. This 1st Petitioner has been living with the deceased as his wife for more than 14 years and has by the deceased two children who have been brought up as the very own children of the deceased as befits their status in life. 10
2. The deceased and the 1st Petitioner and his two children always lived together at Talangama and the Last Will of the deceased has provided for the 1st Petitioner, the deceased's children as well as for the children of a deceased sister. The Will is manifestly equitable.
3. The 1st Petitioner and the 2nd Petitioner were jointly appointed executors and both brought this Testamentary Case to prove the Will of the deceased.
4. Subsequently, actuated by greed and avarice, on legal advice that if the Will is set aside the 2nd Petitioner would benefit very greatly, the 2nd Petitioner has now at this stage contrived a method of setting 20 aside the Will.
5. The 2nd Petitioner does not himself object to the granting of Probate or urge any reasons for setting aside the Will but gets a poor relation of his to challenge the Will. He himself with the same wile and cunning now thinks that he could get the Court on his side by this seemingly honest application to have the Public Trustee appointed to take charge of the estate.
6. The Public as well as the Court are aware of the expenses that will have to be borne by the estate if the Public Trustee takes over the matter. 30
7. The 1st Petitioner has no fear whatever that the Last Will as it is in the handwriting of the deceased husband must be accepted as genuine by Court and Probate issued in which case there will be no need for the Public Trustee. The 1st Petitioner is appointed Executor and can function if the 2nd Petitioner does not wish to.
8. This application is too premature and can be laid by till the determination of the proving of the Will. This 1st Petitioner will only be too glad and happy if the date for the hearing of the Inquiry into the setting aside of the Last Will be advanced even next week. This is the only sure way of avoiding unnecessary work and expenses. 40

Wherefore the 1st Petitioner prays that the application of the 2nd Petitioner to give over charge of the estate to the Public Trustee at this state of the Testamentary case be dismissed with costs and for such other and further relief as to this Court shall seem meet.

Sgd. P. C. SENEVIRATNE,
Proctor for 1st Petitioner.

AFFIDAVIT OF THE 2nd PETITIONER

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Talangama.....*Deceased.*

- 1. HETTIARACHCHIGE DONA ADLIET RATNAYAKE of Talangama,
- 2. FELIX WIJESINGHE of Dehiowita.....*Petitioners.*

and

- 1. PERCY ARNOLD RATNAYAKE.
- 10 2. PEARL BANDARA MENIKE RATNAYAKE both of Bank Hill Estate, Talangama.
- 3. HETTIARACHCHIGE DON HERATH of Piliyandara.
- 4. ELLEN WIJESINGHE.
- 5. GERTIE WIJESINGHE both of "Riverton," Matale Road, Kandy.
- 6. MURIEL AMERASEKERA *nee* WIJESINGHE of Deal Place, Colombo *Respondents.*

I, Felix Augustus Lionel Wijesinghe of Dehiowita make oath and say as follows:—

- 20 1. I am the 2nd Petitioner abovenamed.
- 2. For nearly six years during the life time of my uncle James Albert Ratnayake I managed the business carried on in the name of "J. A. Ratnayake & Co." at Dehiowita.
- 3. The goods of the said business at Dehiowita are nearly of the value of Rs. 3,370/- and the business brings an income of nearly Rs. 200/- per mensem. The Agency is to supply provisions sundry articles and cash to various estates at Dehiowita and also the Sole Agents for Caltex Petroleum products for the district.
- 30 4. Towards the beginning of September 1943 I was credibly informed that the 3rd Respondent, H. D. Herath the brother of the 1st Petitioner would harm me bodily.
- On the 9th August 1943 I left Dehiowita intending to return but when I heard of this I kept away from the said business up to this date.
- 5. The said 3rd Respondent and one V. C. Direcksz are now in sole charge of the said business.
- 6. The 3rd Respondent during my uncle's life time was a salesman in the business at Dehiowita.
- 7. The 1st Petitioner is not a fit person and is not capable of managing the said business.
- 40 8. I have reasons to believe that the business will suffer without proper supervision and should be entrusted to a responsible person till it is decided by Court who is entitled to carry on the said business.

Signed and sworn to at Colombo on this
30th day of September 1943.

Before me.

Sgd. Illegible.

C. O.

Sgd. F. A. L. Wijesinghe

NO. 13.

INQUIRY RE APPOINTMENT OF PUBLIC TRUSTEE

5th October 1943.

Mr. Advocate E. G. Wikramanayake instructed by Mr. Amarasekera for 2nd Petitioner in the Application for Probate and 4th, 5th and 6th Respondents to that application.

Mr. Advocate Jansz instructed by Mr. Seneviratne for 1st Petitioner.

Mr. Advocate Wikramanayake states that this is an application for limited letters of administration under Section 539 pending the decision of the application for probate in this case where the Will is challenged as a for- 10
gery. He asks that the Public Trustee be appointed for the purpose as Section 29 of the Public Trustees Ordinance enables him to collect and hold assets until the right of succession is determined.

Mr. Advocate Jansz says he is not opposing the application but he only asks that some provision be made for the 1st Petitioner and her children by the deceased till the dispute is finally settled. He asks that the 1st Petitioner and her children be allowed to live where they are now, namely, Bank Hill Estate, Talangama. Mr. Advocate Wikramanayake has no objection to the Petitioner and her children living in the house on Bank Hill Estate and the Public Trustee making an allowance sufficient for their needs. It 20
is agreed that the amount to be paid to the 1st Petitioner monthly is Rs. 100/- for herself and her two children.

ORDER

I allow the application of the 2nd Petitioner and 4th to 6th Respondents, and direct that the Public Trustee take charge of the estate of the deceased James Albert Ratnayake, both movables and immovables, and collect the assets and pay debts until it is finally determined who is entitled to the succession thereto. 1st Petitioner and her two children will be allowed to continue to reside in the house on Bank Hill Estate, Talangama, pendente 30
lite, and the Public Trustee will pay them a monthly allowance of Rs. 100/- from the assets of the estate. The 1st Petitioner and her two children will only be allowed to live in the house on the estate but the Public Trustee will collect the income from Bank Hill Estate.

In view of the allegation in paragraph 4 of the affidavit of the 2nd Petitioner dated 30th September 1943 that the 3rd Respondent, H. D. Herath, who is a brother of the 1st Petitioner, was likely to do bodily harm to the 2nd Petitioner, Mr. Jansz says that that allegation is denied by the 3rd Respondent. He undertakes not to interfere with the management of the estate by the Public Trustee. 3rd Respondent is present in Court and the terms of this undertaking are explained to him. He undertakes not to interfere. 40

Signed S. J. C. SCHOKMAN,
Additional District Judge.

5-10-43.

NO. 14.
LETTERS OF ADMINISTRATION PENDENTE LITE
IN THE DISTRICT COURT OF COLOMBO

No. 14
 Letters of
 Administration
 Pendente Lite
 7-10-43

Testamentary Jurisdiction No. 10504.

THE PUBLIC TRUSTEE OF CEYLON.

Whereas James Albert Ratnayake of Bank Hill Estate, Talangama, deceased, lately departed this life leaving a Will, you are therefore fully empowered and authorised by these Presents to take charge of the Estate of the deceased James Albert Ratnayake, both movables and immovables, and to
 10 collect the assets and pay whatever debts the said deceased did owe until it is finally determined who is entitled to the succession thereto.

The first Petitioner, Hettiaratchige Dona Adliet Ratnayake of Bank Hill Estate, Talangama and her two children are allowed to reside in the house on Bank Hill Estate, Talangama, pendente lite, and you are hereby directed to pay them a monthly allowance of Rs. 100/- from the assets of the estate.

You are also required to render a true and perfect Inventory of all the said property and estate, rights and credits to this Court on or before the 25th day of November, 1943.

20 Given under my hand and the Seal of the Court this 7th day of October 1943.

Signed S. J. C. SCHOKMAN,
Additional District Judge.

NO. 15.
ISSUES FRAMED

No. 15
 Issues Framed
 27-3-44

27th March 1944.

Mr. Advocate Obeysekera with Mr. Advocate Jansz instructed by Mr. P. C. Seneviratne for the 1st Petitioner.

30 Mr. Advocate Wikramanayake with Mr. Advocate Abeysekera instructed by Mr. S. R. Amarasekera for the 2nd Petitioner and the Respondents.

Mr. Obeysekera opens his case and suggests the following issues:—

(1) Is the writing dated the 23rd May 1943 produced with the Petition dated 5th July 1943 the act and deed of the deceased?

(2) If so is the 1st Petitioner, as one of the executors named in the Will, entitled to probate of the same?

Mr. Wikramanayake suggests the following issue in place of Mr. Obeysekera's 1st issue:—

40 (3) Is the document dated 23rd May 1943 produced with the Petition a Last Will duly executed by the deceased?

He has no objection to the second issue.

Mr. Obeysekera says that his issue 1 arises on the affidavit filed by the 6th Respondent dated 25th August 1943 and that he objects to issue 3 suggested by Mr. Wikramanayake unless the ground on which it is stated that the Will was not duly executed is mentioned either in the issue itself or by Counsel at the Bar.

Mr. Wikramanayake in reply cites 6 C.W.R. 362.

I frame all three issues suggested.

NO. 16.

1st PETITIONER'S EVIDENCE

Mr. Obeysekera calls—

Hettiarachige Dona Adliet Ratnayake—affirmed.

I am the 1st Petitioner in this case. My father is Hettiarachige Don William Appuhamy. He was a building contractor. My mother's name is Atandaarachige Dona Kalo Nona. My father is not alive. My mother is alive. My brother is Don Herath, the 3rd Respondent to this Petition. He has been appointed guardian-ad-litem of my minor children, the 1st and 2nd Respondents. 10

My brother Don Herath was employed on Bank Hill Estate. So far as I could recollect he took employment on that Estate in about 1923. I was then 16 years old. My mother and I were living at Piliandala. My mother and I went to Bank Hill Estate to take up residence there. We went there a year after my brother took up employment. My mother and I lived in the Conductor's bungalow with my brother.

The deceased Ratnayake was then living at Dehiowita where he had a business. He was in the habit of coming to Bank Hill Estate about once a month. He was previously married. I have met his wife. Apart from the Conductor's bungalow there was a Proprietor's bungalow also on that Bank Hill Estate. When Mr. Ratnayake came there he used to take up residence in this Bungalow. Mrs. Ratnayake also accompanied him when he used to come there. At such times Mrs. Ratnayake used to get me down there to assist her in the bungalow. 20

Mrs. Ratnayake is dead. I think she died in 1927. Later I began to live with Mr. Ratnayake as his wife. I began to live with him as his wife a year after his wife's death. Before that my brother went to Mr. Ratnayake's bungalow and saw him.

Q. Did your brother tell you anything after that?

A. My brother came and spoke to my mother and step-father. 30

Q. Did you do anything in consequence of that?

A. After that I was taken as his wife. He put a chain round my neck, he gave a wedding breakfast and with the consent of my parents I lived with him as his wife. I was recognized by all his relations as his wife.

(Mr. Wikramanayake objects to this evidence as there is no issue raised on a question of marriage by habit and repute. He says if it is sought to prove marriage by habit and repute a specific issue must be raised.

(Mr. Obeysekera says that he is leading this evidence merely to show that the Will was a natural Will and in this application he is only asking for Probate of the Will and if that is refused he is not making any application as on an intestacy in the present proceedings. If he fails on the present application he says it must be dismissed. But his admission must not be taken to be an admission that it will not be open to him to make any application thereafter which may be open to him). 40

Q. Did your brother consent to your living as the deceased's wife?
Mr. Wikramanayake objects to this question as being a leading question. I allow the question to go in in the form of question and answer).

A. Yes, my brother also agreed.

I lived with Mr. Ratnayake as his wife in the Proprietor's bungalow at Bank Hill Estate. The breakfast party and the putting of the chain round my neck also took place in the Proprietor's bungalow. At that time my mother, my step-father and some relations of mine were present. On the deceased's side only Mr. Ratnayake was there. He said there was nobody
10 on his side.

After I began to live with him as his wife, Mr. Ratnayake used to come to Bank Hill Estate about once a fortnight. My brother did not continue to be the conductor of that estate. He left the estate and my step-father succeeded him. My brother left the estate before I was taken as the deceased's wife. My brother came to Colombo and got an employment.

Mr. Ratnayake was an Anglican. I know the Church he attended. He used to take me also. That is, to St. Peter's Church, Fort. He used to come to this Church from Talangama in his car. He had his own car.
20 Mr. Ratnayake was a well-to-do man. I was a Buddhist but after I went to live with the deceased as his wife I adopted his religion. I was not baptised. I only went to Church with him. I also joined him in the prayer. In the Church the Service was conducted in English. In the Bungalow he used to pray with me in Sinhalese. That is to say, there used to be family prayers and I used to join in the family prayers.

My first child was born on the 16th of February 1932. He is Percy Ratnayake, the 1st Respondent. The deceased regarded him as his child. The birth was registered. The second child was born on the 20th of August 1940. She is the 2nd Respondent, Pearl Bandara Menike Ratnayake.

Q. He regarded that as his child?

30 A. Yes.

There was a boy of school-going age. He has been going to school. He attends the C.M.S. School, Kotte. He has been going to that school since he was five years. Now he is twelve years. Mr. Ratnayake took an interest in the education of that child. His fees were paid by Mr. Ratnayake.

Q. Do I understand you to say that you and the children lived with Mr. Ratnayake?

A. Yes.

Q. Have you been going about with Mr. Ratnayake?

A. Yes.

40 Q. Do you recall a performance in aid of a Roman Catholic School?

A. Yes, there was a concert in aid of the Roman Catholic School at Talangama.

The Manager of that school is Father Dabrera.

Q. Had Mr. Ratnayake anything to do with that concert?

A. The concert was under the patronage of Mr. Ratnayake and he occupied the principal chair. I attended that function with him. I sat next to him. My elder child was also present.

Mr. Ratnayake died on the 3rd of June 1943.

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1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Examination
—Continued.

Q. Before that what was his state of health?

A. He was working till about 3 or 4 days before his death. He was 63 years old when he died. He had been in good health.

Q. Had he been taking treatment from anybody?

A. He took treatment. He was treated by a Buddhist Priest for about three years before his death. He took treatment for piles.

Q. In the latter part he went to Dehiowita?

A. He used to go to Dehiowita, stay there for about one week and come to Talangama. Talangama then became his permanent residence. 10

Q. Do you remember his signing any document before he died?

A. Yes.

Q. Will you tell the Court what you know about that?

A. He got down five persons and took down their signatures to a document.

Q. Did you see what they signed?

A. I saw them signing a document called a Last Will. The signatures were obtained saying that it was the Last Will and Testament.

First of all it was signed by Mr. Ratnayake and five others signed after that. I know who those five persons are. 20

They are: Loku Dissanayake, The Manager of the Co-operative Store, Podi Dissanayake, James de Alwis and H. D. Martin. Martin was a watcher in the estate. I saw Mr. Ratnayake and these five people signing. There was a Hall in the Bungalow with glass shutters. The document was signed in that hall.

Q. From where did you see that happen?

A. I was in the room by that hall, I saw them all sign.

Q. At the time this document was signed where were these six people—Mr. Ratnayake and the others?

A. Mr. Ratnayake was in a lounge in that room. He sent for Martin. 30 When Martin came he sent for James de Alwis. Martin brought him. Then he asked James de Alwis to come with Loku Dissanayake and two others saying that he wanted them for some purpose. In consequence of this, five people came there. Those were the five people whose names I mentioned.

Mr. Ratnayake was not seated on the lounge when he signed. He got up from the lounge, went into a room and got a book from an almirah. There was a small table with pen and ink in the hall and there were also some chairs. There, Mr. Ratnayake signed the document saying that it was his Last Will and asked all the others to witness it. Then the other five also 40 signed. Those five people were also by that table when Mr. Ratnayake signed the document.

(Mr. Obeysekera marks the book, P1 and the particular pages on which the writing appears, P1a and P1b).

(Shown P1). I recognise this as the book the deceased took from the almirah.

(Shown P1a and P1b). (Witness identifies the signature of the deceased). I have seen my husband's signature on other documents. He had two bank accounts. I have seen him signing cheques. I am familiar with his signature.

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1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Examination
—Continued.

(Shown the first signature of the deceased on P1b).

I say that that is his signature. The second signature is also his. I do not know why there are two different signatures. I have seen him signing cheques.

Q. How did he sign cheques?

10 A. He signed both ways.

After this document was signed the deceased asked me to prepare some tea for the five people, but these people said that they did not want tea and left the bungalow. The deceased handed me the book and asked me to keep it. There was a drawer in the almirah where deeds are kept and I kept this book in that drawer. Mr. Ratnayake's clothes were in that almirah. My clothes and my children's clothes were also there. The drawer in which I kept the book had a separate key. I had that key with me. The almirah also had a key. That key too was with me. There was a bunch of keys. I kept the bunch of keys. My husband did not have a separate bunch of
20 keys.

(For want of time further hearing is adjourned for the 22nd and 23rd August 1944).

Signed S. J. C. SCHOKMAN,
Additional District Judge.
27-3-44.

The witnesses present in Court today are warned to attend Court on the next date without summons.

Initialled S. J. C. S.,
Additional District Judge.

30 22nd August 1944.

Trial resumed.

Same appearance as on the last date.

Hettiarachige Dona Adliet Ratnayake—recalled—affirmed—

Examination continued.

I have said that I have two children by the deceased. The elder is a boy Percy Arnold, born on 18th February 1932, I produce his birth certificate marked P2. (Translation marked P2A). The father's name is given there as James Albert Ratnayake. The younger child is Pearl Bandara Menika Ratnayake born on 20th August 1940. I produce her birth certificate
40 marked P3 and a translation marked P3A. In that certificate too the father's name is given as James Albert Ratnayake. In both cases information as to the births was given by James Albert Ratnayake.

I have also said that Mr. Ratnayake had an account in banks including the National Bank. I produce cheque book marked P4. There are two cheque leaves in that book signed partly in blank where the signature of the deceased appears. (The cheque leaves are marked P4A and P4B.) The signatures on these cheques (shown) are Mr. Ratnayake's,

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1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination

CROSS-EXAMINED

I have said that my name is Hettiaratchige Dona Adliet Ratnayake. I can read Sinhalese. I cannot read English. I can read 'A,B,C.' I can read just a bit of English. (Shown P2). The mother's name is given here as Liyana Aratchige Dona Adliet in cage 5. That name was written there by mistake. In cage 8 the names of the informants are given as James Albert Ratnayake and Liyana Aratchige Dona Adliet of Talangama South, father and mother. My name appears there as Liyana Aratchige Dona Adliet.

(Shown P3). Here also my name appears as Liyana Aratchige Dona Adliet. I am not also known as Alice. I do not know anyone called Alice. I cannot say whether there is anyone called Alice. The name Liyana Aratchige Dona Adliet was written in the certificates by mistake. I do not know my "vasagama" correctly. I am not called Alice. I have never been referred to as Alice. Mr. Ratnayake the deceased never called me Alice. 10

I know Welikade Corenelis Perera *alias* Kotta of Talangama South. I remember the time he was charged with theft of two bunches of coconuts by the deceased. I remember going to Court in connection with that case, When the deceased was giving evidence I was called into Court to be identified by him.

Q. You received summons as Alice and went to Court in answer to that summons? 20

A. I went to Court after my name was corrected.

The accused did not state in that case that he had been invited to the estate by me; that was not his defence.

Q. Do you know why you were produced in Court for identification by Mr. Ratnayake?

A. I was summoned by the accused just to shame me.

Q. You were summoned as Alice and you were produced in Court and you were identified as Alice?

A. My name was corrected and then I was produced there. 30

I was called into Court to be identified by Mr. Ratnayake while he was giving evidence. He identified me on that occasion and he said that I was his "nona."

I have said that before I began to live with the deceased I insisted through my brother on his marrying me. As a result of that insistence, before I began to live with him, there was the ceremony I referred to. At that ceremony a chain was put round my neck and the deceased claimed me before the people assembled as his wife. There was a wedding breakfast also on that occasion. I had no doubt at that time that I was marrying the deceased. I have also said that the deceased always treated me as his wife from that day. 40

(Mr. Wickramanayake marks R1. Certified copy of the evidence given by the deceased in the case referred to). At the time he gave evidence I was the only woman living with him.

Q. Have you got any reason to offer why he should have referred to you in the evidence as his mistress?

A. I do not know why he did so. I know that I was his wife.

(Shown cage 8 of birth certificate P2). The Registrar came to the deceased's house to register the birth. I remember signing the Registrar's book on a stamp on that occasion. The deceased wrote out the details and I signed. (Shown cage 7 of P2). It is entered here that the parents were not married. That was when Percy was born. Pearl was born about eight years later. The informants with regard to her birth also were the deceased and myself. (Shown cage 7 of P3). It is stated here also that the parents were not married. It has been stated consistently that the parents were not married because the deceased and I were not married.

10 Q. Do you now admit that you were not married to him and that you were kept as his mistress?

A. Yes.

Q. You knew from the date you went to his house up to the date of his death that you were nothing more than his mistress?

A. He treated me as his wife. He did not treat me as a mistress. I had the rights of a wife.

I know the deceased's brother-in-law, Wijesignhe. He did not come to the house regularly. I have seen him at the bungalow at Dehiowita. I have not spoken to him. After Mr. Ratnayake's death, he came to his bungalow. I spoke to him then, but I did not address him by any name. I deny that I always addressed him as "Hamumahatmaya."

20 Q. Why did you allow Mr. Ratnayake to state in the declarations that the parents were not married?

A. He filled up the forms in English.

Q. Do you say that Mr. Ratnayake filled them up in English?

A. I cannot remember definitely. I was shown a place to sign and I signed.

The child Pearl was born on 20th August 1940. The registration was made on 20th October 1940, two months after the birth of the child. 30 By that time I was quite well.

Q. The declaration was signed in the verandah?

A. I was not allowed to come out of my room for three months after the birth of the child as it was bad to expose myself.

I was able to move about in the house during that time. I saw the deceased writing out the form. I swear that he wrote it out in his own handwriting. I did not bother to see what he wrote there.

I do not know whether the deceased paid Income Tax. I do not know that an allowance is allowed for the wife for the purposes of Income Tax. I have said that I can recognise the deceased's signature on certain documents. 40 I can recognise his signature though I cannot read English. I cannot say whether I can make out his handwriting also.

I have brothers and sisters. They were not married before my marriage. I have a brother called Herath. He married after my marriage; so did my brother Martin. Before my wedding ceremony I used to attend other wedding ceremonies. I knew the significance of signing the book before the Registrar of Marriages. I knew marriages have to be registered and that once a marriage is registered there can be no question about the

No. 16
1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

parties being husband and wife. I have said that before I was allowed to live in the deceased's house, my brother insisted on the formalities of a marriage. My marriage with the deceased was not registered because he had married twice before and both the wives had died. Therefore through fear that I too might die, he did not get our marriage registered. I do not know whether my brother had such a fear. I too had such a fear. That is why there was no registration.

After I began to live with the deceased, he attended an At-Home in Colombo with me. I cannot say whose At-Home. He did not attend weddings of his relatives. After he started living at Talangama, he did not do so. He did not go to his relatives' houses. He used to help his sister. When he was helping her I cannot say whether he was visiting her. He did not take me to her house during her lifetime. He used to take me to Church. I was never baptized. He used to take me to the shops also as well as to his lands. He never visited any friends. 10

He had a driver called Girigoris who worked under him for about 30 years. Girigoris was the one servant he trusted. He used to send him with cheques for large amounts to be cashed. I have produced two blank cheques with the counterfoils filled up. The words "sent through P. G. P." appear there. "P.G.P." is P. Girigoris Perera. 20

I do not know whether the deceased had a clerk called Direcksze. The driver Girigoris was always with Mr. Ratnayake. He went with him wherever he went.

Q. During the latter end of his life the deceased was very feeble?

A. He was healthy but he did not eat.

He was suffering from piles. That resulted in anaemia and he died as a result of that. Towards the latter end of his life he was very feeble. About four days before his death he was unable to walk. Even before that the driver Girigoris Perera did not assist him to move about. Girigoris was not always in the house. He was living in the garage a little distance away from the house. He was not in the house on the day the Will was executed. On that day he had gone to Hendala to pick nuts. From 22nd May 1943, till the death of the deceased he stayed in the garage to be always at hand to assist the deceased. 30

Q. Only on the day the Will was executed he had gone to Hendala to pick nuts?

A. He had gone there before also. Owing to the raid and inability to find pickers he had to stay there two or three days.

On 23rd May 1943, he was not in the garage.

Q. Can you explain why the deceased waited till Girigoris went to pick nuts to sign his will? 40

A. I cannot explain that but I can say that he was not in the house on the day the Will was executed.

One of the witnesses to the Will is Martin a brother of mine. James Alwis is not related to me at all. He was employed as a watcher on the estate, and he left that employment. Before he left there was no trouble—there was no suggestion of any intimacy between him and me. There was no such

talk which resulted in his leaving employment under the deceased. After he ceased to be the watcher, he used to come to the deceased's house for the purpose of meeting him. When he was employed on the estate he was paid by the deceased. He was employed there for about four or five years. Throughout that period he was not living in a house close to the estate. He lived in his house and came to work on the estate. During that time he had no other employment.

No. 16
1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

I do not know whether Loku Dissanayake and Podi Dissanayake are uncle and nephew. I do not know their relationship. I cannot say whether
10 they are related. I also do not know whether James Perera is related to them.

The deceased did not send for Martin. Martin always comes to the bungalow. He happened to come to the bungalow. Then he was told about the signing of the Will.

Q. On the day the Will was signed did he come there or had he been sent for?

A. He happened to come there. Then I told Mr. Ratnayake about that whereupon he told me: "Ask him to come to me."

He said that at about 2 or 2-30 p.m. after his lunch. He did not tell me why he wanted Martin. He did not have a nap after his lunch. Martin
20 used to have his meals in the bungalow. At the time referred to he may have also had his lunch. When he came to the deceased the latter asked him to bring James Alwis who lives less than quarter of a mile from the bungalow. I was present at the time. The deceased only told Martin: "Go and fetch James Alwis." After Martin went out I did not ask the deceased why he wanted James Alwis. James Alwis came to the bungalow about quarter of an hour later. I did not question the deceased nor did the deceased tell me why he had sent for James Alwis and others. Till James Alwis arrived the deceased was in his lounge reading the papers. When James Alwis
30 arrived he went with me to where the deceased was. I did not go there with James Alwis. I heard what the deceased told James Alwis. At that time I was seated by the deceased. I was seated by the deceased when James Alwis came there. The deceased told James Alwis that he wanted a certain thing and that he wanted him to bring Loku Dissanayake and two others to him. He did not tell James Alwis why he wanted them, nor did James Alwis ask the deceased why he wanted them. The deceased wanted him to bring Loku Dissanayake and two others. He did not mention the names of the others. He only wanted two others brought to him. James Alwis did not ask the deceased what sort of people he should bring nor did the deceased ask any questions in that connection. The deceased wanted James
40 Alwis to ask Dissanayake to come with two others.

Q. How was Dissanayake to know what sort of people he should bring?

A. I do not know.

Loku Dissanayake's house is within sight of the deceased's bungalow. Podi Dissanayake's house is also visible from the bungalow. The distance between the houses of the two Dissanayakes is less than quarter of a mile. James Alwis lives in a Co-operative Store at Talangama, close to Podi Dissanayake's house. There are others living closer to the deceased's bungalow.

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Ratnayake
Cross-Examination
—Continued.

They were known to the deceased. To go to Podi Dissanayake's house as well as Loku Dissanayake's house, one has to pass the deceased's bungalow. Between the houses of the deceased and Loku Dissanayake there are several occupied houses. Loku Dissanayake brought two trusted people to the deceased. He had been asked to bring two persons whom he could trust. When James Alwis was asked by the deceased to bring two people whom he could trust, I did not ask the deceased what was the necessity for that, what he was trying to do, nor did James Alwis do so.

Q. About half an hour after James Alwis left, the four men came to the bungalow. Throughout that time you were seated by Mr. Ratnayake? 10

A. When they came to the compound I was seated by him. He continued to stay there. After they came I went out. When they came I got up and went to the adjoining room. There was no reason for my doing that.

Q. Having gone into the room you looked through the glass to see what was happening?

A. From the room I was able to see what was going on. I just went to the room. I stood by the window.

Q. From the time you left the room till the completion of the execution of the Will it took some time? 20

A. The Last Will was not written there. It was only signed there. During the time it was being signed I was just standing by the window.

Q. The deceased had sent for the witnesses but he waited till all the five arrived and then he went and brought the book?

A. Yes.

He brought the book from an almirah in the room where I was. When he came there to take the book I did not ask him anything. I opened the almirah myself. He asked me to do so. I did not ask him what he wanted from the almirah. He himself took the book. I did not ask him why he had sent for five persons. After he took the book he said he wanted to get their signatures for a Last Will. He said that to the witnesses. Without any curiosity I allowed him to take the book away without asking him any questions. 30

After he removed the book I went to the window and stayed there. After he took the book to the witnesses the deceased told them that he wanted their signatures. There is always a small table at the place to which the deceased took the book. I heard him telling the witnesses: "This is my Last Will" and that he wanted them to sign it. Then they all signed the document and went away. After the Will was signed he wanted to give them tea but they said they did not want it and went away. Thereafter the deceased gave me the book. From that date onwards I knew that he had made a Last Will. I did not know the contents of that Last Will. Till the date of his death I did not know the contents. 40

After his death I remember meeting Felix Wijesinghe at the funeral. I deny that I asked him then to see that my children and I were not left desti-

tute and also to see that some provision was made for me and the children. Mr. Wijesinghe sent some one to get the deeds of the deceased for the purpose of obtaining letters of administration.

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—Continued.

Q. You sent a message back to him that the deeds were with Mr. Seneviratne, Proctor?

A. At first two persons came for the deeds. Then I told them that there was a writing from Mr. Ratnayake and that I had given all the deeds to Mr. Seneviratne.

I remember the day Mr. Wijesinghe signed the proxy along with me
10 in Mr. Seneviratne's office. I was present at the conversation there.

Q. You heard Mr. Seneviratne say that it was he who discovered the Last Will?

(Mr. Obeyesekera objects to this question unless Mr. Seneviratne is called. Mr. Wickramanayake says that he is not seeking to prove the truth of this statement alleged to have been made by Mr. Seneviratne, and that he is putting the question in order to explain the subsequent conduct of his client. I allow the question).

Q. Did you hear Mr. Seneviratne say that it was he who had discovered the Last Will?

20 A. He was talking to Mr. Wijesinghe in English and I did not understand what he said.

Mr. Ratnayake died on 3rd June, 1943. At the time of his death the Last Will was in my keeping with other deeds. It was locked up in an almirah of which I had the key.

Q. When did you first try to find out what the terms of that Last Will were?

A. I got down Proctor Seneviratne and I gave the papers to him together with the deeds and the Last Will. I told him that the Last Will was there.

30 Q. You gave him the book and said: "This contains the Last Will?"

A. No.

Q. You just gave him a bundle of deeds and the book?

A. Yes.

Q. You told him: "These are the documents of the deceased?"

A. Yes.

Q. You did not at that time mention to him anything about the Last Will?

A. Yes.

40 Q. Why is it you did not tell him there was the Last Will in that document when you knew it was there?

A. I did not tell him that at any time.

Mr. Seneviratne took away all the documents. I next met him when I went along with Mr. Wijesinghe to his office. Up to that point of time, Mr. Seneviratne had not been told anything about the Last Will by me.

Q. When you went to his office he was aware of the fact that there was a Last Will?

A. At the bungalow at Talangama he read out the contents of the Last Will to me.

Q. Did you not say that he did not know anything about the Last Will?

A. When I handed over the deeds and the book to him I did not tell him anything about the Will. But he after going through all the papers read out the contents of the Will to me.

When he was going through the papers, he said: "Hullo, here is the Last Will." Then I did not tell him: "There was a Last Will all along." I did not ask him to read out the contents. He read out the contents.

Q. Can you explain why you were so reticent about the Will?

A. I brought all the deeds and the papers and handed them to Mr. Seneviratne and went back to see whether there were any other documents. He came to the bungalow on 7th June, four days after the death of the deceased.

I have said that I can recognise the signature of the deceased. (Shown book marked R2); there are 14 signatures of the deceased on the first page, 4 on page 2, 4 on page 3, 4 on page 4, and 4 on page 5. The first signature on page 6 is not the deceased's. On page 6 there are 3 signatures of the deceased. 20

(Shown R3): The signature on the fly leaf is the deceased's. There are 3 signatures of the deceased on page 1, 4 on page 2, 3 on page 3, 3 on page 4, 2 on page 5, 4 on page 6, 4 on page 7, 4 on page 8, 5 on page 9 and 2 on page 10.

(Shown R4): There are 4 signatures of the deceased on page 1, 4 on page 2, 4 on page 3, 4 on page 4, 4 on page 5, 4 on page 6, 4 on page 7, 4 on page 8, 3 on page 9, 4 on page 10, and 1 on page 11.

I cannot read English. I saw the deceased taking the book to the five witnesses. By that time he had written out the Will. He produced the written document for signature by those persons. After he brought out the book from the almirah he did not tell me that his Last Will was in the book. But he gave me the book to be kept. I knew that the document was a Last Will because I heard the deceased and the witnesses saying that it was the Last Will. 30

(Mr. Wickramanayake draws attention to the fact that on page 47 of the book (P1) the word "ahead" is on an erasure and he suggests that what was written there before was 61 in figures where the word "ahead" now appears. He also draws attention to the fact that the page 61 is missing from the book). 40

The deceased was a very good business man. He was very careful in his money matters and thoroughly conversant with his interests. He knew what he possessed. He was a person who liked to handle his money—not to spend it. He was a very well educated man. I do not know whether he was educated at St. Thomas' College and that he had done well there.

As a business man he had his lawyers. I do not know whether Mr. Jacolin Seneviratne was his lawyer at Avissawella and Messrs. F. J. & G. de Saram his lawyers in Colombo.

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I referred to the pen and ink being on the table. It was with that pen and ink that the deceased signed the Last Will. The pen was an ordinary one. I know that he always used a fountain pen. He did not sign the Will with a fountain pen. I have said that on the day the Will was signed it was about 2 p.m. He first spoke to Martin. On that day the deceased remained at home the whole day. He slept there the previous night; he was living there; when he bled he was very weak. I attended to his needs on the day in question such as giving him his breakfast and I stayed with him attending to his wants the whole day.

Q. He spent the whole morning resting?

A. He used to walk about. After his meals he used to read for about half an hour.

After breakfast on the day in question he was inside the house. I was by him most of the time. He did not do any work that day.

Q. He did not take the keys from you on that day?

A. Whenever he wanted anything he used to get the keys from me. On the day in question he got me to open the almirah and he took the book from there.

Q. Do you know when the book had been put in there?

A. I cannot say when.

It was not put in there on that particular day. It had been put in there earlier.

Q. On the previous day too no book was put in there?

A. On that day he was not ill.

A. On the previous day too it had not been put in there?

A. Whenever the almirah was open he used to put in things there. I do not know when the book was put in there.

(Interval).

Signed S. J. C. SCHOKMAN,
Additional District Judge.

22-8-44.

(After Interval).

Dona Adliet Ratnayake:—recalled—affirmed.

Cross-examination continued.

Shown R5. This also contains some signatures. The signature on page 1 is that of Mr. Ratnayake. The signature on page 3 is also his. So is also the signature on page 5. The first signature on the last written page of R5 is not Mr. Ratnayake's. It is not like the other signatures. There is something like an 's' below. The second signature on that page is that of Mr. Ratnayake.

(Mr. Wckramayanake marks these two signatures as R5a and R5b).

RE-EXAMINATION

My mother's name is Athauda Arachchige Dona Alo Nona. In P2 the name of the mother of the child is given as Liyana Arachchige. In cage 5 the names of the informants are given as Jamès Albert Ratnayake and Liyana Arachchige Dona Adliet. When that birth was registered I did not go to the Registrar's office. For the purpose of registration a form was got down and that was filled up. Mr. Ratnayake filled that up. I was asked to sign my name. Apart from signing my name I did not write anything else. I remember I signed my name as Liyana Arachchige Dona Adliet.

The respondents are the children of Mr. Ratnayake's sister. Mr. Felix Wijesinghe was at one time employed under Mr. Ratnayake. He was employed in the shop at Dehiowita. At the time of Mr. Ratnayake's death he continued to be employed there. Mr. Wijesinghe was not in the habit of coming to see Mr. Ratnayake at Talangama. The deceased died in June, 1943. Prior to that he was ill for about three years. He was ill for the last time for about four or five days. Mr. Felix Wijesinghe did not come to see him at Talangama during the deceased's last illness. Mr. Ratnayake's nieces also did not come to see him. His nieces were not in the habit of visiting him at Talangama at any time. Two of them were living at Kandy. To my knowledge Mr. Ratnayake did not go to see them at Kandy. To my knowledge he was not in the habit of helping these people by sending them money or presents. Mr. Ratnayake was a Christian. He was a well-to-do man. I do not know whether he sent any money to these people, but not to my knowledge. During his last illness he was suffering from piles. He was anaemic. During those four or five days he did not go out anywhere.

Q. How long before that did he go out of Talangama at all?

A. He returned from Dehiowita on the 10th of May. After that he did not go anywhere else.

During that time he did not go out anywhere. He was treated by a priest during this time. The priest's name is Methananda. Methananda is a well known physician. He was in attendance on my husband during his last illness.

Q. Do you remember that Priest making a certain inquiry from him shortly before he died?

A. Yes

Q. What did you hear Methananda asking him?

A. He told the deceased that his illness was serious " what provisions have you made for the Nona and the children."

Q. Did your husband make a reply to that?

A. Yes.

Q. Did the Priest put any questions after that?

A. No.

Mr. Ratnayake had interests in Talangama as well. His business in Talangama was attened to by Martin. He looked after the estate. I have seen Mr. Ratnayake writing books of account, letters and things like that in his estate at Talangama. He did that kind of bus'ness in Talangama.

He was able to do that till six days before this death. I have seen him writing till six days before his death. His letters accounts books, and so on were normally kept in the almirah.

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Re-Examination
—Continued.

Q. All the things?

A. The account books of the estate were on the writing table, that is, the check roll and all the other current books were kept on the table.

There were papers in the almirah too. They were like cheque books, deeds and other important letters. There were two almirahs in the house.
10 Both almirahs can be locked. The keys of both were in the same bunch. There was no particular almirah that Mr. Ratnayake used as his own.

I did not have any voice in the choice of witnesses to this Last Will. Before the 23rd of May Mr. Ratnayake did not discuss with me the terms of the Last Will. I did not ask him to make a Last Will providing for me and my children. When these witness had arrived and Mr. Ratnayake had got this book out of the almirah he addressed some particular words to the people who had come there. He brought the book and told them that that was his Last Will and he wanted them to sign it. He used the word "Anthima kematha."
20 kematha " was. Mr. Ratnayake gave me the book and asked me to put it away. That was on the 23rd of May. Between that day and the 3rd of June I did not have any conversation with him about that book.

I remember the funeral. In answer to a question in cross examination I told that two persons came some time after the funeral sent by Felix Wijesinghe asking from me certain documents. The two persons who came were my brother Herath who is the guardian-ad-litem of the children and the driver P. G. Perera. They came and told me that Mr. Wijesinghe wanted all the deeds to enable him to work up the administration of the estate. My precise reply was that there were some writings of my deceased master and
30 that I could not give them. I was not prepared to give them to anybody at all. I told them to inform Mr. Wijesinghe to come with a Proctor to hand over the papers to the Proctor. Thereafter a Proctor came to my house at Talangama. The following day after the visit of my brother and driver one Mr. Burhan came. He and the driver came. By the time Proctor Burhan and the driver came I had already handed over the papers to Mr. Seneviratne, Proctor. Then I went to Mr. Seneviratne's office. I cannot say how long after but I went a few days after. Proctor Burhan, Wijesinghe, my brother Herath and I went to Mr. Seneviratne's office. In the office I saw Mr. Felix Wijesinghe examining the document P1 written by the deceased.

40 Q. Having examined that document what did Felix Wijesinghe say?

A. He said " let us destroy this document and then divide."

He said that this has been nicely written. He said that uncle's handwriting is correct, and then suggested to destroy this document. I told them that I would not agree but if the gentlemen liked I also would agree. By " gentlemen " I refer to the Proctors. I asked those Proctors to do whatever they liked but I said I did not like the document being torn.

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Re-Examination
—Continued.

Q. Do you remember Mr. Felix signing a certain document and giving to the Proctor, or did you both sign that?

A. I signed first he also signed it later

This was after the conversat on about tearing the document.

Signed S. J. C. SCHOKMAN,
Additional District Judge.
22-8-44.

J. D. A. Dissanayake
Examination

J. D. A. Dissanayake:—affirmed—.

62 Cultivator, Talangama.

I am the Local Manager of a Buddhist School. The name of that school is the Talangama Buddhist Mixed School. I am also Vice-President of the Co-operative Society. I am possessed of property. I am worth about Rs. 20,000/-.

I knew Mr. Ratnayake. I had known him for about 15 to 16 years. He had an estate in Talangama called the Bank Hill Estate. He used to reside on that estate for about half of the month and for the other half of the month he used to reside at Dehiowita. He had business interests in Dehiowita. I had been going to see him at Bank Hill Estate. We were not really friends, only when necessary we used to visit each other. Mr. Ratnayake had married twice. I knew both his wives. It was the first wife who had died. Apart from this lady I know of one wife only. I knew the lady who died shortly before the petitioner lived as his wife. The lady who died was not quite right on her head. 20

Q. During her last illness had you been there?

A. When she was insane I had been there but she did not die at Talangama.

After that lady died I knew that the petitioner was living at Bank Hill Estate with Mr. Ratnayake. He had children by her. I have seen him going about with the Petitioner and her children. He used to go to Church every Sunday with her and the children. There was a theatre adjoining Bank Hill Estate and Mr. Ratnayake and this lady presided; I mean the theatre was under their patronage. They occupied the "mulputuwa" and Mr. Ratnayake gave special gifts also to the promoters. So far as Ratnayake was concerned I regarded this lady as his second wife. 30

I remember being sent for by Mr. Ratnayake sometime in May 1943. I remember the date as the 23rd of May. The message was brought by one James Alwis. He came and told me that Mr. Ratnayake wanted me to come with two trusted people. I asked him why but he said he did not know. I went. I went with W. P. Perera the Manager of the Co-operative Store and another Dissanayake. He is popularly known as Podi Dissanayake. I think we went about 3 p.m. When the message was brought to me I was in the Co-operative Store. I went with these two people and James Alwis to Mr. Ratnayake's place. Mr. Ratnayake was there. He was lounging in the verandah. As we were approaching the house, this lady told Mr. Ratnayake that we were coming and so saying she went in. We went into the house—the four of us went into the house. After we went in Mr. Ratnayake said: "Oh you have come, take a seat." He asked Martin to come, 40

so saying he got up. Martin is the watcher of the Estate Mr. Ratnayake got up and went into the house and he came out with a book and then sat near a table in the verandah. It was a closed verandah with glass shutters all round. He opened the book and sat and said that he wanted us to come there to sign as witnesses to his Last Will. So saying he signed. He signed twice in the same place. After he had signed I signed. After me W. P. Perera signed. After that James Alwis then Podi Dissanayake and lastly Martin. At the time I signed and the deceased signed the six of us were in that closed verandah. While this was going on I saw the 1st Petitioner.

10 She was inside the house on the other side of the window.

(Shown P1). The document was written in a book like this. I can identify the writing if I see it. (Shown the pages marked P1a and P1b). This is the writing. (He points to his signature on P1b). I say that this is the document that was signed on that day because my signature is there. I know W. P. Perera's signature. He is the Manager of the Co-operative Stores run by our Society of which I am the Vice-President. I identify the second signature as that of W. P. Perera. The third signature is that of James Alwis and the fourth, of Podi Dissanayake and the last signature is that of Martin. After that document was signed Mr. Ratnayake wanted some tea

20 to be brought. Then we said we did not want tea and we were in a hurry to go and we must go. Mr. Ratnayake then thanked us for coming and wanted us to keep this as a secret. I am quite certain that before we signed he said that it was his Last Will and wanted us to witness his signature to that document. We did not remain there after that. We went away. Mr. Ratnayake was ill at that time. He was able to walk about but he was very, very weak. He was able to go to his almirah and fetch his book. He was in full possession of his senses. He knew what he was about. Even four or five days prior to this death I went there and I was speaking to him for about half an hour; he was quite normal. (Shown affidavit at page 1e). That is my

30 signature. That is an affidavit which I swore for the purpose of this application.

CROSS-EXAMINATION

J. D. A. Dissanayake
Cross-Examination

I had a residing house at Talangama. No, it is not my ancestral property,—my own. That was sold against me two years ago. It was not sold under a writ. My brother-in-law wanted to raise a loan of Rs. 2,000/- on a mortgage of a rubber property 8 acres in extent. As the lender did not know my brother-in-law I was asked to sign as surety. My brother-in-law mortgaged his 8 acres. I did not mortgage anything.

Q. Then the 8 acres did not fetch Rs. 2,000/-?

40 A. The 8 acres at the sale fetched Rs. 1,400/- or Rs. 1,800/-.

I was told that there was a deficit of Rs. 2,000/-. Then the lender wanted to know what I was going to do for the balance. I gave security in my house and 3/4 acre of land.

Q. You were not able to relieve that security?

A. After that I wanted to pay Rs. 2,000/- but he demanded Rs. 3,000/-.

Q. He was not entitled to Rs. 3,000/-; he was entitled to Rs. 2,000/-, he was wrongfully claiming Rs. 3,000/-, was Rs. 3 000/- due?

A. The security was for Rs. 2,000/- odd. I wanted to pay after some years. By that time the principal and interest had mounted up to Rs 3,000/-.

He did not sue me on the bond. I transferred the property in his name and took a lease.

Q. At that time you had Rs. 2,000/- in cash; this was in 1942 when prices had begun to soar?

A. I cannot remember whether it was in 1942. 10

Q. Will you tell me how long it was when you sold your residing house?

A. According to my recollection, between 1930 and 1940.

Q. Are you still suggesting that you cannot tell us when you sold your residing house?

A. I cannot say.

Q. Except within a period of ten years you cannot place the date?

A. I cannot say exactly.

This was a house I had built. I am married. I did not bring my wife to this house. After my marriage and after I got three children I came to that house. Before that I was living in an old house, my father's house. After my marriage and after three children were born I built that house and went there. I did not build that house in a quarter acre of that land. The whole land belonged to me. I bought the other shares in that land. I bought the shares before the sale of the house. I was entitled to more than five acres and the house. Besides this I had a field about 8 pelas sowing extent. I mortgaged that for Rs. 1,000/- for a friend of mine and I paid Rs. 500/- and I had to pay a balance of Rs. 500/-. I paid Rs. 400/- as interest and my friend and I were in difficulties so I transferred that. I cannot remember the year I transferred that. I transferred before the bombing. I have nothing else. So that before the bombing I was left with five acres. 20 30

Q. When you were called upon to pay why did you transfer the residing house; you could not pay the Rs. 3,000/- and you had to pay the debt, why transfer your residing house?

A. Because I had nothing to give.

Since then I have not been living in the house of my son-in-law. After I transferred the property I took a lease and I was residing there. The house in which I am now living does not belong to my son-in-law.

Q. Who is the lawful owner, in whose favour is the deed in respect of the house in which you are now living? 40

A. There is no deed for the house. There is a deed in my name, in my wife's name.

This is not the same house that was sold by me. My son-in-law and I spent for putting up the house in which I am now living. The house is put up on my land.

Q. That is the rest of the 5 acres?

A. Some shares are in my wife's name and I have got shares.

Q. Your son-in-law put up the house you say and you assisted him?

A. Both of us spent for the house.

I claim that house as my property. It does not belong to my son-in-law. My son-in-law is living with me. When I sold my house I was living in that house. When I sold my house I came to the present house. My son-in-law was not living here at that time. He was living with me in the house that I sold.

Q. All that is left to you is an undivided interest along with your wife and son-in-law in that four acres of land?

10 A. Not to my son-in-law—to me and my wife.

Of the four acres the interest I am entitled to is roughly more than half.

Q. More than three-quarter or less than that?

A. $\frac{1}{8}$ has been bought in the name of my wife. Some portion has been bought in my daughter's name. The rest of it is in my name. So, perhaps I have three-quarter or less than three-quarter of the four acres

The land is planted with coconuts and some rubber.

Q. Is that the property which is worth Rs. 20,000/-?

20 A. Though I sold that field I have other fields.

Q. You told us a little while ago that you have absolutely nothing else besides this?

A. I have other fields. I have a field one pela sowing extent in Dukena and another field 3 pelas in Etunkedeniya.

Q. These days when prices are high these lands worth Rs. 20,000/- must be giving you a fairly large income?

A. Yes.

Q. How much?

A. I do not know what my income is.

30 I pluck the nuts, sell and spend the money, that is all.

Q. You are the Vice-President of the Co-operative Society, so you must be keeping some accounts of your own?

A. I keep no accounts. I sell and spend.

I have not the faintest idea of what my income is.

I was employed at one time in a firm in Colombo. I was in the Commercial Company, a despatch clerk. I retired on a pension. I retired in 1939. I am not getting a pension now. I got a gratuity. I left that Company twice, once on my own when I was paid Rs. 100/- gratuity. The second time I left I was paid Rs. 150/-.

40 James Alwis is related to me but I do not claim relationship. He is my father's cousin's son. Podi Dissanayake is a first cousin's son. James Alwis is not related to the Petitioner. I do not know whether the Petitioner cooked for Mr. Ratnayake and his wife when they came to the estate. I do not know the fact that she was acting there as cook. I do not know anything at all about the household of Mr. Ratnayake during the time he had his married wife. I knew that the Petitioner was their sewing woman.

Q. You were very friendly with Mr. Ratnayake and you used to go to his house and when you went there you saw her as a sewing woman?

A. I knew that she was a sewing woman.

I did not know that she was brought there to cook for Mr. Ratnayake and his wife when they came there.

Q. You can take it from me that she has admitted in her evidence that she was brought there to cook whenever Mr. Ratnayake came there with his wife?

A. I do not know.

Q. Before Mr. Ratnayake died she was in that Estate in her brother's hut?

A. I knew that she was residing in a house in that Estate but I did not know where.

I knew that Martin was her brother. I knew that Martin was a watcher in that Estate.

Q. Did you know that Martin had a hut in that estate to live in when he was a watcher?

A. I knew that he was residing in a house in that estate.

It is a house provided for the watcher in the estate. I did not know that she was living there with her brother Martin. I know Herath. I did not know that Herath was also a daily paid labourer in that estate. I remember Herath was staying at Dehiowita in the shop. Herath may have lived in the estate but I do not know. I do not know whether he was working in that estate.

(It is now past 4 p.m. Further hearing is adjourned for tomorrow).

Signed S. J. C. SCHOKMAN,
Additional District Judge.
22-8-44.

* * * * *

23rd August, 1944.

30

Same appearances as before.

Mr. K. M. Fernando from the Hongkong & Shanghai Banking Corporation tenders from the Bank's custody four cheques which the Bank has been summoned to produce. They are filed of record at the request of Counsel for the Respondent.

J. D. A. Dissanayake:—recalled—affirmed.

Cross-examination continued.

James Alwis is one of the witnesses to the Will. His mother is Dissanayakage Dona Lucia. Dona Lucia's own brother is Robert. Robert is my father. I am a 1st cousin of Alwis. It may be that James Alwis has been figuring more than once in the Police Court as an accused. I do not know that he has been punished also in the Magistrate's Court. Once or twice I have figured in the Courts in my own cases.

James Alwis had a brother Haran de Alwis. Haran de Alwis sold a property but I do not know the name of the person to whom he sold it.

I brought an action on a mortgage bond against Haran de Alwis and the purchaser. Purchaser did not plead that the bond had been paid and discharged by Haran de Alwis although the bond had not been discharged. The position taken up by the purchaser was that there was no money due on that bond. He claimed prescription. The case No. is 78425 of the Court of Requests, Colombo, I did not know that the plea taken up was that the mortgage bond had been discharged by a payment but the bond had not been cancelled. He had paid part of the principal but I sued for the balance. The only evidence given was my evidence. I was cross-examined. Half
10 way through the cross-examination I consented to the action being dismissed without costs.

Yesterday I did not say that I knew the household of Mr. Ratnayake very well. I said I knew Mr. Ratnayake very well; I mean visiting him. I used to visit him only when the occasion arose. Mr. Ratnayake did not live more at Dehiowita than at Talangama. He spent less time at Dehiowita. At Talangama he had only this property. He had a big business at Dehiowita. He had a shop which he attended to himself. Mr. Ratnayake did not visit my house. As a matter of fact he considered to be of a slightly different social status from me. I used to address him as Mahatmaya. He
20 called me by name, that is, Dissanayake unahē. He was not on visiting terms with me. When necessary he sent for me.

This Adliet is also known as Alice. She is commonly known as Alice. I refer to her as Alice. She is the sister of the watcher of Mr. Ratnayake's estate. The other brother was also employed under Mr. Ratnayake. She was distinctly of a lower social status. It is not a matter unknown that people have mistress in the estates or elsewhere. That often happens. It is a matter of common experience. From my point of view it is nothing unusual for Mr. Ratnayake to have a mistress here. I did not know that Mr. Ratnayake had as his Proctors Messrs. F. J. & G. de Saram of Colombo. When Mr.
30 Ratnayake sent for me on that day it was James de Alwis who brought the message to me.

(Lunch Interval).

Signed S. J. C. SCHOKMAN,
Additional District Judge.
23-8-44.

(After Interval).

J. D. A. Dissanayake:

Cross-examination continued.

I have said that James Alwis is a close relative of mine though I am
40 not on good terms with him. It is a well known fact in Talangama that I am not on good terms with him. We do not visit each other and do not invite each other for our functions. I do not know whether the deceased, Mr. Ratnayake was aware of the state of feelings between us. A message was sent by the deceased asking James to come to him. I do not know that the deceased had sent for James. I know that fact now. James' house is about 1/8th of a mile from my house. When the deceased sent for me I took Podi Dissanayake and Perera to him at his request. Perera has not come to Court today. He did not come here yesterday.

Q. Is it not correct that Perera is not here because he is not prepared to support this Will?

(Mr. Obeysekera objects to this question as it involves some hearsay. Mr. Wickramanayake puts the following question:

Q. Do you know what Mr. W. B. P. Perera's attitude to the Will is now?

A. I do not know.

I know that he is in Talangama. There is a difficulty in getting him here. He had been ordered not to give evidence in Courts. His work is such that he has difficulty in going out and giving evidence. He has been ordered not to give evidence. He is the Manager of a Co-operative Store. For that reasons he is not willing to give evidence in this case. 10

Q. You know that he is not willing to give evidence in this case for that reason?

A. That is what I think. I do not know whether that is so.

I was working with him in the same Co-operative Society. I am the Vice-President of the Society. He is the Manager of a Store run by another Society. I am the Vice-President of a Co-operative Society. That Society has no connection with the stores of which Mr. Perera is the Manager. I did not discuss the Will recently with him. I do not know that the Will is being challenged here as a forgery. 20

Q. What is the contest in this case?

A. Evidence has to be given in this case about the signature. I know that there is a contest in this case. I know what the contest is. I know that the Will is being challenged as not being a genuine document. I was one of the witnesses to the Will.

Q. Have you discussed with any of the other witnesses the circumstances of this particular case knowing yourself that the Will was duly executed? 30

A. I have discussed with the witnesses that came here.

I met Mr. Perera recently. There was no need for me to discuss the Will with him because he was not prepared to give evidence.

Q. You told him that it was necessary for him to give evidence here?

A. If I said that, he would have been relieved of his job.

I do not know whether he has been served with summons. I did not ask him whether summons had been served on him. I knew that he was not coming here to give evidence.

I signed an affidavit in support of the application for Letters of Administration. I signed that affidavit before a J.P. near the Court house. I cannot remember when I did so. I came from Talangama to Colombo to sign it. I was asked to come here and I did so. Herath the brother of the Petitioner asked me to come. Others were also asked to do so, namely, W. P. Perera, Jamis, Podi Dissanayake and Martin. Three of the persons asked to come including myself came together. The other two were in Mr. Sene- 40

viratne's office when we went there. Perera left his Co-operative Store and came to sign the affidavit. He came to Colombo I think in the morning. The affidavit was signed immediately I came. Then I went away.

No. 16
1st Petitioner's
Evidence
J. D. A. Dissanayake
Cross-Examination
—Continued.

I have said that I have spoken to the witnesses who have come to Court. James, Podi Dissanayake and Martin are the witnesses who have come here. They and I went to the deceased's house on the day in question. I have said that I remember the date—23rd May.

Q. How did you fix the date as 23rd May?

A. There is a dispute and on account of that I remember the date.

10 I do not remember what I did on the 23rd nor on the 24th of May. I have also said that I was sent for by the deceased on 23rd May.

Q. What reason have you for remembering that date?

A. It was after that we were asked to come to Colombo and sign the affidavit. That is why I remember the date. Because I had to come and sign the affidavit I remember the date.

20 When I and the others went to the deceased's house only the deceased and the lady were there. The deceased may have been waiting for us for a long time. As we went in the lady left the place and the deceased still remained in the verandah on a lounge. He was in the lounge till we got into the house. The lady went in first and the deceased followed her later. He asked us to sit down and went in.

Q. The lady went into a room and was looking from a glass pane?

A. I saw her standing there. She must have been looking. Whilst I was near the window of the room I saw her on the other side. She must have been watching the proceedings.

30 The deceased came back to me and the other witnesses with a book. When he brought that book it was not open at a particular page. Having come back he sat by a table. Then he opened the book. Thereafter having told us that it was his Last Will, he signed the book. At that time I was seated close to him. I saw him signing. After he signed he asked me to sign and then put the book towards me. I signed and thereafter all the other witnesses also did so.

Q. After that he closed the book and took it away?

A. When we were there, the book was not taken away. He did not make any other entries in the book while we were there.

Q. Is it a fact that at that point of time Mr. Ratnayake was too ill to do any writing?

A. No.

40 The deceased was a very careful business man. He has kept a number of books in respect of his various transactions. I do not know whether all the entries in those books were made by him.

Q. Would you be surprised to hear that he has made no entries at all in those books after the 14th of May?

A. I do not know that.

Q. Would you be surprised to know that there are entries in this book of a subsequent date and that there is some one else who has signed for Mr. Ratnayake? Would you be surprised to know that after the 14th of May the entries have been made on behalf of Mr. Ratnayake—not by himself?

A. I cannot say anything about it.

Mr. Ratnayake suffered from pernicious anaemia. Towards the latter end of his life he was extremely debilitated. In the area where he was living there were a number of respectable people such as Dr. Jayatilleke. He lived about a mile away from the deceased's bungalow—a little over a mile away. Those who lived closest to the deceased's bungalow were one Istogu who sells fire-wood and Moragoda Wedda and his relatives. One Istaila is also living in the neighbourhood. There is a church close to the deceased's bungalow. There is no priest there. There is also a school in the locality. A person from Wattala comes there to teach. He does not reside at Talangama. He comes there daily by bus. To the west of the deceased's estate is Mr. Jayasinghe's estate. Mr. Jayasinghe lives on his estate. He is a person employed in Colombo. I think in the Income Tax Department. On the eastern side of the deceased's estate is the house of Moragoda referred to.

Q. Between Mr. Ratnayake's land and your land how many houses are there? 20

A. There is only one house between these two lands. There are three or four houses in the district.

I do not know Podimahatmaya Wijesinghe living within 50 fathoms of the deceased's land. I know Jayasinghe Podi Mahatmaya. That is the person I said is working in an office in Colombo. I cannot say whether there was a person living close to the deceased's house who is employed at the G.P.O. In the house between my house and the deceased's land one P. W. Perera who died was living. There are no males in that house. I said that there are four or five other houses in the district. They are all rented out to labourers who come to Colombo—not to clerks. The houses are not tiled. 30

Q. Between your house and Podi Dissanayake's house had you to pass any other houses?

A. Yes, I had to pass the whole of Moragoda Estate and Weerasuriya Estate.

At the time in question some Mahatmaya was living on Weerasuriya Estate. I do not know his name. He was one Kaviratne. I do not know what his occupation was. I pass his house. I used to greet him when we have met. Podi Dissanatake's house is next to Kaviratne's house. 40

Q. From Podi Dissanayake's house you went to Perera's?

A. I was in a boutique with Perera and I took Perera along with me to Dissayanayake.

I was not present at the funeral of Mr. Ratnayake. The funeral was at Dehiowita. He died at Talangama and the corpse was taken to Dehiowita.

Q. After the death you met the Petitioner between the date of the death and your being asked to come to the Protcor's office?

A. No.

Q. Did you go to her house and meet her there after Mr. Ratnayake's death?

A. Only on the day of the deceased's death I went there ; not after that.

I know Girigoris Perera the deceased's driver. He must have been a very trusted servant of the deceased. He was working under him for about 10 30 odd years. Girigoris' work was to drive the car. Mr. Ratnayake may have come to Talangama by car on the 10th of May.

Q. After that date he was not seen in Talangama alive?

A. He died at Talangama.

Q. You do not know whether he stayed at Talangama on the 10th till he died?

A. I cannot definitely say so. I believe he did so.

I do not know whether he was away for one or two days during that time. Between the 10th of May till the signing of the Will I went to see the deceased. After the signing of the Will I did not do so. On the day previous to the signing of the Will I went to see him as I heard that he was not well. 20

RE-EXAMINED

J.D.A.Dissanayake
Re-Examination

I was cross-examined with regard to a mortgage bond in respect of which I was surety. Eventually there was a balance liability which I had to satisfy. I liquidated that liability by transferring a certain house to the creditor. I transferred the house with 3/4ths of an acre of land. That 3/4ths of an acre was part of a larger land. The extent of the whole land is 5 acres, 2 roods and about 36 perches. The house and three-quarter acre of land were transferred on 1st January, 1934. I can remember that date now. I 30 was cross-examined about the debt yesterday. After that I looked through the papers and verified the date. Now I am able to give the exact date, namely, 1st January, 1934. The whole of the remaining extent of nearly five acres is mine. I have deeds in my name for about 3/4ths of the remainder and that remainder is in my wife's name.

Q. You have built a house on that remaining portion?

A. Yes.

The cost was about Rs. 4,000/-. I am living in that house with my children and my son-in-law. My daughter is a school mistress married to a school master. Both of them are teachers. The four acres odd and the house are now worth about Rs. 15,000/-. I own other properties—a field 40 in extent about 3 pelas. I am possessing that field. It is correct to say that as standards go in that part of the world (Talangama) I am comfortably off.

I was also cross-examined about a mortgage bond action which was brought in the Court of Requests, Colombo, against one Harandi Alwis. I admitted that at a certain stage I agreed to the dismissal of the action without costs. I agreed to that because the debt was prescribed. I remember

No. 16
1st Petitioner's
Evidence
J.D.A.Dissanayake
Cross-Examination
—Continued.

No. 16
1st Petitioner's
Evidence
J.D.A. Dissanayake
Re-Examination
Continued.

the affidavit I signed in connection with this case which was shown to me. I said I signed it one morning in Hulftsdorp before a J.P. All the five witnesses signed it at the same time. The J.P. is Mr. E. B. Weerakoon, Proctor. I know him. He was living at one time at Talawatuoya where he has a land. I remember I said that on the 23rd of May when the deceased brought out the book and before he signed, he said: "This is my Last Will. I want you to attest my signature." All the five witnesses who were assembled heard him say that.

I was also cross-examined about certain neighbours of Mr. Ratnayake. I mentioned certain neighbours including a lady known as Yakadahamy. I do not know much of the "celebrities" who were known to Mr. Ratnayake. He was a cut above the average villager. 10

Signed S. J. C. SCHOKMAN,
Additional District Judge.

23-8-44.

W. J. de Alwis
Examination

Weerasinghege James de Alwis—affirmed—45, Cultivator, Talangama South.

I knew the deceased Mr. Ratnayake for about 15 or 16 years. I was employed under him at one time as a watcher on Bank Hill Estate. I was the watcher of that estate when his eldest child was born. I was the watcher for about four or five years. Thereafter I left employment under the deceased and took up cultivation in the village. After I left his employment I was in the habit of visiting the deceased. The reason why I left his employment was not because my relations with him were strained. I informed him that I wanted to leave his employment, before I ceased to work under him. He had a regard for me. 20

I know the Petitioner. When I was employed as the watcher of Bank Hill Estate, she was living on that estate. I addressed her as Nonamahatmaya. Other servants too addressed her in that way. The deceased had interests in Dehiowita. He used to come to Talangama and remain there for two weeks every month and spend the other two weeks at Dehiowita. The eldest child had just been born when I started employment on the estate. I called him Hamumahatmaya. When the girl was born I had left the estate. The deceased regarded the boy as his son. He was fond of him. 30

Mr. Ratnayake died about a year ago; I cannot remember the date. I remember the fact of his death. I also attended his funeral. He died at Talangama and his funeral also was there. I attended the funeral at Talangama, and went to Dehiowita also. I remember going to his bungalow at Talangama before he died; I cannot remember the date; it was about ten or twelve days before his death. When I was at home Martin came to me and told me that the deceased wanted me. Martin was the watcher at that time. My house is about 75 to 100 fathoms from the boundary of the deceased's estate. Martin called on me at about 2 or 2-30 p.m. I did not ask him why the deceased wanted me. If the deceased, my master, sent for me I did not ask why he had done so. I went to his house and met him after Martin told me that I was wanted by the deceased. On that occasion the deceased told me: "Meet Mr. Dissanayake and ask him to come to me with two other 40

persons known to him." Mr. Dissanayake is the last witness. I did not ask him why he wanted Dissanayake. I would not have put a question of that kind to my former master. If he asked me to do anything I did it without questioning.

No. 16
1st Petitioner's
Evidence
W. J. de Alwis
Examination
—Continued.

When I went to Dissanayake's house he was not there. When I went to the Co-operative Stores at Talangama he was there. Then I told him that the deceased wanted him. Thereupon he accompanied me to the deceased's house with the Manager of the Store, W. P. Perera and the other Dissanayake. The four of us went to Bank Hill Estate. When we arrived
10 there, the deceased was there. He was lounging in a room enclosed with glass shutters. I and the three others entered that room. Then the deceased asked us to sit. As we entered the room the lady went into another part of the house. I presume she had been asked to call Martin. The deceased then went into another room and came back with a book. Then he placed the book on a table and sat by the table. Thereafter he opened the book and said he had written his last Will and wanted me and the others to attest his signature. Martin had arrived at the time. All the five witnesses were at the table at the time. Thereafter the deceased signed the book in two places. The pen and ink were on the table. After the deceased signed, he
20 turned the book towards Dissanayake and then Dissanayake signed. After that Perera the Manager of the Co-operative Stores signed. Then I did so and after that Podi Dissanayake. Later Martin signed the book. The book is like a check roll book about this size (shows the length with his hands). (Shown P1): It was a book like this. I can identify my signature if it is shown to me. I cannot read English. (Shown P1B): The third signature is mine. I can say that this is the paper which Mr. Ratnayake signed. I can swear to that. I also say that it was signed by Mr. Ratnayake, myself and the other witnesses about 12 days before his death, all of us being present at the same time. After the writing was signed the deceased ordered for tea. Then
30 Dissanayake said that it was not necessary and that he had other work to be attended to. Thereafter he left the house and the others also did so. When the book was being signed the Petitioner must have been in the room adjoining the room in which the document was signed.

I signed an affidavit in connection with this matter. That was some-time after the Will had been signed. I signed that affidavit at the Magistrate's Court before Mr. Weerakoon. I know Mr. Weerakoon. All the five witnesses including myself signed that affidavit. (Shown affidavit marked IE): The third signature here is mine.

CROSS-EXAMINED

W. J. de Alwis
Cross-Examination

40 I have not been convicted several times. I have never been convicted. I did not have any trouble with the Vidane Aratchi of Talangama. I was not prosecuted in that connection.

Q. You had trouble with a person called Suwaris Pinto?

A. There is one Suwaris Pinto who is my father-in-law. He did not prosecute me at any time. I was not involved in a bus case.

No. 16
1st Petitioner's
Evidence
W. J. de Alwis
Cross-Examination
—Continued.

I know Tichoris Almeida. I wanted my brother-in-law's bus stopped for the purpose of taking my son to hospital. The bus was not stopped. Later I engaged a car and took the child to hospital. After that I damaged the bus with a club and paid Rs. 200/- as damages. There was a case in that connection for damages. I was not charged for unlawful assembly and rioting. I have never been convicted in a Court of law nor fined. I know a person known as Cotta. There was no case against me and Cotta at any time. I am Weerasinghe James de Alwis. I was not convicted in Case No. 7547 (D.C. Criminal) on 7th August, 1925. I was not charged in that case along with Cotta. I was not charged with anybody else at any time and convicted. (Mr. Wikramanayake marks as R6 a certified copy of an entry preserved in the register of criminal cases relating to Case No. 7547. Mr. Obeysekera objects to the production of the document as it is not a certified copy of a document kept under any provisions of law. He says that the document itself refers to W. J. Allis. 10

ORDER

This document cannot be accepted in evidence as it is not certified in terms of Section 7 of the Destruction of Valueless Documents' Ordinance, (Chapter 336).

(As it is now past 4 p.m. further hearing is postponed for January, 20 17th, 22nd and 26th 1945.

Signed S. J. C. SHOKMAN,
Additional District Judge.

23-8-44.

17th January, 1945.

Same appearances as on the last date.

Weerasinghage James de Alwis—recalled—affirmed.

Cross-Examination continued:

I told the other day that I was not convicted for any offence.

(Mr. Wikramanayake marks as R6 a certified copy of an entry in the 30 Register of Criminal Cases in Case No. 7547 D.C. Criminal).

I have never been found guilty and bound over in any Magistrate's Court. I have been prosecuted. I cannot remember the exact date—about two years ago. One William Pinto filed an action against me alleging that I assaulted one of his children.

I was charged for the commission of an offence along with Cornelis Perera. I was not convicted and bound over. I was warned. That was over 20 years ago; not on the 17th September, 1941. I said that I knew this man Cotta. His name is Cornelis Perera, also known as Cotta. I do not know whether he was the man charged with the theft of coconuts (R1). 40

I am a cultivator. I cultivate my own land. I have four pelas of paddy and about three acres of high land. These lands are close to the estate of the deceased. During the period I was a watcher on Mr. Ratnayake's estate I cultivated my own lands also. I was watcher for about six or seven years. During that period I found some difficulty in being watcher and

cultivating my own lands. Mr. Ratnayake was paying me Rs. 20/- a month. Apart from me there was a tapper employed in the estate at the same time. I left Mr. Ratnayake to look after my own land. I deny that Mr. Ratnayake dismissed me. I deny that he dismissed me because there were some rumours connecting me with the woman he was keeping in the estate. I treated her as my master's wife and I am very sorry to hear this. It is not a fact that I was asked not to set foot on that estate from the date I was dismissed. I used to go whenever Mr. Ratnayake wanted me.

No. 16
1st Petitioner's
Evidence
W. J. de Alwis
Cross-Examination
—Continued.

I know Girigoris Perera the driver.

10 Q. You have heard it from the Petitioner herself that he is a trusted servant of Mr. Ratnayake employed for over 30 years, that he was the one man Mr. Ratnayake trusted with everything. Do you have anything against Girigoris Perera?

A. Nothing.

Girigoris was a car driver and was always in attendance on Mr. Ratnayake. He was there during my time.

I came to the estate on the day in question at the request of Martin. Martin is said to be a brother of the Petitioner. I know that he is a brother of the Petitioner. He was employed there as a watcher. He succeeded
20 me as watcher. Martin came and called me at about 1 or 2 p.m. I went straight along with him. At that time Mr. Ratnayake was lounging in a room. My house was adjoining the estate on the other end. It is about one-eighth of a mile from Loku Dissanayake's house. Loku Dissanayake's house is not in the same direction as my house. His house is on the opposite direction of Mr. Ratnayake's house on the other side. Loku Dissanayake's house was towards Pannipitiya and Podi Dissanayake was towards the Colombo side. My house was at the other end, looking at it my house will be between. From my house I went to the bungalow and from the bungalow I went in search of Loku Dissanayake. I was told to fetch Loku
30 Dissanayake and two others. Both Loku Dissanayake and I got the two others. Going from Loku Dissanayake's house to the bungalow I had to pass a small estate of 8 acres. The house in that small estate was occupied by a widow. There were no other houses up to Mr. Ratnayake's estate.

Q. You went to Podi Dissanayake's house and fetched Podi Dissanayake and Perera?

A. Loku Dissanayake was not at home. I was told that he had gone to the Co-operative Store. I went there and he was there. Then I conveyed the message to him.

Near about the Co-operative Store, just opposite is the house of Mr.
40 Jayasinghe a Government employee. Going from the Co-operative Store to the bungalow you would have to pass that house. You also have to pass the house of the Overseer and also the house of Mr. Simon.

Q. Instead of just going near about the bungalow and picking up the people there you went far in to fetch Podi Dissanayake?

A. In the Co-operative Store we got hold of the Manager and Podi Dissanayake lived just nearby, he was there and we called him,

Podi Dissanayake is a cousin of Loku Dissanayake. Loku Dissanayake and I are not cousins. He is related to me by my mother's side but I have not recognised that relationships. I do not know whether he is a distant relation of my mother. We do not recognise each other as relations. My mother is Louisa de Alwis Dissanayake. She is a sister of Robert. Robert is Loku Dissanayake's father. Yes we are first cousins but we do not recognise as such. I knew all along that Loku Dissanayake's father and my mother were cousins. Loku Dissanayake and I do not treat each other as relations.

The person who fetched the witnesses was Martin, brother of this 10
Petitioner. I was the first witness fetched.

Q. The other two witnesses were Loku Dissanayake your first cousin
and Podi Dissanayake who is a first cousin of Loku Dissa-
nayake?

A. Yes.

Q. And along with Perera you went to the deceased's house?

A. Yes.

When I went back again with Mr. Perera the deceased was in the
same position on the lounge. About an hour elapsed between the first visit
and the second visit to the bungalow. Only after I went there on the second 20
occasion did Mr. Ratnayake go inside and fetch that book. The Petitioner
was seated with Mr. Ratnayake on the second time I went. I did not see her
on my first visit. I did not see her at all on the first visit. After bringing
the book Mr. Ratnayake wanted Martin called. Then Martin came. After
Martin also came he told us, "I sent for you to witness my Last Will." I
do not know anything about execution of documents. I have signed a deed
as a witness. Those are always done in the presence of a Notary.

Q. Did you not think at that time that it was necessary to have a
Notary for the execution of a Will?

A. I did not know about that.

30

I did not question "Well, do you want a Notary for this?" The
deceased said "I want you to sign as a witness to my Last Will" and after
he signed the whole lot of us signed. I know that Mr. Ratnayake was a man
of considerable property. I knew that he was a man who had been doing
business for a long time. I did not know that he was a man who had Proct-
tors both in Avissawella and Colombo. I did not know that the Proctors
he employed in Colombo were Messrs. F. J. & G. de Saram. I have wit-
nessed the signature of Mr. Ratnayake to a birth certificate when his son
was born. At that time I was a watcher on his estate.

I did not see Girigoris Perera on that day when I went. I know where 40
he stays when he is on the estate. He stays in a garage just by the house.
You cannot go to the bungalow without passing that garage. I swear that
he was not there in that house on that date. When Mr. Ratnayake's message
was given to me on that day I was on the bed after my mid-day meal. I do
not remember the date on which this happened.

What I signed was a book. I have not heard of Last Wills before.

Q. Did you take it as a normal thing signing Wills in exercise books?

A. I did not think about it.

No. 16
1st Petitioner's
Evidence
W. J. de Alwis
Cross-Examination
—Continued.

Mr. Ratnayake was not using a fountain pen always. There were two pens on the table. During my stay as a watcher I am not certain whether I noticed Mr. Ratnayake using a fountain pen always, but I think he did not use a fountain pen. At that time we all used pen and ink and he also used pen and ink. There were two pens and an ink pot on the table. I do not know whether they had been brought there between the time of my first visit and the second visit. I do not know at what time they were brought. His
10 writing table was there all the time.

Mr. Ratnayake used glasses. He was wearing the glasses when he signed the Will. I cannot say whether it was there or whether it was brought. He used glasses for reading and writing. He could do it without a pair of glasses but he used a pair of glasses on that occasion. I do not know from where he fetched them at that time. I remember Mr. Ratnayake wearing a white shirt like a banian on that occasion but I cannot remember whether he was wearing a sarong or trousers. I cannot remember whether his glasses were produced from the pocket. The Petitioner was by Mr. Ratnayake when we went there. When she was told that Mr. Dissanayake and the
20 other people were coming she went into the room. After she went into the room she was visible from where we were. She may have been standing and watching all that was going on.

Q. Was she looking on?

A. She could have seen but I was not careful in observing whether she was looking or not. She was staying in that one place from where she could see.

Martin is now employed in Colombo. He comes to Colombo from the estate. He has not continued to be there right through after Mr. Ratnayake's death. For some time he was at Matara where he got married. I
30 cannot say that he went to Matara a few days after Mr. Ratnayake's death. I cannot say for how long Martin was not there in the Estate after Mr. Ratnayake's death. There was no necessity for me to take note of this. I do not know whether it was about six months. I know that he is back there now.

Q. Can you tell us your earliest recollection of seeing him back in the village?

A. I do not remember.

Q. Mr. Ratnayake died in May 1943 — did you see him in the village the whole of last year ?

A. I do not remember.

Q. You lived adjoining the estate—Martin was there as a watcher in the estate—You cannot tell us whether he was there the
40 whole of last year?

A. I knew that he had gone to Matara and that he remained there for some time. After that I now know that he comes to Colombo for some job. I cannot say for how long he was away or when he returned.

No. 16
1st Petitioner's
Evidence
W. J. de Alwis
Cross-Examination
—Continued.

Q. Can you recollect any instance when you saw him last year—the whole of last year?

A. I cannot remember having seen him. I cannot say whether it was last year or this year but he is there on the estate on Sundays.

W. J. de Alwis
Re-Examination

RE-EXAMINATION

I was never known as W. J. Allis. I said I left Mr. Ratnayake's employment. That was about 10 or 12 years ago. I remember the time the 1st Petitioner began to live with the deceased Mr. Ratnayake. I left the deceased's employment five years after the birth of the elder child. I told the Court that I signed as a witness when the birth of that child was registered. 10
After I left the deceased's employment I cannot say how often I went to Bank Hill Estate but whenever there was any necessity or when Mr. Ratnayake sent for me I used to go. That happened once or twice every month or two.

I know the deceased had been a little ill about the time this document was signed. He was able to get about. He was able to understand what he was doing.

Signed S. J. C. SCHOKMAN,
Additional District Judge.

17-1-45.

J. R. de A,
Dissanayake
Examination

Joseph Richard de Alwis Dissanayake—affirmed. 20

30 years, Clerk to my brother, C. D. A. Dissanayake, Contractor.

My brother is a Contractor to the Public Works Department and the Irrigation Department. In 1943 I was his Clerk. I live in Talangama South. I knew the deceased Mr. Ratnayake. I had known him for about eight years. He lived on Bank Hill Estate. I lived within sight of this estate. I know the witness J. D. A. Dissanayake. He is also called Loku Dissanayake. I am popularly known as Podi Dissanayake. Loku Dissanayake is a first cousin of mine. He is my uncle's son.

I was in the habit of going to Mr. Ratnayake's house. I was cultivating his field. In that connection I used to go to his bungalow. I know 30
the 1st Petitioner. I know her as the wife of the deceased. I have known her for about 8 years. I have seen her living there with the deceased. I know that this lady had two children by Mr. Ratnayake, a boy and a girl.

I went to Mr. Ratnayake's house one day to witness his signature to a document. I do not remember the date, but I know that was about ten or twelve days before the death of the deceased. I remember the death of Mr. Ratnayake. I went to the bungalow on the date of his death. One day when I was at home, at about 2 or 2-30 p.m. my brother Loku Dissanayake, Jamis Alwis and Paulis Perera came and my brother called me to go to Mr. Ratnayake's bungalow saying that he had asked me to come. It was 40
Loku Dissanayake who actually called me to go. At that time he did not say why the deceased gentleman wanted me. The four of us went to Mr. Ratnayake's bungalow on Bank Hill Estate. He was seated on a lounge. The 1st Petitioner was by him. Then the 1st Petitioner said that the Dissanayakes are coming and she went into the room. We then stepped into the

room where the deceased was lounging. Mr. Ratnayake asked us to sit down. When we were seated he got up, went into a room and brought a book like a ledger and kept it on a writing table. Then he wanted Martin called.. Martin came. After that Mr. Ratnayake opened the book and said "I have written my Last Will and I sent for you to witness it." Then Mr. Ratnayake signed in two places. Thereafter the five of us signed as witnesses. The order in which the five witnesses signed were: Loku Dissanayake, Perera, James Alwis, I and Martin. I can identify the book if it is shown to me. (Shown P1). It was a book like this. I can identify my signature if I see it.

No. 16
1st Petitioner's
Evidence
J. R. de A.
Dissanayake
Examination
—Continued.

10 (Shown P1B). (Witness points to the two signatures of the deceased on P1b. He points to the signature of the fourth witness as his). That signature reads J. R. A. Dissanayake. That is my usual signature.

After the document was signed Mr. Ratnayake ordered tea. Then my brother said that we were in a hurry to go, we had some work. The deceased then thanked us and told us not to tell anybody about the signing of this document and advised us to keep this in mind. After that we left.

I signed an affidavit in connection with the application for probate of this Last Will. I signed it before Mr. Weerakoon who is a Justice of the Peace.

20 (Shown affidavit.) I identify the fourth signature to this as mine.

CROSS-EXAMINATION

J. R. de A.
Dissanayake
Cross-Examination

I have signed both these documents as J. R. A. Dissanayake. I have told the Court that that is my usual signature. I have not signed in any other form. My name is J. R. de A. Dissanayake; because it is difficult to write the "de" I omit it and sign 'J. R. A. Dissanayake.' I am not known as Dissanayake Galagedera Alwis. I was never known as that. I was prosecuted in the Magistrate's Court fairly recently. Before I had to appear in the Magistrate's Court I signed a bail bond. I did not sign that bail bond as Dissanayake Galagedera Alwis. I swear to the fact that I did not sign
30 that bail bond as Dissanayake Galagedera Alwis. I was charged as Dissanayake Galagedera Alwis. The Police had put my name as that. I did not get a summons but I appeared before Court. Before I received the summons I appeared before Court and it was then that I signed that bail bond. Thereafter I was continued to be charged in that case as Dissanayake Galagedera Alwis.

To Court:

The Police did not ask what my name was and record my statement before the prosecution.)

40 I put my usual signature on the bail bond. I told them that my name was not Dissanayake Galagedera Alwis.

To Court:

Q. If you did not get the summons also, why did you go and appear in connexion with this case when that was not your name?

A. There was another accused along with me. The Police had come home and told my mother that they had obtained a warrant against me. Then I surrendered to Court.)

No. 16
1st Petitioner's
Evidence
J. R. de A.
Dissanayake
Cross-Examination
—Continued.

I drew attention to the fact that I was not Dissanayake Galagedera Alwis but J. R. A. Dissanayake and I signed the bail bond as such. There was no change thereafter in the name in the charge or the proceedings. They said "Never mind, let the name remain as it is." When I appeared in Court the name of the accused was called out and I answered to the name of D. G. Alwis. As my name appeared as D. G. Alwis in the bail bond and as the Police told me that there was no harm in my name remaining like that I answered to that name.

Q. When you surrendered to Court you surrendered to the name D. G. Alwis? 10

A. On that day I did not know what the name was.

Q. Do you go by any other name besides Robert Dissanayake?

A. In the village I am called Appuhamy.

Q. Do you know Francis Moonesinghe?

A. There was a witness Moonesinghe for my case—I do not know whether he is Francis—I know him. He is not a man of my village. He knows me. He is a driver working in that camp for about five or six months. He did not know me at that time as Robert Dissanayake. He knew me only as Appuhamy.

My brother's work is to get canals cleared and canals cut. He also clears shelters. He does not construct military camps. There was a military camp there at that time. I had nothing to do with military camps.

There are several Wilsons in the village. The Wilson who was charged with me is a man of the village. He is not a relation of mine. He has no connection with me at all. He is an acquaintance. He is not from our village.

I know Jamis Alwis. He may be a cousin of Loku Dissanayake. I know him well. There is no ill-feeling between me and James Alwis. We do not visit each other. There is no animosity between each of us. James Alwis had been a watcher on this estate. I do not remember the time he left the estate. I remember the fact that he left. He left several years ago. It is not correct to say that from the time he left the estate he was asked not to step into that estate. He has gone to the estate after that. I have seen him going to the bungalow when I was tethering cattle. Yes, he has gone when Mr. Ratnayake was there. I do not know why he left the estate. 30

Q. At about the time of his leaving the estate have you heard any rumours about him?

(Mr. Obeysekera objects to this question on the ground that it is irrelevant and hearsay. Mr. Wikramanayake says that he has not questioned the witness about what the contents of the rumour were but about the mere fact whether he heard any rumours. I allow the question to be put). 40

A. No.

I said that I was looking after some fields of Mr. Ratnayake. The fields are in the estate itself. I did not do the tilling of these fields. My father and my brother did the tilling.

Q. So that any transactions that Mr. Ratnayake had were between your father and your brother?

A. My father could not sign, therefore I also went to the estate. My father had taken the field to cultivate on a cultivator's share.

Q. What are the documents that your father had to sign and understand for which purpose you had to go?

A. My father used to buy coconuts from the estate and he had to give an advance and a writing to pay the balance. All those things were attended to by me.

10 Q. Apart from that you had no necessity to go there?

A. Whenever I was at home I used to take cattle to tether.

So far as Mr. Ratnayake was concerned he was of a higher status than I and I was not on visiting terms with him. My brother was a Contractor and I was a Contractor's clerk. We are of a slightly higher social status than the ordinary labourer.

Q. The ordinary labourers and people like that are not on visiting terms with you?

A. Yes. We get our work done in distant places.

20 was of a lower social status than I. Martin was a watcher in the estate. I do not know whether Martin

Q. That is how you look at it whether it is right or wrong—that is why you do not go to this house?

A. I do not treat him as a man of lower status, but there was no occasion to go to his house.

Q. Socially would he attend your functions or would you attend his functions?

A. There were no occasions for social functions.

30 I do not know whether Martin's father was also first a labourer in that estate. I do not know whether he was at any time a watcher on that estate. I do not know him. I know the married wife of Mr. Ratnayake who died. She used to come to that place occasionally. I do not know whether the 1st Petitioner was sent there to assist in the cooking when Mr. Ratnayake's married wife came there. I was not going to the estate at that time. I was only going to the estate after the Petitioner began to live there as the mistress of the deceased. My acquaintance and my visits were only for about eight years, only after she began to live there. I knew that she was the sister of Mr. Ratnayake's watcher on that estate. I did not know that he had not registered the marriage. I do not know of people who have mistresses in estates. I have never heard of such things. It is not so in our
40 side.

Q. So far as your experience goes you have never known anybody having mistresses?

A. There may be several people keeping mistresses but in the estates that side there were no gentlemen behaving like that.

I have heard of people keeping mistresses.

No. 16
1st Petitioner's
Evidence
J. R. de A.
Dissanayake
Cross-Examination
—Continued.

Q. When Mr. Ratnayake was living with a woman who was his watcher's sister, do you seriously suggest that he was married to her?

A. There was every possibility of thinking that they married because she was treated as his married wife; they were going in the same car seated side by side. I have seen them several times seated together in the bungalow. A gentleman will not take his mistress out like that in a car in public.

There were servants in that house. There were some female servants. I cannot give the names of any of those servants. They were not from the same village, from some other village. The Petitioner wore saree at home, not cloth and jacket. I have seen her in saree and also in a long robe in the bungalow. I have seen the servants taking water to the bungalow. They may be doing the cooking. I used to go to this bungalow once in two months to buy coconuts. At other times also I have been going there when sent for by Mr. Ratnayake. After Mr. Ratnayake's death I do not visit the bungalow but I used to go to the estate to tie cattle. 10

Shortly after Mr. Ratnayake died Martin was there in the estate. Then he was absent for sometime. I do not know where he had gone. Shortly after Mr. Ratnayake's death Martin left the estate. He was not there for four or five months. During that period he was out of the village. I do not know where he was. 20

Signed S. J. C. SCHOKMAN,
Additional District Judge.

Interval.

17-1-45. After interval.

J. R. de Alwis Dissanayake.

Cross-examination continued.

On the day the Will was signed James Alwis, Loku Dissanayake and Perera came to me and told me that the deceased wanted me for some purpose. They stood on the road opposite my house and told me that. I was in my house at the time. I did not ask them why the deceased wanted me. I accompanied them to the deceased without asking what the reason was. On the way to the deceased's house we did not discuss the matter. Not one of us was curious as to why the deceased wanted us. Till we went to the deceased, we did not have the faintest idea why we were wanted. 30

When we went into the deceased's house without our asking why we were sent for, the deceased went into a room and brought a book. When he told us that it was his Last Will and wanted it signed, we were not surprised. I have not signed a deed as a witness. I cannot remember whether I have signed other deeds or not. I know the formalities in connection with the signing of a deed. I know that a deed has to be signed before a Notary and that two witnesses are required for that. I did not think that the Will also had to be attested in the same way. I did not know that a Will has to be signed by five witnesses. I was asked to sign the Will and I did so. I and the three others referred to signed the Will without making any inquiries. 40

Prior to the occasion on which the Will was signed I have seen the deceased signing other documents—not cheques. I have seen him signing receipts. I saw him signing the Will twice. I do not know why he signed twice. I did not give any thought to the matter at the time. I did not scrutinise the two signatures. I do not know even now whether the two signatures are different. (Shown Will—P2): I see two signatures of the deceased here. I noticed those signatures at the time I was signing. I did not then see that the two signatures were different. I now notice a difference in the first letters of the signatures. The deceased did not say that he had written the Will.
10 He did not say what the contents of the Will were. I signed the Will only in one place. I have not signed a Last Will in book form on any other occasion.

When the deceased wanted tea prepared Loku Dissanayake said that he was in a hurry to go back. I was not in a hurry to do that but I and the others left the house together. Before we entered the house, when we were still in the garden, the Petitioner said that the Dissanayakes were also coming and went into the room. Before we went in I did not see whether she was looking at us but she was able to see us from the room. The deceased brought the book from a room. I have said that the Petitioner having said that the
20 Dissanayakes were coming went into a room. I did not see her in the room. At no time between my entering the verandah and my going away did I see her in the room. I could not see into the room but I could see the things in the doorway. I cannot remember whether there are glass pane windows between the room and the verandah where I was. I have been to the deceased's bungalow hundreds of times. Between the room and the verandah there is only a door—no glass shutter windows. There are no windows facing the hall but there is a door facing the hall. The only way by which we could look into the hall from the verandah was by looking through the doorway. After the Will was signed the Petitioner did not come to the hall.

30 I do not know from where the deceased brought the book. He put on his glasses to sign the Will. I do not know from where he brought his glasses. Before he signed the Will, when we entered the house, he was not wearing glasses. When he brought the book from the room, he was wearing his spectacles. I cannot say from where he brought them. When he returned from the room he came with his spectacles. He was wearing a sarong and white banian at the time.

After I and the others went into the house it did not take more than a minute or two to fetch Martin. I cannot say who fetched him. The request to fetch him was made by the deceased. None of the four persons
40 referred to including myself went out to fetch Martin. I cannot say whether the lady did so. There is no way of getting out of the room except through the hall.

I know Girigoris Perera. He has been working under the deceased for a long time. He was his car driver. He assisted him in matters at Talangama as well, such as plucking of coconuts. He may have been a trusted employee of the deceased. On the day the Will was signed, I did not see Girigoris in the bungalow. I did not ask where he had been on that day. I had to pass the garage to go to the house. I did not see the car in the garage.

No. 16
1st Petitioner's
Evidence
J. R. de A.
Dissanayake
Cross-Examination
—Continued.

The garage was closed at the time. I do not know whether the car was inside the garage or whether it had been taken out.

I do not know Felix Wijesinghe. I have never seen him in Talangama. I have never seen him in the deceased's house.

J. R. de A.
Dissanayake
Re-Examination

RE-EXAMINED

I was cross-examined with regard to a case in which I was charged. I was charged in that case with the theft of a gear box from a Military Camp. I was acquitted in that case. My defence in the case was this: My brother was living in a garden next to the camp. One Munesinghe threw a letter at my brother's servant girl. Later I slapped Munasinghe at a tea boutique. He kept that as a grudge and on account of that grudge he instigated a false charge against me. When I heard that there was a warrant against me, I surrendered to Court. Before I surrendered a statement from me was not recorded by the Police. There was a co-accused in that case, namely, Wilson. Both of us did not surrender the same day. Wilson was in jail when I surrendered. On the day I surrendered to Court my name was called out, namely, Dissanayakege Galagedera Alwis. Wilson's name was called out first, then my name. Wilson was not produced in Court. After my name was called out I appeared. I was advised by a Police Sergeant to appear when the name referred to was called out. I signed the bail bond in a room in the Court house. I signed that bond with my usual signature. The case was postponed about four times before I was acquitted. I appeared on all those dates. 10 20

In cross-examination I did not say that I saw James Alwis going to the deceased's bungalow after he had left the deceased's employment. I said that I saw that. I have not seen James speaking to the deceased. I described the room in which the Last Will was signed as a hall with glass panes. I also said that there was a room behind into which the 1st Petitioner went when I and the others arrived. There is a portion of the house behind that room, namely, a long verandah and a kitchen. The hall with glass panes is in the front portion of the house. 30

Q. When you entered the house the first portion you entered was the hall with the glass panes?

A. The main door leads to the hall. One can get to the back verandah from the front portion of the house.

The back verandah can also be entered from a side of the house. The room in which the 1st Petitioner was is between that verandah and the hall. I cannot say how many doors that room has. I am aware that it has one door which leads from it to the hall. There are almirahs in the room and beyond the almirahs nothing can be seen. I do not think the house has a separate dining room but I saw a dining table in another room by the side of the hall. 10

(Mr. Wikramanayake asks for permission of the Court to put certain questions to this witness regarding the proceedings in the case in which he was prosecuted, based on the record, a copy of which he has. Mr. Obeysekere objects. He says he has, however, no objection to the Court looking at the certified copy of the record and putting any questions based on it. I allow Mr. Wikramanayake to put questions based on the record).

Cross-examined by Mr. Wikramanayake.

My position in the case referred to was that because I slapped Munasinghe over some incident he implicated me. I gave instructions to that effect to my lawyers. Questions were not put to Munasinghe with regard to the letter. He was not asked about my having slapped him. When he was cross-examined in Court I was present. My Proctor said that he could not question Munasinghe about the incident as I could not get hold of the letter. Therefore no questions were put to Munasinghe about it.

No. 16
1st Petitioner's
Evidence
J. R. de A.
Dissanayake
Cross-Examinatoin
—Continued.

10 I surrendered to Court on 9th November; that may be the date. Wilson was convicted in that case on 28th October, 1943. I cannot say whether he was in jail serving his term of imprisonment in that case on the day I surrendered. By the time I surrendered I did not know that Wilson had been convicted. On the day I surrendered to Court I was charged on the warrant against me, and I pleaded "not guilty." From that date onwards there were certain proceedings in which I was the accused as well as Wilson. Wilson's name was also called out on each of the days on which I attended Court. His name was called out first, then mine. I appeared as D. G. Alwis merely because Wilson's name was also called.

Re-examined: Nil.

20

Signed S. J. C. SCHOKMAN,
Additional District Judge.

17-1-45.

H. D. Martin—affirmed—30, Fitter, Talangama.

H. D. Martin
Examination

30 I am now employed at the B.C.C. Mills, Hulftsdorp as a fitter. I am paid Rs. 2/50 per day in addition to a War Allowance. In 1934, I was employed on the deceased's estate at Talangama. I was the watcher of that estate. I was looking after it. I was managing it. The deceased was living on the estate. He did not attend to any work there. I was employed under him for about 20 years. I was on the estate for 15 years. At the start I was employed in his boutique at Dehiowita for five years. Thereafter I was brought to Talangama. In 1943, my salary was Rs. 20/- a month and I was also provided with meals. I resided in a house on the estate.

40 I know the 1st Petitioner. She is related to me. She is my elder sister. She was living on the estate even before I came there. She was living there as the mistress of the deceased in his bungalow when I took up employment on the estate. She has two children by him. I remember his death. When he died I was in the bungalow. Before his death I signed a document, about 10 or 12 days before the death. That document was the deceased's Last Will. What happened on that day was this: I came to the bungalow at about 2 or 2-30 p.m. Then my sister the 1st Petitioner told me that the deceased wanted me to fetch Appuhamy (James Alwis). I know James Alwis. He lives in a house near the estate. I went to his house. I found him seated on a bed. I told him that the deceased wanted him. Then he accompanied me to the deceased's bungalow. There he went into the room where the deceased was. It was a room with glass panes. Then I went to the dining room and took my meals. After about half an hour or one hour I heard the deceased asking for me. Having heard that I answered

No. 16
1st Petitioner's
Evidence
H. D. Martin
Examination
—Continued.

the call and went to him. Dissanayake Appuhamy alias James Alwis, Perera the Co-operative Store Manager and Podi Dissanayake were also with the deceased at the time. Then the deceased said that he had called us to have his Will signed. Then the deceased signed the Will first in two places. Before he signed the document was on a table. It consisted of a book, He signed a page in that book in two places. After that Loku Dissanayake signed the book. Next the Manager Perera did so. The book was next signed by James Alwis, next by Podi Dissanayake and then by me. I can identify the book which contained the page. (Shown book P1). The book was one like this. (Shown P1b). I identify the fifth signature here as my signature. I have signed in Sinhalese as H. D. Martin. After the document was signed, the deceased wanted tea poured out for the other four witnesses but they refused it and went away. I do not know what happened to the book after that. I saw the deceased taking the book and getting up from his seat. After that I did not see it. After I had signed the Will I swore an affidavit before Mr. Weerakoon. (Shown affidavit marked IE). I identify the last signature on this as mine. 10

H. D. Martin
Cross-Examination

CROSS-EXAMINED

After the deceased died I did not leave the estate. When one of my children fell ill, I went to Matara my wife's native place for the purpose of obtaining treatment for the child. That was done about a month or 1½ months after the deceased died. In the meantime I was looking after the estate. I did not give over anything to the headman before I went away. There is nothing to fix the date on which I left the bungalow. I returned to the bungalow after a month. In August 1943, I was in Matara. I went there on 15th August. I did not go there before that. On 11th August I was not there; I am certain about that, I have fixed the date 15th August so definitely because on the 11th I was on the deceased's estate. I did not go to the Resthouse at Matara with some others on 11th August, 1943. On 23rd August I went there with Mr. Wijesinghe and others. 30

I remember a case where a man called Cornelis alias Cotta was charged with theft of coconuts from the estate. I made a complaint to the deceased in that connection and Cornelis was charged in consequence. The accused's defence was not that he had been implicated because he was on terms of intimacy with the Petitioner and I had found him visiting her. I cannot remember whether the accused made such a defence.

Q. You remember that your sister was summoned to be identified?

A. She had also come to Court.

Q. She was brought in when the deceased was giving evidence, and he was asked who she was? 40

A. I do not know.

I cannot now remember what the defence was. The accused was acquitted. I cannot now remember whether in view of the accused's defence that I had implicated him falsely because he was visiting my sister, I was asked questions about the Petitioner.

Q. Your sister was brought into the Court when you were giving evidence?

A. She was in Court when I was giving evidence. I cannot remember whether I stated to Court on oath that she was not related to me. I cannot now remember what I then said. The Petitioner is my sister. I cannot remember whether I stated in Court that she was not my sister.

Q. If it is recorded that you said she was not your sister, are you prepared to deny it?

10 A. I am unable to say anything now as I do not remember what I said.

Q. You said this in cross-examination in that case: "The lady who is in Court is not related to me?" Did you say that or not?

A. I cannot now speak to the correctness of that.

Q. Your memory with regard to the execution of the Last Will is perfect?

A. It is a recent incident.

Q. You stated in the Magistrate's Court in that case that the woman is not related to you? Do you deny that or not?

20 A. I am unable to say anything about that now because I do not remember what I said.

Q. You may have said so if it is so recorded?

A. If it is so recorded I may have said that, but I cannot say definitely whether I said so.

(Mr. Wikramanayake marks in evidence as R7 an extract from the evidence of this witness on this point in Case No. 4615 of the Magistrate's Court, Colombo).

Q. Will you tell us why you stated on oath that your sister was not related to you?

30 (No answer).

Q. To meet the defence in that case you were prepared to deny that your sister was not your sister?

A. I did not say such a thing.

(At this stage, for want of time further hearing is postponed for the 22nd instant).

Signed S. J. C. SCHOKMAN,
Additional District Judge.

17-1-45.

22-1-45.

40 Same appearance as before.

H. D. Martin—Recalled—Affirmed

Cross-examination continued.

I have said that when I took up employment on the estate my sister was living there as the mistress of the deceased. I do not know when she became his mistress nor the circumstances under which she became his mis-

ness. I was away at Dehiowita at the time. I took up employment on the estate in 1927 or 1928. I succeeded my uncle as the watcher of the estate.

Q. To your knowledge your sister was always the mistress of the deceased?

A. They were going out together and doing everything together. I did not know whether they were married or not. I was on the estate for about 15 years. During the whole of that period I did not know whether they were married or not, nor did I bother about it.

Q. To you it was an advantage for her to be even the mistress of the deceased? It was a matter for you to be glad about? 10

A. It was of no advantage to me.

I began to live on the estate after my sister took up residence in the bungalow. Before that I was employed in a boutique at Dehiowita belonging to the deceased.

I know James Alwis. He was also employed on the estate for some time. He lives in the neighbourhood. He was a watcher on the estate. He did not then stay in the watch hut at night. He was asked to look after the estate. He took care of the estate and saw that things on the estate were not stolen by others. He did so without living in the watch hut on the estate. 20 When he was the watcher he lived in his own house and kept an eye on the estate. He did not do any other work on the estate. During the day he used to attend to his own fields. Even during the time he was employed under the deceased he looked after his lands in addition to keeping an eye on the estate. After he left the deceased's employment he attended to his own lands. There was no difference in his attending to his lands before and after he left the deceased's employment.

Q. The only difference was that he did not receive a wage after a certain day?

A. That I do not know. 30

Q. You say that he continued to visit the estate after he left the employment of the deceased as frequently as when he was in the deceased's employ?

A. Whenever the deceased wanted him he came there.

Q. Is it correct that after he left the deceased's employment his visits to the estate were as frequent to the estates as when he was employed there?

A. He did not come there so often. He did not come there as a visitor. He came there only when sent for. He never came there after he ceased to be in the deceased's employment unless 40 he was sent for.

The deceased had other employees on the estate—labourers—in addition to myself and Girigoris Perera the driver. Apart from driving Girigoris did other work for the deceased and was as a matter of fact the personal attendant of the deceased during the latter part of this life.

Towards the latter end of his life the deceased was not very weak. He was suffering from bleeding piles. He was not very feeble. He last came to the estate on 10th May, 1943. He continued to live there and died there on 3rd June, 1943. Between 10th May and 3rd June he never left the estate. His car was also on the estate in the garage during that time.

No. 16
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
—Continued.

I swore an affidavit. That was done in the Colombo Police Court about a month after the deceased died. I came to Colombo direct from Matara for that purpose. I came from Talangama to swear that affidavit. I have signed another affidavit after coming from Matara. That affidavit
10 was also signed in the Police Court. It was signed about a month after I left the estate.

Q. You came from Matara and signed the affidavit how long after the deceased died?

A. About a month or $1\frac{1}{2}$ months after his death.

I left the deceased's estate about $1\frac{1}{2}$ months after his death. Then I went to Matara.

Q. About a month after that you came from Matara and signed the affidavit?

20 A. Some gentlemen came to Matara in search of me and took me to the Matara Rest House where they gave me tea. The gentlemen I referred to are Mr. Wijesinghe and Mr. Amerasekera. They also came to my house after having bought vegetables and meat and breakfast was prepared for them there.

The affidavit which I signed after having come from Matara was also signed in the Colombo Police Court. I signed the first affidavit about a week or two after the death of the deceased. To sign that affidavit I went to the Police Court from Talangama. On that occasion all the five witnesses went there together. My sister also went there. She and I travelled there by bus having met at the deceased's bungalow. I do not know how the meet-
30 ing took place. I had to go on that day to sign the affidavit.

Q. Your sister had said: "Let's go. You have to sign an affidavit?"

A. Yes.

Q. And you got out to go there with her?

A. Yes.

The others were on the road close to the house. When we went to the bus halting place we saw the four of them there. They had already assembled there. When my sister and I went there I do not know whether she told them: "Let us go to Colombo—you have to sign an affidavit." I do not know whether she told them anything. I did not tell them anything at
40 the bus halting place. I cannot remember whether they conversed there with my sister. She and I got into a bus there and the four others also got into it one by one, without any conversation between us. I did not ask them where they were going nor did my sister do so. Throughout the whole journey I cannot say whether they talked or not in the bus. I cannot remember whether I sat next to my sister in the bus. The others were seated there in different places. My sister and I were occupying back seats. The bus stopped

No. 16
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
—Continued.

at Borella and there my sister and I got down. I did not ask the others to get down there. There was no necessity for me to do so. I had come at my sister's request to sign an affidavit. At that stage I did not know where the others were going. To my knowledge my sister did not ask them where they were going. At Borella my sister and I got into a tram. The others also got into the same tram. Even then I did not ask them "Where are you going? You seem to be going with us the whole journey." There was no conversation between them and me. My sister and I got down from the tram at St. Sebastian junction. The others also did so. Even then I did not ask them where they were going. From there my sister and I walked 10 accompanied by the others. Still I did not know why they were coming. Later I came to know why they accompanied us. My sister and I went straight to the place where Mr. Weerakoon was. We went there with the others coming behind us.

Q. Where was Mr. Weerakoon at the time?

A. There was a table and Mr. Weerakoon was there. That was at the Police Court.

A number of other gentlemen were also there. I did not know who they were. I cannot remember whether they were all in black coats. I do not know whether they were in the screened room by the stair case of the Police Court. I and the others went to a room in the Police Court. After 20 we got down from the tram my sister and I went there accompanied by the others. There was no necessity for me to question the others as to why they were coming with us. I do not know who spoke to Mr. Weerakoon when we went to him.

Q. Either your sister or you told him that you had come to sign an affidavit?

A. I was asked to sign an affidavit and I signed it.

Mr. Weerakoon was sitting at a table when we went to him. Then he said: "Sign this affidavit" and I signed it. I do not know whether he 30 had the affidavit in his hands when we went there. The affidavit was on the table at the time, probably, with a number of other papers. He did not ask for anything. I have no recollection as to what he asked me or did not ask me. I did not tell him: "I have come to sign an affidavit." I did not take the affidavit to him. I do not know whether my sister took it to him. She and I travelled to the Police Court together and went home also together.

Q. If your sister took the affidavit to Mr. Weerakoon you must necessarily know that?

A. I did not see her having an affidavit. I did not see her producing 40 the affidavit. I saw it on the table.

I did not see the other witnesses who had come with us producing the affidavit. My sister and I and the others—six of us—were the only persons who went to Mr. Weerakoon together. When we went to him he had the document with him.

Q. Did he ask you to sign it?

A. Yes.

He did not address me personally and ask me to sign. I and the others all signed the affidavit. I cannot remember whom he addressed and asked to sign the affidavit.

No. 16
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
—Continued.

Q. Did he tell you what you were signing?

A. I signed an affidavit.

Q. You signed it as a witness?

A. We swore the affidavit testifying to the truth of the Last Will.

Q. Did you sign a document before Mr. Weerakoon as a witness.

A. Yes. I signed an affidavit before him.

10 I do not remember whether Mr. Weerakoon said whether the document was an affidavit or not. He did not explain the contents of the affidavit to us. I cannot read English.

Q. At the time you signed the document you did not know what it was?

A. I was asked to sign an affidavit testifying to the fact that the Last Will was a true one, and I signed the affidavit.

Q. Who told you that?

A. I cannot remember who told me that.

Q. One of the people there said: "Sign this?"

20 A. At the bungalow my sister told me that we were going to sign an affidavit.

Q. You went from home with the knowledge that you were going to sign an affidavit to prove the genuineness of the Will?

A. Yes.

Q. Although Mr. Weerakoon did not explain the contents when you signed the affidavit, you knew that it was an affidavit?

A. Yes.

30 Mr. Weerakoon did not tell me: "come here and sign this." I did not know him. I had never seen him before. The affidavit was first signed by Loku Dissanayake. I do not know whether he knew Mr. Weerakoon.

Q. Mr. Weerakoon did not address the others also and ask them to sign?

A. I did not hear him addressing any of the others and asking them to sign the affidavit.

The five witnesses were all together. When we went to Mr. Weerakoon the affidavit was on the table. The five of us signed it. There was no conversation between Mr. Weerakoon and anyone else. All the five signed the affidavit together and left the place.

Q. Six of you went back to Talangama.

40 A. I do not know where the others went. My sister and I separated from them at the Police Court.

My sister had asked me at the bungalow to go along with her to Colombo and sign the affidavit. That is all she told me about the matter.

The second affidavit was also signed in the Colombo Police Court before a J.P. I do not know who the J.P. was. I came from Matara and

No. 16
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
—Continued.

signed that affidavit. I came to Colombo to sign that affidavit by the morning train from Matara reaching here at 12-30 p.m. I got down at Maradana at that time and from there I walked—not to the Police Court. Having got down at Maradana I went to the estate at Talangama. The following day, I went to a Proctor (Mr. Seneviratne) and signed the affidavit. I went with him and signed it. I am not certain where it was signed—may be in the Police Court. It was not signed before Mr. Weerakoon. It was signed before another J. P. The J. P. was seated when I went to him from the Proctor's office. A Proctor's Clerk placed the affidavit on a table before the J. P. Then I was asked to sign it.

10

My sister is not called Alice by Loku Dissanayake. I know him. He comes to the bungalow occasionally. He knows my sister.

Q. You say that his statement that he knew her as Alice is not correct?

A. I do not know.

The deceased paid my wages. He was a very systematic man, very regular in his payments. I do not know whether he entered the payments in books.

I have said that I met Mr. Wijesinghe at Matara. That was on 23rd August. I remember the date because a wire was sent, I handed over that telegram to the Proctor. He and the other person who came with him asked me certain questions about the Last Will.

Q. Is it not a fact that you told Mr. Wijesinghe that the document you signed was signed after Mr. Ratnayake's death?

A. I did not say so. They asked me to say so.

H. D. Martin
Re-Examination

RE-EXAMINED

I remember the first affidavit I signed. Five persons signed it. Besides those persons, my sister and Mr. Weerakoon, I cannot remember whether any other person was present at the time.

Q. Was there a Proctor who was acting for your sister in the case at the time.

A. The Proctor who was acting for my sister in the case, namely, Mr. Seneviratne, was present at the time.

Q. How did Mr. Seneviratne come to be present at the time you swore the affidavit?

A. I cannot say. I happened to be there and he was also there. When I arrived there, what I think is that he was there. What I remember is that he was there when I and the others arrived there.

At the time I signed the affidavit I knew what I was signing. I was affirming a document to the effect that the deceased signed a Last Will and that I and others were witnesses to it.

The second affidavit I referred to was sworn only by me. The reason why I did so is this: When I was at Matara on 23rd August, 1943, Mr. Wijesinghe the 2nd Petitioner (points him out) and Mr. Amerasekera (points out another person present in Court) came to my house there and took me to the Matara Resthouse.

(Mr. Wikramanayake says that Mr. Amerasekera referred to is the husband of the 6th Respondent). There the three of us took tea together. From there we went to the market, bought vegetables and meat and then they asked me to get breakfast prepared. When breakfast was being prepared, they asked me to say that the Last Will was written after the death of the deceased and promised me Rs. 2,000/- if I said so. I refused to say that. They took breakfast and then left the house. While breakfast was being taken I sent a telegram to my sister stating that Messrs. Wijesinghe and Amarasekera had come to my house and asking her to come there immediately.

10 (Shown P5). My signature appears here. This is the second affidavit I signed. I say the statements in that affidavit are true.

(To Court

Q. You said you came to Colombo the day before you signed the affidavit?

A. I cannot remember.

I went to the Proctor and got the affidavit written and signed it.

Q. Who suggested the affidavit?

A. The Proctor told me that an affidavit must be signed.

Q. He said that after you had told him what happened at Matara?

20 A. Yes.)

Q. The position is this—You said that after you came to Colombo you went to Talangama. Then you came to see your Proctor and told him what had happened at Matara. Then he suggested that an affidavit with regard to that matter should be sworn and therefore you swore that affidavit?

A. Yes.

Interval.

Signed S. J. C. SCHOKMAN,
Additional District Judge,

30 22-1-45.

22nd January, 1945.

After interval.

A. B. N. Kulasekera—Sworn.

I was a teacher teaching at Christian College, Kotte, from 1938 to 1942. I have given up teaching now. At present I am working in the Pembroke Academy. I do not teach now, I am in the office. When I was teaching at Christian College, Kotte, the 1st Respondent, Percy Arnold Ratnayake, was a pupil. I knew him for quite a period, as long as I was in school. He was sometime in my class as well.

40 I have been going to Mr. Ratnayake's house at Bank Hill Estate, Talangama. I went in connection with this boy, about his studies. I could not meet Mr. Ratnayake. I met Mrs. Ratnayake.

(Mr. Wikramanayake objects to this evidence on the ground that it is irrelevant to the issues of this inquiry.

No. 16
1st Petitioner's
Evidence
A. B. N. Kulasekera
Examination
—Continued.

Mr. Obeysekera states that he is leading this evidence to show that this Will was a natural Will and the evidence of this witness is to prove that the deceased took an interest on the 1st Respondent).

Thereafter I wrote letter P6 of the 17th of November, 1942 to Mr. Ratnayake. It is about the boy generally and his work. I believe I received a reply but I do not have that. I have not seen Mr. Ratnayake. I have not met him. The boy went by the name of Ratnayake. The school treated him as Mr. Ratnayake's child.

Cross-examination. No questions.

Sgd. S. J. C. SCHOKMAN, 10
Additional District Judge.
22-1-45.

E. B. Weerakoon
Examination

E. B. Weerakoon—Sworn.

I am a Proctor of the Supreme Court in practice since 1906. I am a Justice of the Peace. I have a large practice in the Magistrate's Court and sometimes I act for the Colombo Magistrate. Last week I acted for him.

I knew the deceased Mr. Ratnayake for several years. He had an estate at Talangama called Bank Hill Estate with a residing house. I had a residing house at Talawatugoda about a mile away. I do not know that Mr. Ratnayake's first wife had died. I have seen the 1st Petitioner. I do not know her personally but I have seen her at Talangama in the house known as Bank Hill Estate where Mr. Ratnayake was residing. I have never been inside that house but I used to pass that house very frequently, about once a fortnight or so on my way to my estate and I very frequently saw these parties together in that house, that is, Mr. Ratnayake and this lady with the children. I think I have seen this lady and Mr. Ratnayake going out once or twice in the car together. I do not know whether Mr. Ratnayake was a Christian. I have not seen him in church. I remember his death. Sometime after his death an affidavit was sworn before me. I believe Proctor Mr. Seneviratne came with the 1st Petitioner to our lawyer's chambers in Hulftsdorp and explained the affidavit to her and I signed. That is, the Magistrate's Court lawyers chambers. 30

(Shown affidavit from the record). That affidavit was sworn to before me on the 5th July. This is the affidavit I remember which Mr. Seneviratne made arrangements to sign by five people. I explained the contents of this affidavit to them all before they signed and they seemed to understand it. The 1st Petitioner did come and see me after that—I am sorry I cannot say how long after—a short time afterwards she came and saw me. As far as I remember she said that the Will was being contested. I believe—I don't quite remember—she said that the Will was being contested and she asked me whether I was aware of the fact that she and her husband Ratnayake were living together as husband and wife. And it was then for the first time that I became aware that she was not married. I was under the impression that they were both married but it was then she told me that she was not married. That is my recollection. 40

It is correct to say that I have appeared for Mr. Ratnayake in some cases. He was my client in the Magistrate's Court in certain cases.

CROSS-EXAMINATION

No. 16
1st Petitioner's
Evidence
E. B. Weerakoon
Cross-Examination

He was my client. I knew him very well. I passed his house frequently. There was no occasion for me to call on him. My relation with him was not social at all. Nor has he called on me. But he has seen me in connection with Criminal Cases in the office and in the Courts. I have just a hazy recollection of a case in which he was complainant and the Police prosecuted a man called Cornelis Perera with theft of coconuts. But I do not quite remember the facts. It does not surprise me to know that he said there that he was keeping the 1st Petitioner as his mistress. I know nothing about
10 the case.

I have been a Justice of the Peace for quite a long time. A large number of affidavits have been sworn before me. I know that I got to read and explain an affidavit. When an affidavit is brought to me by somebody I explain the affidavit to the deponent who swears and signs in my presence. I quite properly followed all that procedure in the affidavit that was just shown to me. I knew some of the persons who signed. I don't think I knew one or two of them. If a witness says that I did not explain the affidavit before he signed that, it will not be correct. That cannot be because I must have explained, I always explain the affidavit to each and every one—it cannot be.
20 The affidavit is not drafted by me. If a witness speaks to the fact that when he came along I had the affidavit on the table and I asked him to sign, that could not be correct. I must have explained it to him before I obtained his signature.

Re-examination: Nil.

Signed S. J. C. SCHOKMAN,
Additional District Judge.

22-1-45.

Mr. Obeyesekera reads in evidence P1 to P6 and closes the case for the Petitioner.

30

NO. 17

2nd PETITIONER'S AND 4th, 5th AND 6th RESPONDENTS' EVIDENCE

No. 17
2nd Petitioner's &
4th, 5th & 6th
Respondents'
Evidence

Mr. Wikramanayake states that before he opens his case he wishes it recorded that one of the objections he will take to the Will not being proved is that all the five witnesses have not been called, and that no evidence has been led that the fifth witness is not available. He calls—

P. Girigoris Perera—Affirmed.

P. G. Perera
Examination

I knew Mr. J. A. Ratnayake. I was employed under him for 36 years. At the start I was employed in his shop at Dehiowita; later on I became his
40 car driver. I was his car driver for 28 years.

Apart from owning this Bank Hill Estate Mr. Ratnayake did business of forwarding goods to various Company Estates. He did some work in connection with the payment of the labour force on other people's estates. Once a month he paid the wages of the labourers in Company Estates. The

No. 17
2nd Petitioner's &
4th, 5th & 6th
Respondents'
Evidence
P. G. Perera
Examination
—Continued.

Company would send him that money. Mr. Ratnayake got a commission of 1%. For the purpose of payment of these labourers he had to draw large sums of money from the bank in cash. At one time he drew about 40 or 50 thousand rupees a month. I used to go and fetch that money from the bank with somebody else from the shop. He gave a cash cheque for 30, 40 or 50 thousand rupees as the case may be, and I went and got the cash. He took the cash to Dehiowita and divided it up according to the number of estates. I took the money and attended to payment on the estates. I also did the supervising of the picking of nuts. There were other matters in which Mr. Ratnayake consulted me. If he wanted to build a house or a boutique he discussed the matter with me. If he wanted to start any business also he consulted me, and when he wanted to buy an estate or a property he went with me for inspection. I was a trusted servant of his. 10

I remember the time when he came along with me to Talangama on the 10th May, 1943 from Dehiowita. After he came on that occasion he did not leave Talangama at all. At that time he was very feeble. From the 10th onwards he did not improve; he got worse. He was systematic about his business. He was a Christian. He went to Church regularly on Sundays except when he became feeble. He did not do any work on Sundays. He did not get his employees to work on Sundays. It was a strict rule of his that he did not want them to work on Sundays. I was his car driver. He never lent his car to anybody else. 20

I said that I came with Mr. Ratnayake to Bank Hill Estate on the 10th of May. When I go to that estate I live in a garage which was just opposite the bungalow near the gate. Nobody could go to the bungalow without being seen by any one in the garage. Between the 10th of May and the date on which Mr. Ratnayake died, that is, 3rd June, I did not see Loku Dissanayake, Podi Dissanayake, James Alwis and Perera coming together to that house. I took my meals in the bungalow. I did not see Loku Dissanayake ever coming to the estate between the 10th of May and the 3rd of June. Nor did I see Podi Dissanayake coming there between those dates. Nor did I see James Alwis coming there between those dates. James Alwis was employed in that estate sometime before that. He was a watcher. I remember the time he left. I do not know whether he came to the estate after that. So far as I know he never came to the estate after he left. He had no work to do on that estate. 30

To Court:

As far as I am aware he did not come.

Loku Dissanayake is not a person who comes to the estate frequently. Nor does Podi Dissanayake come to the estate frequently. I do not know who Perera is. I do not know W. P. Perera the Manager of the Co-operative Store. As far as I know, these people were not people with whom Mr. Ratnayake had anything to do. 40

I attended to the picking of nuts in Mr. Ratnayake's estates. I know Mr. Ratnayake had some fields in Talangama. One William was working the field on an "ande" share. I do not know whether Podi Dissanayake worked on those fields. Podi Dissanayake's father or brother did not work those fields. Without my knowledge they could not have got the fields for cultivation on an "ande" share.

I know the 1st Petitioner. She was there as Mr. Ratnayake's wife for some time.

Q. What do you mean by "bariyawa?"

A. She was not married.

No. 17
2nd Petitioner's &
4th, 5th & 6th
Respondents'
Evidence
P. G. Perera
Examination
—Continued.

I was there I said for 36 years. I was there in 1928. There was no period when I was not in the employment of Mr. Ratnayake during those 36 years. All throughout I was employed under him. I remember when the 1st Petitioner first began to live with the deceased. There was no ceremony before she started to live with him. There was no wedding breakfast.
10 I do not know whether there was any occasion on which at the start he put a chain round her neck and asked her to live with him formally. There was no public ceremony of any kind. In the first instance she came there during the life-time of Mrs. Ratnayake to help her in her work in preparing meals. These meals were prepared in a kitchen in the bungalow. The 1st Petitioner's duties when she came there was to prepare meals. Mr. Ratnayake might have paid her for that. After Mrs. Ratnayake's death she continued to remain in the bungalow. She continued to attend to the preparation of meals. Mr. Ratnayake began to live with the 1st Petitioner as his mistress.

20 Q. How long after Mrs. Ratnayake's death did Mr. Ratnayake begin to live with the 1st Petitioner as his mistress?

A. After Mrs. Ratnayake's death all throughout she continued to remain in the bungalow.

CROSS-EXAMINATION

P. G. Perera
Cross-Examination

I am working in Mr. Ratnayake's shop at Dehiowita at present. Mr. Felix Wijesinghe is managing the shop. I am attending to the business. I am paid a salary of Rs. 30/- a month. As car driver I got Rs. 55/- at the start. Then, owing to the depression he paid me Rs. 40/- and then Rs. 30/-. What I get at the shop is Rs. 30/- a month, that is all. I do not give my full time to the shop. I repair motor car tyres. I have an independent business of repairing tyres. So far as the shop is concerned my immediate superior will be Felix Wijesinghe.
30

I said that I was a trusted servant of Mr. Ratnayake. I was not merely his car driver but I attended to other matters as well. The car was not used very much. I used to run errands for him. I used to go to the bank for him and I used to go and supervise the picking of coconuts on his land. He had eight blocks of coconut lands in Hendala, they were not contiguous blocks—separate bits of land within a radius of one mile. They are small blocks. Then, in Dehiowita in Magama, three miles from Dehiowita towards Hatton, he had coconut lands. These were the only coconut lands
40 he had besides the estate at Talangama. I used to go and supervise the picking of coconuts in lands situated in various places.

I am quite certain that my service under the deceased was continuous. I did not leave his services at any time. At one time I came from the shop to Colombo to learn car-driving. That was in 1915. After that I went back to Mr. Ratnayake. I was originally engaged in the shop at Dehiowita as a salesman. Then I came to Colombo to learn driving. For that purpose I left his services. Although I left his services he spent for me to learn car driving. In 1916 I re-entered his services.

No. 17
2nd Petitioner's &
4th, 5th & 6th
Respondents'
Evidence
P. G. Perera
Cross-Examination
—Continued.

I did not at any time have a tin-smith's shop. When I was in the shop I used to get small rubber spouts made.

Q. My instructions are that you left the deceased and for some time you had that business of your own?

A. For some time I was doing that work with the idea of leaving the services of Mr. Ratnayake. Then Mr. Ratnayake asked me to go and learn car driving.

Q. I am instructed that you were out of his employment for some considerable time?

A. No. I was taking my meals at that time also in the shop. He said "No harm of your attending to that work, you take your meals from here."

Even my money and everything was kept in that shop and I had an account in the ledger.

I do not understand English. I understand a little. I cannot read English. I cannot write English. I cannot read a check roll. I write my signature in English.

I said I used to go to certain company estates to make payments to labourers. I used to take the money and hand it over to the Superintendents of the estates and they paid the money. In other words, I was the messenger that carried the money from the bank to a particular estate. I carried a lump sum to the Superintendent and it is the Superintendent who pays. 20

(It is now 4 p.m. Further hearing on the 26th instant).

Signed S. J. C. SCHOKMAN,
Additional District Judge.

22-1-45.

* * * *

26th January, 1945.

Same appearances as on the last date.

P. Girigoris Perera—Affirmed.

I knew Mr. Felix Wijesinghe's father. He is not alive now. He was employed in the Kelow Company at Yatiyantota. That Company supplies things to estates. It is an estate agency. It was Mr. Felix Wijesinghe's father who obtained employment for me under the deceased. At some later stage the deceased himself was engaged in a business similar to that done by the Kelow Company.

The deceased had a servant called Jacob. He was a faithful servant at one time. He was working under the deceased at the time I was working under him. The deceased employed me before he gave employment to Jacob. Money was taken to the Bank by Jacob also.

Q. Usually when money was taken to the Estate for payment a man who knew English was sent because he had to converse with the Superintendent? 40

A. No. The Superintendent can talk Tamil and Jacob and I can also talk Tamil?

At one time the deceased hired out cars. He hired out two cars from about 1918 till 1925. I used to drive those cars also. During that period most of my time was taken up with driving those cars.

I had no occasion to address the Petitioner as Nona Mahatmaya. When I spoke to the deceased I used to refer to her as Alice Nona.

Q. Did the deceased treat her with the regard and respect one treats his wife?

A. Not to the extent he would have treated his wife but he was treating her with the same respect as he would have treated his own wife.

10

He has gone with her in his car. He used to go to Church with her. He also attended a concert with her at a certain school at Talangama.

Q. That concert was under his patronage and the principal chairs were occupied by him and the Petitioner?

A. I did not go into the hall. I cannot say what chairs they occupied. They went into the hall together.

The deceased has two children by the Petitioner. He was very attached to those children. He looked after them as any father would look after his children. He used to take them about with him. He also attended to their schooling. He had no other children.

20

I have said that the deceased used to go to Hendala to supervise the plucking of coconuts, and that he had eight lands there. When I went to Hendala by bicycle I did so in the morning and returned in the evening. When I went by bus I used to stay there for about two days. The nuts were plucked once in two months. Coconuts used to be plucked on the Hendala lands in the odd months—January, March, May, July, &c. There would have been a picking in March, 1943. I supervised that picking. The next picking I supervised was in May. That picking took place about 22nd or 23rd May. I did not go to the lands for that picking. I cannot say who

30

came to Bank Hill Estate while I was not there. I remember Mr. Ratnayake's death. The funeral was on 4th June. The Petitioner and the children attended the funeral. I know Mr. Felix Wijesinghe has sisters who are parties to this action, namely, Ellen, Gertie and Muriel. None of these ladies attended the funeral.

Q. The deceased had very little to do with his relatives in his life time?

A. At times they used to visit him at Dehiowita. The deceased went to Kandy to see them.

Felix Wijesinghe was employed under the deceased. I do not remember the deceased's nieces referred to visiting him, but I remember his sister visited him. When Muriel came to Colombo I think for an examination she stayed at Bank Hill Estate.

40

Q. That is a solitary visit you remember?

A. Yes.

The deceased was not a sociable person who went about much. He kept much to himself. His sister and nieces did not visit him during his last illness. It was the Petitioner who looked after him until his death. She underwent a lot of suffering and looked after him,

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I know Herath. The day after the funeral Herath and I were sent to Talangama to fetch Mr. Ratnayake's deeds. We were sent there by Mr. Felix Wijesinghe. The Petitioner refused to give the deeds. When I went there a second time also I did not get the deeds. The Petitioner informed me that they had been given to her Proctor, Mr. Seneviratne. I remember Mr. Wijesinghe going to Bank Hill Estate with Mr. Burhan, Proctor. They travelled there in the deceased's car driven by me. From Talangama they proceeded to Mr. Seneviratne's office in the same car driven by me. There were others in the car, namely, Direcksz, a clerk employed on the estate at Dehiowita, Herath and the Petitioner. We all came to Mr. Seneviratne's office. 10

Q. There Mr. Wijesinghe in the presence of everybody examined the Last Will?

A. He might have done so.

I brought the car near the Courthouse and kept it there. Mr. Wijesinghe told me that he had signed a proxy on that day. He also told me that Mr. Ratnayake had made a Last Will.

Q. He further said that it was according to Mr. Ratnayake's wishes?

A. He did not give me particulars. He told me there was a Last Will of the deceased. 20

Q. He said he could not take objection to that?

A. He did not tell me all that.

After that visit to Mr. Seneviratne we returned to Talangama. Mr. Burhan got down from the car on the way and the lady was "dropped" at Talangama after which I and the others proceeded to Dehiowita. I know that Mr. Wijesinghe was given the deceased's watch and a ring of the deceased. Those articles were given to him by the Petitioner in memory of the deceased. Mr. Wijesinghe asked her to give them to him as a memento. Then she gave them to him.

P. G. Perera
Re-Examination

RE-EXAMINED

30

I have said that I went to Hendala by bus and cycle. I went by bicycle only for about a year. Before that I went by bus. When I went by bus it was difficult to return and I stayed in the nights at Hendala. During my absence from the estate one night, the lamps of the car and other things were stolen. Thereafter the deceased asked me to make arrangements to remain on the estate, not to absent myself from the estate on any night. After that I used to travel by cycle to Hendala. I used to go by cycle to Hendala at about 5 a.m. and return by 4 or 5 p.m. the same day. I was asked whether there was picking of nuts in May, 1943. I cannot remember the exact date of the picking in May, 1943. I have said that Mr. Ratnayake never got any of his employees to work on a Sunday. There was no picking of nuts on a Sunday. 40

(At the request of Mr. Wikramanayake I examine the Calendar of 1943. The 23rd of May fell on a Sunday).

I am not certain when I made the first of my visits to Talangama after the deceased's death. That visit must have been made three or four days after his death. I was sent there by Mr. Wijesinghe. I was accompanied

by Herath. He is a brother of the Petitioner. No deeds were given to me on those occasions by the Petitioner. She said: "You can come with a Proctor and refer to the deeds but I won't give you the deeds to be removed."

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I went again with Proctor Burhan to Talangama. Then the Petitioner said that she had handed the deeds to Mr. Seneviratne, Proctor. Mr. Burhan and I then went to the office of Mr. Seneviratne. There Mr. Burhan had a conversation with Mr. Seneviratne and went away. The travelling on that occasion was done in a hiring car. Those who went in the car to Mr. Seneviratne's office were myself, Mr. Burhan and Direcksz. Mr. Burhan remained in Colombo, and Direcksz and I returned in the same car. The next time I went to Talangama was with Mr. Felix Wijesinghe. On that occasion we travelled by car to Bank Hill Estate, Talangama. From there we proceeded with the Petitioner to Mr. Seneviratne's office. Thereafter we went back to Talangama.

To Court:

If the 23rd of May was a Sunday, I would have been on the estate at Talangama (Bank Hill). I know now the witnesses to the Will. I did not see them coming to the estate.

20 *Q.* Was it not possible for them to have come to the estate and signed the Will on 23rd May without your having seen it?

A. It would have been difficult for them to have done that. The Will could not have been signed without my seeing them or coming to know of it.

30 I say that because I did not see them coming there and they could not have come there without my knowledge. The reason why I say they could not have come there without my knowledge is this: When I was in the garage or within sight of the estate, they could not have gone to the bungalow without being seen by me. At about 2-30 or 3 p.m. on 23rd May, in the normal course I would have been in the garage. When I am in the garage the door is kept open. It has no window. If I am inside the garage I keep the door open. My position is that if the witnesses passed the garage to go to the bungalow, they should have passed the garage. The road to the bungalow is about 15 or 20 yards away from the garage. I could not have been asleep at the time in question. I do not sleep in the afternoon. I sit by the door of the garage and read the papers. I have said that when the deceased came to the estate he was rather ill.

Q. Is it possible that on that Sunday you might have been sent to get medicine for him or to give a message?

40 *A.* The deceased stopped taking medicines from the 10th during the period he was on the estate.

I say that on each of the Sundays from the 10th to the 23rd of May, I was on the estate. I can say that definitely. I can say that from the 10th of May till the 3rd of June I did not leave the estate on the Sundays.)

(At the request of Mr. Obeysekera I put the following questions:—

Q. You have a camp bed in the garage?

A. Yes,

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Q. The day before the day on which nuts are picked have you to go to the lands to get the pickers ready?

A. That was the practice earlier.

Q. When was that practice discontinued?

A. That practice was observed during the period I was going by bus.

Q. That was not the practice during the period you were going by cycle?

A. The pickers usually know the dates of picking, and I used to go very early in the morning and get the nuts picked.

I first came to know that the deceased had executed a Last Will the day on which Mr. Wijesinghe came to Colombo to file the proxy. Then he told me that the deceased had left a Last Will.

Signed S. J. C. SCHOKMAN,
Additional District Judge.

26-1-45.

F. A. L. Wijesinghe
Examination

Felix Augustus Lionel Wijesinghe—Sworn.

I am a nephew of the deceased—his only nephew. He had no brothers. He had one sister. She is dead. She has left six children, four of whom are alive. I was educated at St. Anthony's College, Kandy. I left College in 1934. Subsequently, in 1934 I came to my uncle's house at Dehiowita for a holiday. I spent the holiday there and after that my uncle asked me to assist him in his business. I agreed to do so and I worked under him. At first I was shown the accounts of the firm, and after I had been trained in that connection, he asked me to assist him in everything he did. I lived with him. He was very systematic in his work. Even a six-cents stamp was entered in his accounts. He was very exact in all his dealings. He treated me as his own son and my sisters as his own children. He visited my sisters and they too visited him. He used to send them a cheque monthly for their expenses. There were a number of account books kept with regard to his business. The accounts were written by a clerk named Marshall. The deceased had his private books also. Those books were entered only by him. He had two signatures one of which he used exclusively for the signing of cheques.

Towards the end of his life the deceased was rather ill. He was suffering from pernicious anaemia owing to loss of blood from bleeding piles. Every month he used to spend some time at Dehiowita and in Colombo also. On the 10th of May, 1943, he left for Talanagama from Dehiowita. I was at Dehiowita at the time. He never returned to Dehiowita after that. At that time I knew that he was not very ill. The next information I got about him was about his death. I got that information from the driver Girigoris by telegram. Then I went to Bank Hill Estate. The deceased's body was removed for burial to Avissawella. I attended the funeral. After the funeral the Petitioner came up to me and said: "Please see about me and my children. I have no one to depend upon but your good self." By "please see about us" I meant she wanted me to support her. She left Avissawella immediately after the funeral.

A few days later I sent the driver Girigoris and one Herath to the Petitioner for the purpose of getting the deeds to take out Letters of Administration. Herath is a brother of the 1st Petitioner and was employed under the deceased. I sent them to get the deeds because I wanted to apply for Letters of Administration. When Girigoris returned he said the Petitioner had asked him to tell me that she could not give over the deeds to him unless he came to her accompanied by a Proctor. She had further said she would not give over the deeds to the Proctor but that he could only have a look at them. Thereafter, about a week later, I sent a Proctor to the Petitioner,
 10 namely, Mr. Burhan who lives at Dehiowita. One of my clerks Direcksz and Girigoris accompanied him. About four or five days later I myself went to Bank Hill Estate in a car driven by Girigoris, accompanied by Mr. Burhan, Proctor, Herath and the 1st Petitioner. From Bank Hill Estate we went to Proctor, Seneviratne's office. The 1st Petitioner was among those who went there. Direcksz did not accompany us there; he was left behind. At Proctor Seneviratne's office I was shown a certain writing purported to have been written by the deceased. That was shown to me by Proctor Seneviratne. Then I looked at it. The Proctor showed it to me and made a statement to me.

20 (Mr. Obeyesekera objects to the contents of the statement unless Mr. Seneviratne is called).

I signed a proxy in the office. I did that because Proctor Seneviratne said he wanted to file papers in Court. He asked me to sign it. The 1st Petitioner's signature was on the proxy at the time I signed it. Mr. Seneviratne gave me a typed copy of the Will. Having signed the proxy I went back to Bank Hill Estate.

The deceased had some valuable jewellery—rings, &c. When I asked the 1st Petitioner what had happened to them, she said that most of them were given to her on his death bed, just before he died. She then handed
 30 me a gold watch and a blue sapphire ring which I accepted. Thereafter I went home and scanned the copy of the Will given to me. On going through the Will I found that the deceased had omitted many things which normally he would not have.

Q. (Shown Last Will marked P1A)—What did you notice when you went through this Last Will?

A. Something out of the ordinary with regard to my uncle's ordinary procedure—something which normally he would not have done.

Q. What is it that is out of the ordinary?

40 A. The first thing I noticed was about the Banks. He has not given the names of the banks. He has stated in the Will: "My children are to get half the cash balance at the Banks."

The deceased knew the banks in which he had his deposits. Even I knew that. He has made no mention of the names of the banks in the Will. The Will speaks of "sisters children." The deceased knew the name of his sister and he also knew the number of children she had. He could have therefore inserted the name of his sister in the Will as well as the number of

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children she had. He himself had given a name of his own at the baptism of the children. He was very particular about apostrophes and commas. When I attended to his correspondence, he was very particular about commas, apostrophes and semi-colons. A reader of the Will cannot understand whether it refers to one sister or two sisters. In some cases there is no apostrophe at all in the word "sisters" in the Will. In some cases there is an apostrophe after the last "s" and in some cases before that "s." The two signatures in the Will also strike me as strange. The reference to his interests in "foreign companies" is also unusual. He had shares in sterling companies and he knew what the shares were. He has, however, not given the names of the companies nor the shares. When I had scrutinised the Will I began to think that there was something peculiar. Then I sent a man to Bank Hill Estate to ask Martin to meet me. I did so because Martin was the only man known to me among the five witnesses to the Will. Before that I spoke to the driver Girigoris about the Will. Usually the deceased discussed any important matter with him. I asked him whether the deceased had discussed the execution of the Last Will with him. Then Girigoris said he did not know anything about it. Later I sent the message to Martin. I received a reply to that message. Martin was not at Talangama. So I went to Matara in search of him. I met him there. Then I asked him whether he knew about the Last Will. He replied that he had signed a document purporting to have been executed by Mr. Ratnayake a few days after his death. He also said that he was very frightened about it. He asked me and another person who was with me at the time to deliver him if possible from any trouble. The other person was Mr. J. H. Amarasekera who is employed in the Government Telegraph Office, Colombo. It is not true that I asked Martin to testify falsely that the Will was executed after Mr. Ratnayake's death and also that Mr. Amerasekera and I offered to give him Rs. 2,500/- if he said so. Martin is a brother of the 1st Petitioner. 10

After the talk with Martin, Mr. Amerasekera and I returned to Colombo. Thereafter I revoked Mr. Seneviratne's proxy. As I have worked with the deceased I am familiar with his signature. I have seen him writing and signing. Some of his books were at Dehiowita and some at Talangama. (Shown R8). I have said that he kept his personal account books himself. The book R8 is in his handwriting. It is one of his personal books. It contains full copies of his Income Tax Returns, including copies of the printed words on those forms. The Income Tax Returns contain a cage with regard to claims for allowances. He has noted in the book even the pages of the printed Income Tax Forms. Under the column "dependent relatives," he has written my name and the name of my sister Gertrude. I have tried to get copies of the Income Tax Returns. I was not successful. My application for them was refused by the Income Tax Commissioner under the secrecy clause. 30 40

(Mr. Wikramanayake draws attention to the fact that in all the copies of the Income Tax Returns in the column headed "Claim for allowances" under the heading "C," the deceased has written "None." Mr. Obeysekera says he has not taken up the position at this inquiry that the 1st Petitioner is the deceased's legal wife and that therefore he is not objecting to this evidence. He further says he objects to the names of dependent relatives being proved from these copies appearing in the book unless the originals are produced). 50

(Shown Pass-books R2-R5). These are in my uncle's handwriting. They are house rent receipt books. (Shown R9). This is also in my uncle's handwriting. All the books R2-R5 and R9 contain his signature. (Shown R5A and R5B). These have also been written by the deceased.

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I was present in Court when the 1st Petitioner gave evidence. She purported to identify Mr. Ratnayake's signature. I do not think she can read or write English. I wrote the two signatures shown to her in these circumstances. After she stated in evidence that she could recognise the deceased's handwriting, Mr. Wikramanayake asked me to write those signatures. I said it was easy to imitate the deceased's handwriting. Two of the employees in the deceased's business had a fist closely resembling my uncle's and found it very easy to imitate his handwriting. I think I can imitate his signature with sufficient success. The writings by me referred to were made in the presence of Mr. Wikramanayake and my Proctor. The persons I said who were able to imitate the deceased's handwriting were M. D. Phillip also known as Marshal and Ramanayake. I have seen both of them writing. (Shown R10). This book is in Marshall's handwriting. Ramanayake's handwriting appears on page 618 and also on page 634. Marshall's handwriting is on page 746. On page 745 Ramanayake's handwriting appears up to the 18th item and thereafter Marshall's handwriting. The whole of page 792 is in Marshall's handwriting. The whole of page 583 has been written by Ramanayake. The book has been written by both Ramanayake and Marshall. I have said that the earlier books of the deceased were also at Dehiowita.

CROSS-EXAMINED

F. A. L. Wijesinghe
Cross-Examination

My mother was the deceased's only sister. I do not know whether that was a matter wellknown to the 1st Petitioner. My mother died about 10 or 12 years ago. She lived in Kandy. To my knowledge she has visited the deceased at Talangama. About May, 1931 or 1932 she was with him for about 2½ months for a holiday. I do not know whether the 1st Petitioner was then living with him in the bungalow. I did not accompany my mother on that occasion. My father also had some kind of estate supply business. He died when I was about three years old. I am now 27 year old. I do not know whether he left any property. I do not own any property left by him. My sisters have not inherited any property from him. At the time he died he had six children. He left my mother and the six children. I do not know whether he left hardly any provision for them. It would not be correct to say that the family was in poor circumstances. All my sisters have been teachers for about 10 or 12 years. I do not know that until they began to earn my family had very little income. From the time I was learning in school, we were well provided for by my mother. She had an income. The deceased my uncle used to send her a cheque almost every month.

Q. Your family was dependent on your uncle's charity?

A. Yes.

When I left St. Anthony's College, Kandy, I was 16 or 17 years old, I studied up to the Matriculation Form. I did not pass the Matriculation. I passed the Senior Cambridge Examination. I went to my uncle and took

up employment under him. First he gave me pocket money—Rs. 20/- a month. I first went to him at Dehiowita in 1934. He was then the owner of Bank Hill Estate and he had a bungalow there. His main place of business was at Dehiowita, where he had an estate supply business and owned some houses. He lived in his bungalow at Dehiowita. He had a separate bungalow there, distinct from his place of business at Dehiowita. Whenever he was at Dehiowita he lived in that bungalow. I lived there myself. Besides myself no one else lived there. It is correct to say that during that period, the deceased used to spend about a fortnight there every month. After I took up employment under the deceased at Dehiowita, I did not go to Talangama during his life time. I went there when he died. 10

I remember the second wife of the deceased died somewhere in 1927. I was informed of the fact of her death. After her death I heard that the deceased was living at Talangama with the 1st Petitioner and that he had two children by her. I had not even seen the 1st Petitioner before, except at the funeral of the deceased. I always got on well with the deceased. I am quite certain about that; there was no trouble at any time between me and the deceased.

Q. You say in 1934 or thereabout he taught you the accounts and thereafter you were in charge of the accounts? 20

A. I was assisting him in everything he did.

He taught me accounts; that was the first thing he did. When anyone was absent now and then I used to keep the accounts. There was a clerk in charge of the books. Occasionally I acted for him when he was absent. Otherwise I generally assisted the deceased in his business. That work consisted of supervising the working of the estate and looking after the deceased's interests when he was away. I did not have to go out in connection with his business; I never did so. When I started work in the shop in 1934 there were a number of employees there. They had been working there for some time; they were long standing employees of the deceased. I had no trouble with them. My uncle never warned me against interfering with senior employees. I deny that he did so. I say that from 1934 till the death of the deceased I was in his employ continuously, except for an occasional holiday. I did not leave his employment even for a short time. I deny that I misused some of his moneys and that therefore my services were discontinued. I further deny that later I was re-employed at my request; that never happened. 30

Herath the Petitioner's brother was also an employee at the shop. He was in charge of the rough day books, and he was also a general salesman. The rough day books were kept in English. Sometime about 1939 or 1940 my uncle was an Agent for the sale of Petrol for the Caltex Company. I started that business for the benefit of everybody including my uncle, with his permission. I was "initiative" in setting up that business. By "initiative" I mean that I suggested to my uncle that we should start that business. 40

Q. It was your brain wave that your uncle should start that business?

A. Yes.

The capital was his. The business was carried on inside the shop. There was a hand-pump there. The petrol was stored in a room in a tank inside the shop. That room was especially constructed for that purpose.

It is not correct to say that Herath was in charge of that business. He used to attend to that business in the normal course of his duties. He did that job in addition to his duties as salesman. He was given "something" to look after that petrol business.

Q. Will you say that he was in charge of that section of the business?

A. Yes.

(Shown P7: Statement issued to Caltex Limited). Herath's signature appears here. He has signed for J. A. Ratnayake and Company. The previous documents of this kind have been signed by another person. (Shown P8). This is an agreement between the Caltex Company and James Albert Ratnayake. Herath has signed it for J. A. Ratnayake and Company. There is another agreement signed by Mr. Goonewardene, a clerk.

Q. Herath was a person in whom the deceased had confidence?

A. The deceased had confidence in others.

Q. Did the deceased have the greatest confidence in Herath?

A. Yes.

Herath was being paid Rs. 25/- a month when I was receiving Rs. 20/- a month. I remember Herath obtained a licence to deal in rubber. I cannot remember when he did that. I do not know whether the deceased procured that licence for him. I do not know how he got that licence.

I remember in 1941 there was a flood and some goods belonging to the shop were destroyed. I prepared a statement of the goods that had been destroyed. I deny that my uncle found fault with me on the ground that it was a false statement. I deny that before my uncle left Dehiowita there was a difference between him and me, that he found fault with me owing to the way in which I had prepared certain accounts.

At the time of his death my uncle was about 65 years old. When he left for Talangama on the 10th of May, he was ill but not very ill. Normally he would have returned by about 25th or 26th May. After he left on 10th May, he did not return. I did not make any inquiries with regard to his return. Some months he delayed to return. He sent word to me to Dehiowita that he was ill. I did not receive any message from him that he was very ill. When I received a telegram from Girigoris that he had died, it was a terrible surprise to me.

All my sisters are not living in Kandy. One of them is married. She lives in Colombo. The other sisters are in Kandy. None of them visited my uncle during his last illness. They have been visiting the deceased. They last visited him in 1939 or 1940 at Dehiowita. Both my married and unmarried sisters visited him. Mr. and Mrs. Amarasekera have also visited the deceased at Dehiowita. Their last visit to him was probably about a year before he died. He was in the habit of sending a monthly allowance—a cheque—to my eldest sister in Kandy made out in favour of Rev. Fr. Hyde, Principal of St. Anthony's College, Kandy. I do not know whether the deceased's personal accounts show those monthly payments. Some of the counterfoils of his cheque books show that. I have counterfoils of cheques drawn in favour of Fr. Hyde showing that the deceased sent cheques for the benefit of my sisters.

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(Shown P9). This is an account in my uncle's handwriting. It starts in January, 1938. It shows his estate supplies and agency account; there are no personal accounts there. The accounts are all accounts of the firm. (Shown page 80 of P9). The accounts here are all accounts of the firm. There are no personal accounts of the deceased here. I have seen the book P9 before. I have said that some of the personal accounts are with me. Except the counterfoils of the cheques sent to Fr. Hyde, I do not have in my possession accounts showing those periodical payments by the deceased to my sisters.

(Shown P10). The deceased has an account in this book for educational expenses. St. Thomas', Kotte is the college which the deceased's son was attending. I did not say that expenses were incurred on my behalf. The page headed "H. D. Herath" is not in the deceased's handwriting. The writing on the page headed "Educational Expenses" in P10 is very much like my uncle's writing. That account has been kept up to 29th March, 1943. I have not seen P10 before. The deceased may or may not have kept this book.

I came to Talangama on the day the deceased died. I reached Talangama probably at about 10 or 12 o'clock in the day time. I arranged for the body to be removed to Avissawella that very day in the night, and that same night it was taken there. The Petitioner came to Avissawella later. Apart from the Petitioner and her children I was the only relative present at the funeral. I informed my brothers and sisters about the death by telegram. They received the telegrams late. They could not attend the funeral. The funeral was at 4-30 p.m. on the 4th. I sent the telegrams referred to on the 3rd. My married sister and her husband live at Talangama.

Interval.

Signed S. J. C. SCHOKMAN,
Additional District Judge.

26-1-45. 40

26th January, 1945.

After Interval.

Felix Wijesinghe.

Cross-Examination continued.

I saw the lady at the funeral. I was told that that was the woman who was the mistress of the deceased. I cannot remember whether both the children were there. At the cemetery both the children were there. That was at about 4 or 4-30 p.m. The funeral was fairly largely attended. There must have been his employees and other business associates at his bungalow. He was a well-known gentleman there. I did not notice the 1st Petitioner appearing to be very grieved at the death of Mr. Ratnayake. I cannot remember whether she was crying at the funeral when I saw her. I was not crying at that time.

Q. Men look to these things differently, so that if anybody did in fact cry it would probably have been the 1st Petitioner?

A. There were some other women crying too—a lot of women crying.

The request that the 1st Petitioner made to me after the funeral to look after her and her children may or may not be a strange request. I did not know then what provision Mr. Ratnayake had made for her and her children or whether he had in fact made any provision. Mr. Ratnayake had at no time discussed with me during his life time about writing a Last Will or how he was going to dispose of his property after his death. He said that I was an heir. He had always assured me that I was the heir. In his life time he did not give me any property. He did not gift any properties to me or make any provision of that kind for me or for any of my sisters. It would
 10 be correct to describe Mr. Ratnayake as a very careful man.

Q. He was also entirely a self-made man in the sense that this was all property he acquired?

A. I do not know that.

Q. Do you know whether he earned any property?

A. I do not know.

Q. I take it that he had himself earned quite a lot of money?

A. He was a rich man.

Q. And earned a good deal?

A. I know that.

20 The 1st Petitioner made this request to me " Please see that you look after me and my children " and went away. I said all right. By that I meant that I would look after her and her children.

Q. Do you say you expected to succeed to a share of your uncle's property at his death?

A. Naturally, yes.

Q. That had always been in your mind that one day you were going to get a share?

A. It did not work in my mind.

Q. It was in your mind, it was one of your expectations?

30 A. I should think so.

I was the only male member of the family—closest male relative. He had no brothers, no grown up sons. It did not occur to me that I should go back to Talangama at once and take possession of everything there. I did not tell the widow that I should be coming to take charge of my uncle's property. The first thing I did was, some days after I sent Herath and the driver Girigoris to fetch the deeds. I sent the two about three days after the death of my uncle. Herath was at that time working in the shop at Dehiowita. I remember the telegram I got from Girigoris. I then went to Talangama and came back to Dehiowita in the deceased's car. The car up till
 40 then had been at Talangama. Girigoris drove the car. Thereafter I kept the car at Dehiowita until it was eventually given over to the Public Trustee.

I did not send a letter to the 1st Petitioner. I just sent a message by word of mouth that I wanted the deeds. I told the messenger why I wanted the deeds. I asked the messenger to tell the 1st Petitioner that I wanted the deeds to apply for Letters of Administration. I expressed in Sinhalese to Girigoris and Herath,

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(The witness is asked to state what the Sinhalese words used were and he says: "Usaviye vedata oppu tika genda").

I did not use the word "Budala." At that date, when I first sent for those deeds I had consulted a Proctor. I consulted Proctor Burhan. I was acting on Proctor Burhan's advice at that time. I did not go myself. I was not well. I was suffering from enteritis.

Q. If not for that unfortunate complaint you would have gone yourself?

A. Not necessarily.

Q. What would you have done? 10

A. I would not have gone.

Q. Why not?

A. Because Girigoris would have performed the task alright.

The reply she sent was that she was not prepared to give me the deeds, that if I came with a Proctor they will be shown to me. From the very start the 1st Petitioner resisted any claim on my part to administer the estate. That is what I inferred. Then I consulted Proctor Burhan again. When I speak of Burhan I refer to Mr. Burhan, Proctor at Dehiowita. There is only one Burhan at Dehiowita. On the second occasion Mr. Burhan went himself. That was about five or six days after the first visit; it takes to eight or nine days after the funeral. Mr. Burhan gave me certain information when he returned. The result of it was that my purpose was not served. The information that I desired to have to make my application was not forthcoming. Then it was eventually I decided to go myself. I went after about another five days. That comes to about the 17th or 18th June—somewhere about that time. I did not know that the Petitioner by that time had consulted Mr. Seneviratne, Proctor, and had deposited the papers with him. I am aware now. When I came to Talangama that day the 1st Petitioner quite readily accompanied me to the office of Mr. Seneviratne. That was not at my request. I did not ask her to accompany me. She said that she had an appointment on that same day with Mr. Seneviratne and suggested that if I came along I could get the information I desired. Then I came to Mr. Seneviratne's office in the morning between 10 and 12. Those who were in Mr. Seneviratne's office at that time were myself, Mr. Burhan, Proctor, the 1st Petitioner, Herath and Mr. Seneviratne. I do not know whether Herath had at any time any interest in this matter adverse to his sister. He may or may not have. I am not aware whether he had or had not. I do not know whether he was friendly with his sister. I told Mr. Seneviratne that I came to see him about the Last Will purported to have been written. 20

Q. At that stage you knew that there was a Last Will? 40

A. He told me that there was a Last Will, which he had told me before, at that very moment.

To Court:

Before I spoke to him, he spoke to me about the Last Will.)

Q. When you went there you told Mr. Seneviratne 'I have come to see you about the Last Will?'

A. He introduced himself as the Proctor when I arrived there. Simultaneously these things took place. He introduced himself as the Proctor who has my uncle's Last Will.

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Then he showed me the book P1 with the document in it. Mr. Burhan was there.

Q. You examined it with Mr. Burhan?

A. I examined it. I looked at it myself.

10 I read it through. I did not ask for a copy. I was given a copy.

Q. Do you suggest that Mr. Seneviratne offered a copy?

A. He gave me.

Yes, he offered it to me. I deny that I wanted a copy of the Last Will and he gave it to me.

Q. You want the Court to believe that out of his own goodness and generosity he favoured you with a copy unasked?

A. Yes.

Q. You had not known Mr. Seneviratne before?

A. No.

20 Q. Did you introduce yourself to Mr. Seneviratne?

A. Somebody in the company said—that is Proctor Seneviratne, then we both met each other.

Q. How did Mr. Seneviratne know who you were,

A. I do not know.

Q. Do you suggest as soon as he saw you he thought this must be Felix Wijesinghe?

A. Must have been, because he saw me in the company of the 1st Petitioner.

Q. When was that—before this date?

30 A. On that date.

Q. You came with the 1st Petitioner, with Mr. Burhan and Herath?

A. Yes.

Q. You say you did not disclose the fact that you were Felix Wijesinghe nor did anybody else say this is Felix Wijesinghe?

A. I cannot remember.

Q. Quite unasked he gave you a copy of the Last Will?

A. Yes.

Q. Was that before you signed the proxy or after?

A. I think it was after the proxy was signed.

40 The 1st Petitioner as far as I remember was the only person who signed the proxy.

(Shown proxy which is marked P11). That is the proxy which I signed. That is my signature. I see a signature under "Witnesses." I do not remember seeing anything else besides my signature and the 1st Petitioner's.

The signature under the heading Witnesses is James de Alwis. He is one of the five persons who signed the Last Will. That signature was not there at the time I signed.

Q. You definitely say it was not there?

A. I feel so. That was not a matter that interested me very much. I was signing the document. It did not occur to me that it would affect my signature. I say that the 1st Petitioner's signature was already there.

Q. Alwis' signature appears on the same line, do you suggest this was there or not there? 10

A. It did not occur to me that I should be observant of any other signature at that time.

As far as I remember, I remember seeing the 1st Petitioner's signature only.

Q. But you will not undertake to say that the signature was not there?

A. I cannot.

Q. You see the body of the proxy: "We . . .," was that there when you signed?

A. I did not look at that either. 20

Q. Then the words "to have the Last Will . . .?"

A. I cannot remember. That may or may not have been there.

Q. But at the time you were signing the proxy you knew that you were signing?

A. Authorizing Mr. Seneviratne to apply for letters on my behalf.

Q. As one of the executors mentioned in the Last Will?

A. I did not go that extent. I did not look at it so well.

Q. When you were given a copy of the Will you read it?

A. I must have read it.

Q. So that when you signed this document you were aware of that 30 provision?

A. I was aware of the provision.

Q. And I take it also that you knew that the executors have to apply for, what is called, probate of the Last Will?

A. I did not know that.

Q. You knew that executors had to file certain papers—that you had to take the first step to set the ball rolling?

A. No such thing occurred to me.

Q. Mr. Burhan was there as your adviser, did you get his advice?

A. Immediately. I left Proctor Seneviratne's office he went away 40 and I also went away.

Q. When he was there did you ask him: "May I sign this proxy," and did he tell you there is not harm in doing so?

A. I may or may not have got some advice from Mr. Burhan. I do not remember Mr. Burhan saying anything.

Q. Certainly Mr. Burhan did not ask you not to sign the proxy?

A. That also I cannot remember.

Q. He saw you signing the proxy?

A. Yes.

Q. At the time you signed the proxy you were satisfied that everything was in order?

A. I thought it must be alright.

Q. My instructions are that before you signed the proxy you went out of the room where Mr. Seneviratne was, you consulted with Mr. Burhan and then came back and signed the proxy?

10

A. No, Sir.

To Court.

I am quite sure that.)

Q. Certainly up to that time Mr. Burhan was in the position of your legal adviser?

A. Up to that time he was, till I signed the proxy.

Q. After signing the proxy did you promise Mr. Seneviratne that you will send him further particulars so that he may file the papers?

20

A. I remember writing a letter.

I got a letter from Mr. Seneviratne. If I see the letter I can tell the Court whether it is a copy of the letter that I got.

(Mr. Wikramanayake objects to a copy being shown to the witness as he has not been noticed to produce the original).

(Shown P12).

Q. Is this your letter to Mr. Seneviratne of the 18th of June?

A. Yes.

Q. Is this the reply to the letter you received from Mr. Seneviratne?

A. Yes.

30

After I wrote the letter of the 18th June I did not send him any further reply. I do not think I sent him any particulars.

Q. Have you got a typed copy of the Last Will that was given to you?

A. Yes, I have it here.

Q. Are you prepared to produce it?

(Mr. Wikramanayake marks a copy of the Last Will handed by Mr. Seneviratne on that day as R20. Mr. Obeysekera points to the fact that it is a carbon copy).

40

Q. Did you some days later come to Mr. Seneviratne's office in the company of your sister Mrs. Amarasekera?

A. I did not go in the company of my sister.

Q. Are you aware that Mrs. Amarasekera came to Mr. Seneviratne's office?

A. You mean now.

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Q. Are you aware now?

A. I was aware after some time.

(Mr. Wikramanayake objects as this is hearsay).

Q. How did you come to know that, did Mrs. Amarasekera tell You?

A. Yes.

Q. You say your suspicions were roused after you returned to Dehi-owita, especially about the Will?

A. Yes.

Q. Had you then met Mrs. Amarasekera or not? 10

A. I cannot remember.

Q. When did you next meet Mr. and Mrs. Amarasekera or either?

A. Sometime after. I cannot actually remember—when I came to Colombo to attend to these matters.

I went there once; I cannot remember when.

Q. I take it you discussed this matter of the Last Will with Mr. and Mrs. Amarasekera after some time?

A. Yes.

Q. That was before you took steps to revoke the proxy given to Mr. Seneviratne? 20

A. May be after or may be before.

(Mr. Obeysekera informs the witness that his motion to revoke the proxy granted to Mr. Seneviratne is dated 10th August, 1943 and that the date of the proxy is 7th June, 1943).

Q. Certainly it must be before the 18th of June?

A. I think a day after I signed the proxy I sent that letter P12.

One followed close upon the other.

Q. Certainly before you took steps to revoke the proxy you had met Mr. and Mrs. Amarasekera?

A. May or may not. 30

Q. Do you suggest you cannot be certain whether you met Mr. and Mrs. Amarasekera before the 10th August?

A. I may or may not.

Q. Before you took steps to revoke the proxy can you or can you not say whether you discussed the matter with Mr. and Mrs. Amarasekera?

A. I think I must have.

Q. And with your other sisters?

A. Yes, I may have.

Q. In point of fact before you took steps to revoke the proxy you had gone to Matara along with Mr. Amarasekera? 40

A. May be before or after.

Q. You say your suspicions were roused for certain reasons and you have given those reasons?

A. Yes.

Q. Those are all reasons which occurred to you?

A. Yes.

Q. Not as a result of discussions with anybody else?

A. No. I inquired from the driver whether he had witnessed such a thing or whether he knew about such a thing.

(Shown the Will).

Q. The first thing you say you noticed was that he had not named the banks where his money was?

A. Yes.

10 Q. Actually, at the time of his death Mr. Ratnayake had money at the National Bank and at the Hongkong and Shanghai Bank?

A. Yes.

Q. He had had an account in the Eastern Bank too previously?

A. Yes.

Q. Which he had closed in his life time?

A. Yes.

Q. The only two banks where he had monies were those two banks?

20 A. He had some money once at the Chartered Bank. Not at the time of his death. Shortly before he wrote the Will he had money only in the Hongkong Bank and the National Bank.

Q. Why do you say that it is unreal not to have named the banks?

A. Otherwise how is a person to know.

I had never seen the Will before.

Q. Mr. Ratnayake's bank books, pass books and cheque books were at Talangama?

A. Not always.

Q. At the time of his death?

A. Yes.

30 Q. I suppose your suggestion is this lady or somebody interested in her has forged this Last Will? That is your case?

A. That is the case now.

Q. That is the case which you are asking the Court to accept?

A. Yes.

Q. Anybody fabricating the Will at Talangama could have known what the banks were?

A. I am not aware of that.

Q. The next is that the sister and sister's children are not mentioned by name?

A. Yes.

40 Q. I suppose it is well known that Mr. Ratnayake had only one sister?

A. I should think so.

Q. Certainly the 1st Petitioner who lived with him for several years would know that he had only one sister?

A. She may have known.

- Q. You are also known as Sonny?
A. My uncle called me Sonny.
- Q. In the Will where he first refers to you he says this: "Half share to the children . . . the other half share shall be managed by my sister's son, Felix (Sonny) . . . " ?
A. It is there.
- Q. Will you kindly look at that place where it occurs: there is an apostrophe there—sister's son?
A. Yes. It is on the top of the "s"—it is not before or after.
- Q. Then again he says in the next line "To my sister's son Felix (Sonny) I give my estate supplies" ? 10
A. Yes. He always writes "Estate supplies and agency."
- Q. Next he refers to you and your sisters this way: "My sister's children, Felix and his sisters, shall get jointly my lands and premises in Magamana."—There the apostrophe is very clearly written before the "s" ?
A. Yes.
- Q. Then the next reference to you is: "I give and bequeath my estate . . . appointing my wife and my sister's son Felix as executors." There the apostrophe is after the "s." 20
A. Yes.
- Q. To examine then the second ground of your suspicion, why you say you were suspicious is because the names of your sister and your sister's children had not been mentioned. I take it it is well known that he had three other nieces?
A. Yes. He ought to have mentioned the name of his sister.
- Q. You have never seen any formal document drafted or executed by your uncle?
A. What sort of a document.
- Q. Any formal document drafted by the deceased? 30
A. A letter.
- Q. Something more than a letter?
A. A deed.
- Q. Have you seen any documents besides letters drafted by him?
A. One legal document drafted by him. I have seen an agreement in the shop drafted by a member of the staff and signed by my uncle. It was not drafted by him.
- Q. I think your uncle had been at St. Thomas, so it is said?
A. He was an old boy of St. Thomas.
- I think he has got through his Cambridge Senior. (Shown P4A and 40 P4B).
- Q. Is that your uncle's signature?
A. Looks like his.
- Q. Very much like his?
A. Looks like his.

Q. You have no reason to doubt his signature?

A. No reason or not I cannot say.

Q. You have no reason to doubt?

A. No reason.

(Shown P4B).

Q. Is that your uncle's signature, also on a blank cheque?

A. It is difficult for me to say. As a rule he never keeps blank cheque signed.

10 Q. Quite apart from that, look at the signature itself and the appearance of it?

A. Something like his.

Q. You have no reason to doubt his signature on P4A or B?

A. I have no reason.

(Shown P13). This is a book of account of house rent kept by my uncle.

(Shown signature on page 1). That is my uncle's signature.

(Shown signature on page 4). That is my uncle's signature.

The signature on page 8 is also his, and so on page 10.

20 Q. On P1B the first signature resembles the signature in P13 in form?

A. But closely imitated. It resembles in form.

(Shown P4A and P4B).

Q. Those signatures are of the type or form of the second signature in P1B?

A. Yes.

Q. You also said your suspicion was roused because of the reference in the Last Will to foreign country?

A. Yes.

Q. It is a fact that Mr. Ratnayake held shares in certain sterling companies and certain Malayan Companies?

30 A. Yes.

In 1943 I did not know what happened to the Malayan Company shares. I have some information now.

Q. He says "all my interest in Ceylon and foreign countries," why do you say it is peculiar?

40 A. Even in his income tax reports, the book which I have with me, he has given all the details of the companies in which he held shares. He should have mentioned the companies in such an important document as a Last Will. I say that he should have specified all the companies in which he owned shares. He had shares only in four companies; he could have easily mentioned the names of those companies.

I knew that Martin was the 1st Petitioner's brother. I came to know that he had gone to Matara. I went in search of him. I did not expect him to tell me that he had signed the Will after the deceased's death. I went in search of him to find out the truth of it. I did not expect him to tell me some-

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thing adverse to the 1st Petitioner's interest. I only wanted to know the truth.

Q. You say there were other witnesses to the Will who were not relatives, did you question them as well?

A. I did not know them.

I do not know Loku Dissanayake, Podi Dissanayake, W. P. Perera, James Alwis. I know Martin. He has come off and on to Dehiowita on certain errands to meet my uncle. I knew him as an employee of Mr. Ratnayake who used to come there. I had a copy of the Last Will. I saw four names. 10

Q. Did you go to ascertain who they were?

A. I did not care to at that time. I did not care to try.

Q. But you took the trouble to go to Matara with Mr. Amarasekera in search of Martin?

A. Yes.

Q. Do you want the Court to believe that Martin told you, I have been a party to a forgery?

A. He did not say all that. Martin said that he signed a certain document purported to have been the Last Will of my uncle three days after my uncle had died. 20

Q. Martin denies that: you heard his evidence: Martin on the contrary says you went there to bribe him, that you offered a bribe of Rs. 2,000/- if he would say that?

A. I am not concerned with that.

Q. That is Martin's evidence?

A. I deny that.

Q. Is Martin well to do?

A. I do not know—may or may not be.

Q. Rs. 2,000/- will be a large amount to Martin?

A. May or may not be. 30

Q. You know the station of life of Martin?

A. I know he was a watcher in Bank Hill Estate.

Q. So far as you know he was not possessed of property?

A. Before my uncle's death I knew he was a poor chap.

Q. I put it to you that you tempted him with the offer of Rs. 2,000/-?

A. No such conversion ever took place.

To Court:

Q. When you spoke to Martin did he tell you that Mr. Ratnayake's signature was already there or not?

A. He told me that he signed a document purporting to be the Last Will of Mr. Ratnayake three days after the death of the deceased. He did not say anything else.) 40

Q. When he made you that statement did you ask him "Look here, will you put that down in writing?"

A. No.

Q. You did not even suggest that he should go before a J.P. and give an affidavit to that effect?

A. No. It never occurred to me to do that.

Q. Here is a man making an important statement which if it is true would throw a completely different light to everything—why did you not tell him, “look here, if that is so why not swear an affidavit to that effect?”

A. I did not do that.

Q. You say that Martin volunteered that statement?

10 A. Yes.

(To Court:

Q. In the course of your uncle’s business did he have to consult lawyers?

A. Yes. He had Messrs. F. J. and G. de Saram in Colombo and Messrs. Jacolyne and Seneviratne in Avissawella. They were his regular lawyers. I had seen certain correspondence between F. J. and G. de Saram and my uncle. The absence of execution before a Notary also made me suspicious of the Will.

20 Q. Before this case did you yourself know the formalities necessary to execute a Will?

A. I knew that a Will had to be attested by a Notary. I knew long before this case that a Will had to be executed before a Notary. I did not know that a Will could be executed before five witnesses. As to whether my uncle knew the formalities required by law for the execution of a Will I cannot undertake to say yes or no. He never discussed any question of a Will with me.)

Q. During early and middle life Mr. Ratnayake wrote a firm hand?

A. Yes.

30 Q. You told the Court that in R10 certain pages you referred to were in the handwriting of a man called Marcus?

A. Yes.

Q. He is also known as M. D. Philip?

A. Yes.

Q. He is now doing a business of his own?

A. Something of that kind.

Q. Where?

A. At Atale. That is about 16 miles from Dehiowita.

I do not know what business he is doing. It is correct to say that the deceased set him up in business. He was a faithful employee of Mr. Ratnayake. The other person whose handwriting I referred to is Ramanathan. He was also an employee of my uncle. He left his employment about 10 or 12 years ago. I cannot say what he is doing but I met him recently at Dehiowita. I do not know why he left my uncle’s employment.

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RE-EXAMINATION

Herath was paid Rs. 25/-. I was paid Rs. 20/-. My uncle paid for my clothing and food. I lived with my uncle. He said that everything was mine.

Signed S. J. C. SCHOKMAN,
Additional District Judge.

26-1-45.

It is now past 4 p.m. Further hearing is adjourned for 6th and 7th March, 1945 and if necessary on the 8th also.

Signed S. J. C. SCHOKMAN,
Additional District Judge.

10

26-1-45.

C.S.A.Samarakoon
Examination **6-3-45.**

Same appearance as on the last date.

Mr. Wikramayanake calls:

C. S. A. Samarakoon—Sworn.

I am a photographer. I have a studio called "Samarakoon's Studio." I took photographs of certain documents on the premises of this Court under the direction of Mr. Lawrie Muthukrishna. Those documents included the Last Will produced in this case. I produce R11 and R12, photographs of the two pages of the Will respectively. R11 is a photograph of the first page of the Will and R12 a photograph of the second page. I also photographed together the signatures on four cheques.

(Mr. Wikramanayake marks the photograph R13 and the four cheques which were left in Court by the Bank Clerk R14-R17).

I also photographed an entry on page 47 of the book containing the Last Will.

(The photograph is marked R18).

I have also taken a photograph showing enlargements of two signatures on the Last Will. I produce that photograph marked R19.

30

C.S.A.Samarakoon
Cross-Examination

CROSS-EXAMINED

(Shown R11 and R12).

I do not know who numbered the lines of the two pages of the Will photographed, marked R11 and R12. That numbering was not done in my presence.

(Mr. Wikramanayake says that the lines were numbered by Mr. Muthukrishna for the purpose of reference when he gives evidence).

(Shown R13 and the cheques R14-R17).

R13 is a photograph of the signatures on the cheques taken by me. Certain writing in blue pencil appears over the signatures in the photograph. Blue pencil marks over the signatures appear very faintly in the photograph. The blue marks referred to are the fainting shading in the photograph. Blue marks always appear faintly in photographs. I placed the cheques one over the other and then photographed the signatures.

40

(Shown page 47 of the book P1 in which the Last Will appears and also R18 the photograph of that page).

In the book the word "will" is reasonably clear. In the photograph the word has come out faintly. Even in the book that word is fainter than the rest of the line.

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Re-examined. Nil.

Signed S. J. C. SCHOKMAN,
Additional District Judge.

6-3-45.

10 **Lawrie Muthukrishna:** Sworn.

L. Muthukrishna
Examination

I am an Examiner of Questioned Documents. I have been practicing in that capacity for nearly 35 years. I have given evidence as an expert on questioned documents in District Courts of Ceylon and also in the Supreme Court. I have done that hundreds of times. Apart from giving expert evidence in Ceylon, I have given evidence before the High Court of Madras.

I examined the Last Will in dispute in this case. I had photographs taken under my direction. Those were the photographs produced. I was given certain standards, namely, the signatures on four cheques, for the purpose of examining the second signature on the will. I was also given a number of rent receipt books and pass books, marked R2-R5 and R9, for examining the first signature on the Will. I was also given a manuscript book containing notes relating to Income Tax and connected matters. (Shown R8): This is that book. I also examined the undisputed writing in the book containing the Will. I formed my opinion with regard to the writing on the Will and the signature. My opinion was that the Will writing was not in the hand of the deceased, that he had not signed the Will and that the entry on page 47 of the book was not in his hand. I gave a copy of my opinion in writing to the Respondents as well as the Petitioner's lawyers, somewhere in September or October, 1943. I say that I have formed my opinion with regard to the body writing of the Will, the two signatures and the entry on page 47. I have taken into consideration the features of the handwriting. Apart from the features of the handwriting, I have considered matters with regard to the language, spelling and various other matters.

(First letter of the first signature on the Will, namely, "J" put to witness): I shall save time by directing the attention of the Court to such matters as are inconsistent with genuine writing. In the first instance I shall call the attention of Court to the correction in the first initial "J." For want of a blackboard I have made a rough sketch of the two signatures on the Will. The writing on the top is more or less an example of the genuine writing and the signature in red below that writing is an example of the impugned writing. Just below the upper loop of the "J" in the sketch of the impugned writing there is a correction. It is visible in the photograph and also in the Will. That appears to the naked eye. Once attention is directed to that correction, it can be clearly seen. It is a correction. A correction may be made *bona fide* if a letter has been misshaped, or if in taking the pen out of the ink-well the writer had brought along with it a bit of fibre or some-

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thing else which affected the writing. But it would not be *bona fide* to alter the curvature or straightness of a letter unless the person altering it wanted the letter to approximate some model he had in mind. That can be the only reason for revising or retouching a letter. It is not done in ordinary writing. In this particular case the writing of the deceased affords proof that the deceased had no occasion to do so. The correction in question is not a mannerism of the deceased and there was no necessity for making it.

(The next initial "A" referred to): In the genuine signatures, "J" generally joins the "A" at about half way up the "A." In the case of the impugned signatures the stroke which is proceeding towards "A" reaches it at the very top of the oval. The "A" is formed with two different pen movements. Instead of as in the undisputed writing, the whole oval is made with one movement. The oval has been completed and then the stem drawn in the impugned signature. 10

There is a difference with regard to the second and third letters in the disputed signatures and in the standards. In the admitted or undisputed writing the second initial always joins the third letter (R) at the foot. In the impugned writing the second initial joins the third letter a little higher up the stem of the "R." I shall show that while the forger has tried to put into the impugned writing some of the forms of the deceased's style, he has not been able to avoid putting into the writing his own peculiar forms also. I have already shown how the joining of two letters is not at the identical point of the joining of those letters in the genuine writing. 20

More important than that is the point arising out of the third initial (R). The "R" in the genuine writing is almost always detached from the next letter. In the impugned writing, not only is the "R" connected but connected by a new stroke. That appears in the first as well as the second signatures in the Will. That is equally prominent in the two signatures. I have shown that connecting line in a different colour in the second of the impugned signatures in my sketch. The original "R" was written with a curve with a link with the next letter. Presumably discovering that a large curve was not habitual to the deceased, the writer has made an attempt to make the connection more angular by a new stroke. That is apparent in the enlarged photograph. (Mr. Wikramanayake marks Mr. Muthukrishna's sketch illustrating the significance of the feature about the letter "J" as R19 (a) and as R19 (b) the sketch to illustrate the point made regarding the letter "R"). 30

(Letter "n" referred to): In the undisputed writing the "n" is always or almost invariably written with the second loop taller than the first. That is not so in the impugned signatures. With regard to contact with the stem of the preceding letter, I would not enlarge on that point. There are minute points but I do not wish to trouble the Court with them. For instance in the genuine writing there is a tendency to make a loop formation in all the letters of that type. In the impugned writing there is no loop formation. The two parts of the letter come in contact but they do not go one over the other. 40

(The "k" in the first signature on the Will referred to): In the genuine writing the "k" is generally written with three distinct pen movements. Sometimes the connections between two of the strokes are so close that they

appear to be connected but they are only in contact. In the disputed signature there are only two pen movements. What I mean is in the genuine writing there is one stroke in the writing of the "k," then a lifting of the hand, another stroke, then a lifting of the hand and the bottom stroke, there being three pen lifts. In the disputed signature, there is one stroke downwards and another stroke that way (shows it)—two strokes. In the impugned writing there is one downward stroke and the other stroke is a continuous stroke—one pen lifting. In the genuine writing there is generally a detachment between these two movements and the other stroke. The second and
10 third strokes do not penetrate the first downward stroke of the "k." With regard to the first disputed signature they do. The forger has been trapped there because in the cypher signature, the opposite feature occurs. In the second of the signatures appended to the Will, the writer has written the "k" with the parts penetrating the down stroke. In the signature on the four cheques, which are genuine examples of the deceased's signature, the cross stroke penetrates the down stroke. In the corresponding signature on the Will the rest of the letter "k" is detached from the down stroke; I am speaking of the first signature on the Will. I was referring to the "k" in
20 the first signature in the Will, but I incidentally referred to the "k" in the second signature because the converse occurs there. (Mr. Wikramanayake marks as R19 (c) a diagram made by Mr. Muthukrishna to bring out the points relating to "k").

I next prefer to the foot of the letter "k". The foot of the "k" in the genuine writing extends upwards in contact with the two bulges of the "e" but in the impugned signature the foot is short and penetrates the lower bulge of the "e." That is demonstrated in R19 (c). In the genuine writing also the up stroke of "k" has usually a rebound. In the case of the impugned signatures it appears to stop abruptly.

(Last letter "e" in "Ratnayake" referred to): In the genuine writing
30 ing the "e" is formed so that there are openings outwards in the upper and lower halves. The "e" there is generally formed with the upper and lower halves opening outwards, whereas in the impugned signatures that letter has both the upper and lower portions well incurved as opposed to the outward.

(Stroke under the signature referred to): In the genuine writing generally the underscore starts from a point about the middle of the lower loop of the "J." I have no doubt that there may be a signature or two where it does not start exactly from that point. In the disputed writing, however, that stroke starts almost at the point where the two loops make a junction. There are many more features but I draw attention to these particular features.

40 (Second signature on the will referred to): In most signatures which are written with a complex monogram, the eye is deceived when there is something like a pictorial breach of the customary formation. The observer feels that the monogram is genuine but when it is followed closely it will be seen that it is not so. In the disputed signature in question there are so many extra unhabitual lines that for the sake of convenience I have marked them in a different colour. They can be seen in the photograph and quite easily in the original. There are several pen pauses and lifts in the signature. That is obviously due to inability of the forger to reproduce the customary style of the deceased which was automatic to him. The deceased would not have
50 followed every bit of the monogram consciously. It would have been a-

most reflex writing to him, but when a person sets out to imitate, he cannot make a successful reproduction and has therefore to revise and retouch with the result seen in the second signature on the Will.

(Mr. Wikramanayake marks as R19 (d) a diagram to illustrate this point): The connection of the "R" to the next letter has been converted from a curve to an angular form by a new piece of writing. I have already said that with regard to the joining of the "R" and the "a" in the genuine signature there is a detachment. In the impugned signature the foot of the "R" runs into the oval of the "a." It was originally a curve. It has been formed into an angular piece of writing. In "Rat" the "t" has similarly a curve made at the top. There is an extra downward line. In the genuine writing the foot of the "R" is well within the space occupied by the monogram. In the case of the disputed writing the foot of the "R" extends long way beyond the monogram. 10

I next refer to the joining of the "n." In the genuine signature—the signatures on the cheques—the "n" is usually not in contact with the stem of the "t," whereas in the impugned signature the forger has made the mistake of connecting the "n" to the "t." The "n" in the impugned signatures is very much like a "w"—a very unusual type. With regard to the second down stroke of the "n," I have made my observations. 20

(First "e" in the second signature referred to): That "e" generally starts with a little tick in the genuine signatures. That letter has an "i" form there. The first "e" in the cheque signatures has that form—a tick and an "i." These are absent in the impugned signatures. They appear in the fourth cheque signature, also in the third. In the fourth signature on the photograph R13 the tick over the first "e" is quite clear. In the signature just above it that tick coincides with the upper curve of the "e." In the first signature it is present; in the second signature it is not visible at all. That is one feature of the "e" I draw attention to.

The "e" in the genuine signatures is below the level of the next letter "k." It is shorter than the next letter "k" but in the impugned writing the "e" is as tall as the stem of the "k."

(Joining the "e" and "k" referred to): The "e" is joined to the stem of the "k" at the foot. That is so in the genuine signatures. In the second and third signatures the stem of the "k" is indistinguishable because the whole thing seems one formation. In the impugned signatures there is certainly no such joining. The "e" reaches the stem of the "k" somewhere half way up the "k." (Mr. Wikramanayake marks a diagram to illustrate the "e" and the "k" R19 (e)). With regard to the final "e" I have already drawn attention to the incurve. The "e" in the genuine writing has large openings to the right whereas in the disputed writing the "e" is practically like the figure "8," the curves closing towards the body of the letter. 40

The underscore in the genuine writing has the exact length of the signature but in the impugned writing it extends both ways under the signature. I have not made a sketch of the cypher marks. It will be seen that the cypher marks themselves are marks below the underscore, something like "11" and "s." These are perhaps marks put by the deceased for identification. Those marks go along the letter "R" well within the space of the diagram,

In the impugned writing they are spread out and also what ought to look like the letter "S" is distinctly like the numeral "5." There are many more points with regard to that writing—details of connection, looping etc., but I shall not trouble the Court with them.

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I shall next deal with numerals and also with the symbols used by the deceased. In his admitted writings, the deceased writes "Rs" without the cross bar through that word. There must be hundreds and hundreds of examples in the Income Tax book. In the Will the word in question certainly occurs in that form also. I have marked the numbers of the lines of the will in the photograph for convenience. Those numbers were put in by me for the purpose of easy reference. In the third paragraph of the Will in line 42 you find the word "Rs" with the mark across it. That may seem a very small point but the other symbols also of the deceased's writing have been similarly varied. By "symbols" I mean figures, marks of punctuation, etc. Those symbols have been similarly varied in the disputed writing for the reason that the forger in any case of this kind would be less alert about these little things. These are unconscious lapses of the forger. There are many scores of the word "No." right through the rent receipt book and the Income Tax book. Nowhere has the deceased written that word with a full stop after it. There are at least 40 or 50 examples of it in the books and nowhere is there a full stop after that word, but in the Will writing in two places, the word has a full stop after it. On page 1 of the Will, line 11, the word in question appears with a full stop after it and also lower down in line 15. The mannerism of the person who wrote the Will is to write continuously so that the "N" has been written as one uninterrupted form. That appears in the disputed signature whereas in the genuine writing, the "N" is always made with a broken movement. In R5 the word in the caption is written large with no full stop after it. In R9 also the word has no full stop. In the copy of his Income Tax Returns the deceased has reproduced the printed form. Every page of the book R8 shows the peculiarity with regard to the word "No." In the word "No." in the genuine writing the "o" is generally written above the base line. In the will writing, however, although it so appears in one place in the second place the letter is a large "o" in level with the base.

Another symbol is the and (plus). In the genuine writing there is always a downward stroke at the end of the plus whereas in the impugned writing there is a horizontal stroke without that down stroke. The numerals 2, 3, etc. have an initial tick in the undisputed writing. In the entry on page 47 there are several of the figures 2 and 3. The Will writing has "3" with an absolutely straight top and a curved top. The deceased's "3" has always a tick, a well curved tick and very often with a loop base, either a large one or a small one.

A very small but significant features is the dash. In all the rent receipt books where the deceased acknowledges payment, after the word "Rs," he uses a diagonal dash and one hyphen, but in the will there are two dashes there, although the second dash is a very contracted one. Those dashes in the disputed writing are a mannerism. Whether the writer was capable of writing a half inch dash or only a fractional part of a centimetre, still the movement was there which was unhabitual to the deceased.

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I have already referred to the cypher marks of the signature. I shall not take the Court through other symbols. With regard to brackets, wherever they appear in the genuine writing, they are unequal in size but in the Will writing, they are more or less equal in size. An imitator would be content to represent a huge monogram giving the impression that it was made by the deceased but when it comes to details, he is not as alert as when copying the bigger features. (With regard to the symbols, Mr. Wikramanayake marks a document made by Mr. Muthukrishna as R19 (f)).

In the disputed document there are alterations in the actual signatures or in the formation of letters. I have dealt with the alterations in the signature, the line below the "J" and the angular dash connecting "R" with the "a." In two places there are extra lines in the monogram. There are even more important revisions in the body writing of the Will. On the first page of the Will, in the third line of the first paragraph, there is an "o" altered into "i." That may have been revision on the part of the writer. 10

There are other revisions which cannot be excused. The revision in line 9 of the Will is a case in point. The name "Dona Adliet" there looks as though it has been correctly written but under an ordinary magnifying glass, it will be seen that the "l" was first of all a short "l" and stretched out by a new piece of writing with a difference of angle. A more conspicuous example of the same kind of revision of the "l" can be seen on page 2, second paragraph, where "all" has been first written with two small "l's" and then these letters have been altered into two longer "l's." There the extension of the "ll" is quite visible. In the case of "Adliet," the revision is not visible unless it is closely looked at and therefore I say the person who wrote the Will had something to hide. If it was the writing of the deceased himself, it would not have mattered to him whether he made the "l" longer or shorter but the person who imitates his writing has to take the very greatest care that he approximates his letters to the customary style of the deceased. There are over 40 such corrections. I shall mention just a few of these corrections. ("Dehiowita" in line 16 of the Will referred to). I refer to the fact that in the genuine writing "D" is written with a circle inscribed within a circle. I shall deal with the word "Dehiowita" in the Will but I shall incidentally refer to all the "D's" in the Will. The "D" in the genuine writing is so formed that the circle is in contact with the outer form at some point or another. In the Will writing the loop formation is quite detached from the general contour of the letter. Apart from that you have a down stroke penetrated with a form which is not found in the genuine "D." But more than all, whether the "D" is written in that way as in the Will or in the way in which it has been writing in the genuine writing, one can follow the movements. In the word "Dehiowita" you will see that the "D" is written with an additional line, which I have marked in an additional colour in a digram. (Diagram produced marked R11A). It is impossible for that letter to be written in the way in which it appears in the Will. It is impossible to be written by anyone because one must know where the letter is started and where it ends, unless we concede it is written in two different ways, in the right way and the wrong way. The word "Dehiowita" must have been written by the deceased thousands of times because it appears in all the rent receipts and he also lived in Dehiowita. 20 30 40

In line 23 of the Will the "s" in the word "son" has been written as an ordinary script "s," and then altered into a print type "s." Likewise in line 25 the "s" in the word "son" has also been touched up. In line 26 also the last "s" has been revised in the word "estates." There was no reason for that revision except that the "s" was unlike the original "s." The deceased always wrote "s" blotted. In my copy of the Will as well as in a type copy, I have noted nearly 40 points to show that the writing cannot be the natural fluent writing of any person but a writing done with constant revision and retouching. Words like "equal," "foreign" and "forfeit" appear to have been difficult to the copyist. The words have been revised where they were about to be misled. The word "forfeit" appearing on the first page of the Will was originally spelt "forfi . . ." and then the "i" corrected into "e." I also invite attention to the word "equal" on the second page and also to the word "foreign." "Executors" was a difficult word for the writer of the Will in line 44 on page 2.

In the genuine writing the letter "m" is written close to the ascending stroke whereas in the Will there is considerable space between the two letters. Whereas the "M's" in the genuine writing have a fair amount of straightness there is an unusual curvature in the Will writing and the stems are also varying. Most of the deceased's letters have a loop at the base, for example in the "i," but in the Will writing the "i" has no circle. (Diagram to illustrate this is marked R11b).

I have had access to notes of income tax and to several other writings of the deceased. So far as I was able to gather from those documents I say he wrote flawless English in spelling, the use of stops and capitals and syntax. I am now giving evidence as an Examiner of Questioned Documents. I say that Mr. Ratnayake could not have spelt "until" with two "l's" as the Will spells it. I say that from the evidence I have had of his writing in abundance. He would not have written "sisters" with apostrophe all over the place. There are seven examples of the word "sisters" in lines 20, 23, 37, 40 and 44 of the Will. There are words written with an apostrophe after the "s." In line 25 there is no apostrophe at all. In line 31 there is an apostrophe before the last "s." In line 31 the word appears twice. Out of eight "s's" in the disputed writing, the writer has got the word right only once. I say that is contrary to the evidence I have gathered of the deceased's ability to spell, punctuate, capitalise and write English. I am not concerned with the King's English. The deceased's English is in distinct contrast to the forger's English. With regard to corrections in spelling I refer to the word "manage" in line 22 of the Will. There the writer has first written "mange" and later altered it into "manage." The word "liabilities" like the word "executor" in line 27 was another snare to the writer. The word in question was first written "liabailities" and then the spelling altered.

The small "b" in the Will is generally finished with an up stroke. In the genuine writing it has a deep incurve and is generally connected to the next letter, whereas in the Will writing, the "b," however, close in contact to the next letter, is not actually connected. The capital "S" is a very characteristic letter. The deceased has made it an alongated letter. The upper part of it is a considerable distance from the lower part and it is compressed.

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In the Will writing there is a small upper part and a wide lower part—quite a different type of letter.

The capital "A" was written by the deceased in three strokes—one stroke downwards, another stroke and then a third stroke whereas in the Will writing there are only two strokes. I have pointed out that same feature in the case of the capital "N" and various other letters. I have also referred to capital "I." (Document to illustrate these points marked R11c).

Interval.

Sgd. S. J. C. SCHOKMAN

Additional District Judge,

10
6-3-45.

6th March, 1945.

(After interval).

Lawrie Muthukrishna: (Exn.-in-chief contd.).

In consideration of this impugned document my attention was drawn to page 47 of the same book. On page 47 is a line "See page ahead 223 for my will." I examined that very carefully. That is not in the handwriting of the deceased. It is visible to the naked eye that there is an erasure in the area of "ah" in the word "ahead" and in my opinion the erasure has been followed by the substitution of the letters "ah" in numerals "61" which previously had been written there. The rest of the line was probably written at that time. My suggestion is that originally there was only "See page 61." I have looked for page 61. Pages 61 and 62 are not there. I got the Proctor for the respondent Mr. S. R. Amarasekera to draw the attention of the Secretary and he made a note on page 60 I think. I said that the writing of the line "see page ahead 223 for my will" is in disagreement with the writing before. The writing just above it, the last entry of which is under date May 14th, shows exactly what the capacity of the deceased was—how incapable the deceased was to write this. It is free of all tremor and smoothly written; whereas the writing there is twist and turn and shakes and tremors. The point I make of the contrast of those two writings is that it is just as unlikely that such good writing could follow bad writing previously made. After 50 lines of writing attributed to the author of those signatures one would naturally expect those signatures to be better in form than they are. I have given my reasons in my report. I have come to the conclusion that the two sets of writing have such mutually exclusive features that they cannot possibly be of common authorship.

L. Muthukrishna
Cross-Examination

CROSS-EXAMINED

I have been giving evidence on questioned documents in a number of cases. In a few cases my opinion has not been acted upon by the Court. 40

Q. Will you say in a few cases or a number of cases? In proportion to the number of cases in which I have given evidence, the number of cases in which my opinion was not acted upon would be truthfully few—I might even say very few, but I would say few.

I remember the Dalada Maligawa case where I expressed the firm opinion that the particular signature is not in the writing of the deceased Nugawela. That was my honest opinion and is. That opinion was not accepted by Mr. Nagalingam. I also gave evidence in that Kalutara case. In that case my opinion was upheld by the District Court. 50

Q. Am I right in saying that in that case the Judge did not act on the handwriting evidence at all?

He refers to Mr. MacIntyre and Fr. Julian who gave evidence contra but he says he prefers to accept my evidence.

Q. Are you certain of that or was it the position that he put the handwriting evidence aside and acted on probabilities of the case? I have not read the whole judgement, but this reference to handwriting interested me and I remember it.

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10 Hand writing is not an exact science. It is on the theory of probabilities. All I do is to draw the court's attention to certain matters which by reason of my experience I am more qualified to direct and say. Some will be matters of opinion on which quite reasonable differences may exist. Others are matters of fact. For instance if I see there is a piece of new writing I cannot imagine that that is different; I can visualise and demonstrate.

I agree with Osborne. It is a formal testimony for me? (Osborne 2nd Edn. page 293 read):

20 Q. You will agree that when it is not a single signature but a whole piece of writing the forgery of the whole piece of writing is a much more difficult matter? Yes.

On common sense principle the more writing one has to do the more difficult it is.

Q. You agree with this statement at page 293: "As the amount of forged writing is increased naturally the difficulty of forgery is greatly increased and some new difficulty arises that deserve consideration in this connection? Yes.

Q. The principal difficulty in examining any paper of this kind . . . genuine writing of which it is an imitation?" Yes.

30 Q. Then will you say first that looking at this impugned document as a whole that it has been written with attention to detail or does it show a general abandonment? Not an abandonment but an attempt to imitate the genuine writing.

Q. You see there has been given by the writer, whoever he was, close attention to details of the genuine writing? In so far as he could have appreciated the importance of those details but as I pointed out he has evidently overlooked others.

40 Q. But you say in regard to detail he has given attention and able successfully to reproduce a good part of those details? Fairly. A certain close resemblance to the customary writing has been achieved. It is only upon a close analysis by an experienced examiner that it is found to be spurious.

Q. Will you say of this document that it shows close conformity to design and variation of letters of the genuine writing? In a very large measure.

Q. Have you been able to discover in the impugned writing any unnatural movement—will you show it with reference to standards? Yes. For example—I am taking at random—the letter M.

- Q. I understood you to say as regards that capital letter M that in the genuine writing the interspacing was smaller than in the impugned signature? Yes.
- Q. Where in the capital M do you show the case of an unnatural movement? The pen is controlled by the hand. It is an unnatural movement of the pen and hand. The unnatural movement in regard to the M—the pen was so held that although the natural coordination of the fingers of the deceased caused the lower limb to approach the upper limb, in this case as there was not that practised co-ordination it is separated. That is 10
unnatural co-ordination.
- Q. Pictorially it is not the same resemblance? Pictorial appearance may be the result of such a movement.
- Q. An unnatural movement can only be judged by the absence of pictorial resemblances? No. Because a person may produce a pictorial resemblance by a different movement or even by the same movement.
- Q. An unnatural movement here is a movement unnatural to the writer—I want you to exemplify that by some means—I say in regard to the 'M' you have not done so? I say I have, 20
because the deceased so removed his fingers in writing a particular letter of the pattern of 'M' that the upper and lower limbs came close together. Without that kind of practice and experience a person setting out to imitate his writing tries to produce the letter 'M' but with this detail incorrect that there is greater space.
- Q. You are now drawing attention to some feature of copied writing.—I am asking you to show a movement unnatural to the genuine writer? In this case one is a genuine writing and the other copied writing. I cannot indicate in any other writing such 30
movements.
- Q. In what you called the copied writing will you show movements unnatural to the writer? I can show not one but half a dozen or more. Just one point to clarify the position: Counsel referred to pictorial appearance. Two noughts may pictorially look absolutely alike but may have been formed one by leftward motion and the other rightward. A simple dash may be written left to right or right to left; the resulting picture may be the same but the movement may be different. Save and except such cases, movement is always expressed in the pic- 40
torial form. It is whilst looking at it we can infer that such and such a movement has been put into force.
- Q. Tell me another example of unnatural movement? Every one of those letters to which I called attention where there was alteration would be forceful examples of such.
- Q. Do you say that every example that you have given of differences is an example of an unnatural movement? I will confine you to examples of letters in which I said alterations had been effected.

Q. Alterations in the sense of re-writing? Of correction. Re-writing would not be the same as correction. Over a correct form a person may go again, but here I see the wrong form has been first written and an attempt to restore it to the right form. That I say is an unnatural movement.

Q. Ordinarily a writer holds his pen at a certain angle to the paper? Yes.

Q. That results in a certain feature—did you base on that standpoint? Yes.

10 Q. You have not given any example of that in your evidence? I have in my notes to Counsel mentioned alignment, pressure.

Q. Will you give me any example or any particular writing which shows that? Where the deceased held his pen more on the side—on the left hand side of the pen, which appears to be the general pen-hold of the deceased—the pen was removed with the left side of the nib pressed on the paper with the result that the thicker strokes come on the left hand side than on the right hand side. In the first signature the down stroke which ends the letter “N.” that proceeds to a thickness far beyond what
20 the ordinary writing does.

Q. Your point is that as the pressure was on the left side of the nib, downward would be thicker than the upper? That is one of my points.

Q. While you are on that, will you admit that that is reproduced in the simple ‘n’ in the signature? I do. I say this: that when that hold of the pen is continued there should result continued shading in the downward stroke on the left hand side.

(Shown P4a and P4b):

30 Q. Can you say whether those signatures on P4a and P4b were written by the deceased? (After examination of the two signatures under a magnifying glass witness says). It is most improbable that the deceased wrote these signatures.

Q. What degree of probability will you assign to the second signature on page 30 of P13? (After examining under a magnifying glass witness says). This may be genuine. There is an abnormality in it; part of the cipher does not appear. (Mr. Obeyesekera marks that particular signature P13a).

40 Q. Will you look at the ‘n’: So far as the N is concerned the second downward stroke of that N is thicker than the first? Yes. In one case we have one stroke and in the other we have one stroke over the other. I was going to say that the second stroke is thicker by reason of the fact that it is one stroke over another.

Q. Will you say that the second stroke of the N is thicker than the first?—I say there is no second stroke but there is a set of two strokes—the up and the down stroke. Those two strokes taken together are thicker,

Q. The top of the first stroke is in line with the top of the second stroke?—Practically so.

Q. The writing as a whole shows painstaking attention to detail?—
I have answered that in the sense that there was some attention
to details and in a number of instances there has been that
attention withdrawn or overlooked.

(Question repeated)? I say that parts of the Will show attention to
detail, other parts do not.

Q. So that there has not been painstaking detail as a rule?—That
is so. 10

Q. Your answer to that question for the third time is that there has
been no painstaking detail as a rule?—Yes.

(Passage from Osborne, p. — read):

Q. Do you admit this: “If the document on the other hand is written
freely . . . then the likely conclusion is that it is genuine?”
I quite agree.

(Passage at page 295 read): I said this morning that that difficulty had
not been overcome. I specifically and distinctly said that the forger or the
copyist could not help leaving behind traces of his own mannerism.

Q. One of the matters to which you were giving attention is to the 20
normal form of characteristics of each character? Yes.

Q. I think you said this morning one of the writing characteristics
of the deceased was to form a loop at the bottom end of initial
letters?—Yes. One of the features. I also said that he general-
ly did so.

Q. And that characteristic is reproduced in the capital TO in line 7
“TO my car driver?”—Yes.

Q. There is a similar loop in capital TO in line 9?—Yes.

Q. And to a less degree but characteristically I say in the “I” in
line 12?—No. That is not by any sense a loop. It is an ordi- 30
nary angular projection.

Q. More than angular; the “I” is taken upwards and over in a kind
of curve?—It is merely a rebound of the pen. The whole
movement is angular.

Q. Angular so far as upward stroke is concerned?—Yes. It is a
rebound of the pen.

Q. The pen has been taken over? There is no loop formation at
all or any attempt at a loop formation: that is my answer.

Q. But there is a loop in the “T” in line 13?—Yes. In line 25 in
“To” also. 40

Q. Then in the “M” in line 31 “My sister’s children?”—Yes.

Q. To that extent then that feature is reproduced?—That is under-
stood in the compendious answer I gave. It is a fairly close
resemblance.

- Q. I am looking at it from another point of view, not from mere pictorial resemblance which can frequently be deceptive, but from the point of view of writer's habits: to that extent you admit that it is a reproduction of the habit?—Not habit of the form—habit of forming the initial letter finishing off with a loop. On this form of habit another person setting out to imitate does not do so for habit reacts to habit, but only makes an attempt to imitate.
- 10 Q. You first make up your mind that it is a copyist and then the copyist has reproduced it—that is your mental attitude?—No. I approach it on the other point, whether the person who wrote it has reproduced that to that extent. In my opinion there are forms resembling the genuine writing in the document shown by counsel.
- Q. You also said that it was a feature of the writer's handwriting in the writing to abbreviate the word No. in number to write the 'o' on a higher level than the initial letter 'N'?—Generally.
- 20 Q. That feature is reproduced in the first word in line 11? I said so this morning.
- Q. Shall I suggest that is reproduced in line 11 first?—Yes.
- Q. Will you also admit that is reproduced in line 16.—The 'o' is definitely above the level of the letter 'n'?—Yes.
- Q. Have you been able in your standards to see the capital 'G' written initially?—Yes. (Shows page marked R8a).
- Q. The letter G is written with the downward stroke of the G coming down a single stroke and ending there? Yes.
- 30 Q. That firm characteristic shall I say is reproduced in the G in line 1 "By the Grace of God" in both those GG?—It is not so, because in the genuine writing the pendent stroke of the G comes over the top of the G. It is an invisible loop but it is in a loop form. In both these cases to which my attention has been drawn the G is written with the pendent stroke just going over the body of the G.
- Q. Look at the second G in line 1: that stroke has reproduced a certain over-writing at the beginning?—It must have been a fill of ink.
- Q. That is in writing in the way you suggest?—No.
- 40 Q. I put it to you that in the second G occurring in the word "God" in line 1, is absolutely the same as the G pictorially in R8a?—My answer is that it is absolutely and obviously different. That is obvious to any impartial observer.
- Q. It is also a feature of this handwriting where a letter ends with a downwards stroke it is not taken up when the last letter ends with a downward stroke that stroke remains as a pendent stroke? That is in the Will writing. In the general writing No. There are many cases of letters which usually end with a pendent stroke having a return in the upper stroke.

- Q. Where it is the last letter of the word and that last letter ends with a pendent stroke, it is left with that stroke and not carried upwards —like the letter “ y ” in “ My ” and “ g ” in “ long ”? That is so. The pendent strokes end simply in that way.
- Q. That feature is reproduced in the last Will, for instance, in the words “ my ” and “ long ”?—There is no loop formation.
- Q. My question is, in those cases it ends with the downward stroke? —Yes. The same as the absence of a loop formation.
- Q. Then in the simple letter “ k ” the outward top stroke is inclined to be exaggerated?—Yes. 10
- Q. That feature is reproduced in the letter “ k ” in “ bank ”?—Yes.
- Q. That same observation applies to “ f ” in “ half ” in line 21? —Yes.
- Q. Can you show me a capital Y occurring initially in the standards? (Shows page in R8 marked R8b).
- Q. The first Y does not end with the pendent stroke, which is taken upwards?—Yes.
- Q. But the second Y ends with the pendent stroke?—Yes.
- Q. So apparently he wrote it in, both forms?—He did so.
- Q. In the two succeeding lines?—Yes. 20
- Q. Then the ‘ Y ’ commences with the stroke that is absolutely elongated upwards?—Yes.
- Q. That again is a feature of that letter?—Yes. But he has not completed those features.
- Q. So far as this is concerned it establishes two points, that he writes the downward stroke in two forms and that the beginning of the stroke begins with a rather elongated stroke outwards? —There are other examples. For practical purposes I accept that it does begin with an elongated stroke outwards.
- Q. The second limb of the “ y ” is higher up than the first?—Yes. 30
- Q. Like the “ Y ” in Yatiyantota in line 29?—Yes.
- Q. There that initial stroke begins with an elongated outward stroke? —Yes.
- Q. It ends with a pendent stroke not carried upwards or not carried backwards?—Yes.
- Q. Those two features then of the genuine writing are reproduced here?—Yes.

To Court:

I say that in the formation of the “ y ” there are other features which are dissimilar). 40

- Q. You made a point of the formation of the letter “ D ” in line 16? —Yes. In the word “ Dehiowita.”
- Q. The letter “ D ” occurs immediately below in line 17?—Yes.
- Q. And it occurs again in “ Dehiowita ” in line 34?—Yes.

Q. Will you say that letter "D" in lines 17 and 34 substantially reproduce the writer's formation of habit? That is, the deceased's.—No.

The blue "D" in R11a is the genuine D. In red is the D in the Will.

Q. I suggest that the red "D" there is totally unlike the capital D in line 17 here: for instance, the right end bottom corner is above the base line, in line 34 it is exactly on the base line? —In making these sketches I stated that they were not meant to be precise but only to draw attention to certain points, so that this is not a replica of that. The only point is that there the whirl is inside the body of the D; here, there is space between that and the terminal line penetrates it. Here it does not. I have not made any attempt to copy exactly the base formation.

Q. Will you give me a genuine "D" from your standards? (Shows R9, very first page "Dehiowita").

Q. The deceased himself writes the D differently: take the D on page 1 and the D here; there is a substantial difference in the formation of the loop?—I don't suggest this is a rubber-stamp of the D. There may be a range of variation between the one D and another. But the essential feature is that the whirl or the loop coincides with the outline of the letter. There is no line penetrating. Those two essential features are common to all the DD.

Q. Look at the D on page 1 of R9—outside the whirl there is another formation?—That is a matter of detail, outside or inside.

Q. There is then a line outside the formation of what is called the whirl?—That is coinciding with the outline of the whole letter.

Q. I put it to you that substantially the D in line 17 is the D that the deceased wrote?—No.

Q. Will you tell me what are the differences?—In line 17 as well as in line 34 it will be seen that there is a whirl inside the outline of the letter D ending with a stroke penetrating it.

Q. Stroke coming outside?—Coming through it.

Q. It depends on what you consider inner and outer strokes, in some cases there is a stroke outside and in other cases the stroke is inside I suggest here in the Will in line 17 the stroke is inside? —It is so clear that the stroke penetrates the outline. The stroke comes through that whirl.

Q. I suggest to you that subsequently the D's in page 2 of R9 are the same as the D in line 17?—No.

Q. Or the D in line 34?—No.

Q. What you call the outward stroke has penetrated the line very little?—That is a matter of degree only.

Q. Have you considered whether there has been consistency let us say in the size of the character?—I have said so. The conclusion is that the deceased's writing as shown in the income tax book in the latter part of his life, appears to be rather small

and compressed but he was not incapable of writing a larger scale because in the earlier pages the scale of writing is slightly larger than the scale adopted in these pages.

- Q. Do you say this: that the size of the characters in the disputed writing approximates the size of writing in certain of the standards?—It does approximate a size which the deceased used much earlier in life.
- Q. Will you show me the size of characters about the time of his death as shown in your standards—that is, May to June, 1943? —In R8 about the 29th April, 1943—about a month before. 10
- Q. These are his copies of the income tax returns where actually he has been trying to compress his writing?—These are his notes —not copying—straight from his memory he wrote.
- Q. There is an attempt to copy?—Copy from what?
- Q. These are notes from what he submitted on the income tax form? —Possibly.
- Q. There is an attempt at compression?—I don't say so. There was no scarcity of paper at that time. (Shown R3—Writing in 1943 February and April).
- Q. How does the size of that character compare with the Will? 20
- A. More or less the same.
- Q. Including the spacing?—Yes. That is a reproduction of a form or feature not a habit.
- Q. Shall we call it a feature?—Yes.
- Q. Were you instructed that the deceased had been brought from Dehiowita, the place of his business, to Talangama Estate where he died, nearly a month before his death and that he was during that month suffering from pernicious anemia?—I can only say that I tried to find out what he died of and what his age was and on both those points I was given no information. I knew 30 he was an old man and he must have died of pernicious anemia.
- Q. Pernicious anemia leaves a man weak?—I think so.
- Q. That is a fact to be taken into account? A debilitating disease would have an effect on a person's writing.
- Q. Writing would deteriorate from the earlier standard? I had given that matter consideration.
- Q. You had no instruction what he died of?—Yes.
- Q. Or that he was in a state of physical disability when he wrote his last Will?—I inferred that from his tremulous writing which I examined. 40
- Q. That is to say there are evidence of tremors in the disputed handwriting which can well be accounted for the state of his physical health?—Yes.
- Q. In fact tremors such as you would expect in a man of that condition—to that extent that is an argument in favour of the genuineness of the document? There are tremors of age and infirmity and there are tremors of fraud.

- Q. What do you say the tremors you found are?—They are tremors of fraud.
- Q. This is the first time you have stated that?—I was not asked. I did not say this as part of my argument but I do so now.
- Q. You admit that if tremors of fraud were there that would be a very important argument in favour of the forgery?—Yes.
- 10 Q. Do you admit that until I put it to you that there were tremors which were consistent with the man's physical health you did not adopt this as a part of your argument?—I have so many other arguments to put forward. I only confined myself to the question put to me.
- Q. In other words you reserved that tit-bit for the present moment? —I do not reserve anything. But if there is any hiatus in my evidence which cross-examining counsel wants to make good I am here to fill them.
- Q. You will grant that in pronouncing a document to be a forgery one of the principal reasons put forward by an expert is the presence of tremors?—I do not know if it will be one of the principal or one of the subordinate but it will be one of the reasons. In my statement of reasons there are more important reasons than that, namely, the alteration of letters. I formed my opinion on those alterations.
- 20 Q. Then you do not base your opinion on tremors of fraud?—I do.
- Q. How do you distinguish tremors of fraud to those of physical debility?—When it is due to age or infirmity the writing as a rule would be impaired by those defects but where it is a tremor of fraud it will be, as you have in this Will, free, smooth, and facile writing with an occasional jerk or twist or turn or misshapen feature.
- 30 Q. Will you give one example of that?—Line 10 in the word “furniture” all the letters preceding that word as well as the main part of the word have been well written but a quaint shake has been introduced into the letter “t” in furniture.
- Q. Do you say that what you call tremor in the writing of the letter “t” joining it to the letter “u” the down and upward stroke of that would be the result of a natural physical jerk?—I have no evidence that natural physical jerk occurred just at that psychological moment. If I see such jerks here and there, but the writing as a whole smooth and sound, according to my experience I would say that those are not natural tremors. If a person could write so many words without any apparent difficulty in writing them and suddenly found it difficult to write a straight “t,” I could make a reasonable inference that that difficulty was only pretended.
- 40 Q. If you look at the letter “H” in Hendala in the same line 10— is there no evidence of tremor in the lines of the “H” as well? —No. That is one of my illustrations of an alteration—deliberate alteration of one of the strokes of the “H,” altering from one angle to another.

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- Q. Look at the length between the initial and the last stroke, surely there is evidence of tremor?—No.
- Q. In the writing does not there occur a certain physical jerk?—I want to make clear that that formation between the two strokes of “H” is a peculiar formation which is conventional to the deceased.
- Q. I am not admitting that—you speak of tremor of fraud—will you give me a next example after “furniture”?—Line 26 the word “supplies,” the down strokes of “e” are wobbling.
- Q. Also the initial “s”?—Yes. 10
- Q. I suggest that wobbling is the wobbling of old age and physical infirmity? In that case the word “my” written before it and “trading” written after it and other pendent letters are written without any difficulty and firmly with the pen moving across the paper the whole length.
- Q. I suppose any nervous condition that is there may be intermittent?—At what intervals of intermittency.
- Q. I do not know, I am putting it to you?—That intermission was very frequent in his natural writing and his casual and apparently premeditated in the Will writing. 20
- Q. Now are you coming to this: do you say that this is not genuine because of the absence of tremors?—Tremor of fraud is the absence of genuine tremor and introduction of fraudulent tremor.
- Q. It comes to this: there is in this writing an absence of tremors which have existed in the natural writing?—Yes.
- (Witness refers to the monogram of the second signature).
- Q. Does that not show signs of tremor?—That is a very good instance of a tremor of fraud. The whole of that name has been written fairly free of any jerk but only when it comes to that 30
bizarre outline over the two letters or rather three letters that the deceased was accustomed to make it in a way which it was difficult to follow, this copyist makes a maze of outlines and allows the pictorial introduction of it to make the signature pass for genuine. I have pointed out in my diagram how many new outlines have been introduced. That is the result of uncertainty in the copyist's knowledge of the pattern of that monogram.
- Q. A forger would practice the signature before he attempts to forge? He ought to. 40
- Q. So that, having the model before him he would have achieved some facility before finally making the effort?—He has such a low degree of facility that betrays the forgery.
- Q. I put it to you that what you see there is a tremor due to the physical condition of the writer?—I say no.
- Q. Did you give any particular attention to the width of the line excepting the “N”?—Yes.

Q. You drew attention to the " n " in the signature?—That is only as a passing instance.

Q. Can you give any other illustration of the differences of line widths or do you say there are no differences? There are no appreciable differences.

Q. Which is also an important factor which an examiner of questioned documents takes into account?—Yes.

Q. Then line alignment—did you give your mind to that?—Yes.

10

Q. Will you admit in the matter of line alignment the standards and the disputed writing agree generally speaking?—The writing in on ruled paper in both cases. In the document I had for comparison as well as in the account book unfortunately there are rules. The proper test of alignment cannot be made; but we can make the test in reference to the two signatures where the alignment is contrary to the usual pattern.

Q. Will you then agree that in the matter of the body of the document of the last Will the alignment agrees with the standards generally speaking?—Generally speaking Yes.

20

Q. Then take the second signature which you have compared with the signature on the four cheques, how do those standards agree?—The first " a " in Rat is in level with the rest of the writing generally but in this case it is above the base line.

Q. But it agrees with the " n " and the next " a," to that extent the alignment is the same?—Yes. That is, one wrongly aligned letter agrees with another wrongly aligned letter.

Q. That is to assume that the alignment of the initial " R " is the right alignment?—Yes.

30

Q. By reference to the standard will you say what is the right alignment?—" JAR " sets the level of the writing. In the impugned document it is dead level with the rest of the signature.

Q. In the Last Will that signature was written on a ruled line?—Yes.

Q. But in these books are they all on ruled lines?—They are.

Q. But on the cheques they are not on ruled lines? No. But there is the design on the cheque which practically serves the purpose of the rules.

Q. So that question of alignment does not help you much one way or the other?—Yes.

(It is now 4 p.m. Further hearing tomorrow).

40

Sgd. S. J. C. SCHOKMAN,
Additional District Judge.

6-3-45.

7th March, 1945.

Same appearances.

Lawrie Muttukrishna: Sworn.

Cross-Examination (Contd.)

(Shown Pass Book R3). On the first two pages four signatures appear. I adopted those as my standards of the signatures—according to my genuine signatures.

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Q. Is it correct that looking at those signatures the point at which the initial letter "J" is joined to the next letter "A" varies? These signatures are of a different type, namely, that the "J" is joined to the "A."

(Question repeated)?—Varies, but the "J" and "A" are integral movements.

Was your evidence yesterday that the "J" joined the "A" half way up in the genuine signatures?—Yes. And you made a point that in the impugned signature the "J" above the "A" almost where it stops?—Yes. It does not actually join. It 10 reaches up to the top. They do not join.

Is it correct that in the second signature the "J" has been joined to the "A" almost at the top?—Yes. It is an integral movement. I said "J" and "A" are integral movements here in all the four signatures. One continuous stroke of the pen forms "J" and "A," whether the connection between the "J" and "A" is at the top or bottom. It is of a specific type quite different from the type in the Will.

Q. Is it your case that in all the standards the "J," "A" and "R" the three initials are quite integral movements?—No. But 20 generally they are written together.

Q. Is it your evidence that the "J," "A" and "R" are written at one movement?—Generally.

Q. You will grant that there are exceptions?—Yes.

(Shown Pass Book R5 at page marked R5a, the 1st and 3rd signatures). The signatures show a definite lifting of the pen at the top of the initial letter A?—Absolutely not.

The hiatus at the top is due to then?—There is no hiatus at all. That is one continuous movement. What is at the top, the space at the top of the A.—I am asking now about the oval of the A at the top? The tops of the 30 oval of the "A" do not join. I say that is one pen movement. Any one could see them. Despite that space at the top of the "A" it is one pen movement? Yes.

One pen movement does not necessarily mean that there should be a complete joining of the two sides of the oval?—Yes.

Joining of the "A" to the "R" you say that in the admitted signature is at the foot?—Yes. Generally at the foot. Here you say in the impugned signature is alightly above the foot?—Yes.

Do you seriously say that is one of the writing characteristics?—Yes. Because it is not an isolated instance. 40

I have shown that in about four places where the copyist has the habit of joining the next letter half way up as against the definite mannerism of the deceased in joining letters at their foot.

This is may be one of those cases where the writer joined it slightly higher up?—No. It is because we have to take the signature as a whole.

- Q. Taking that ground will you admit it may be one of those exceptions?—I cannot admit it logically. Because it is an instance of joining of the second letter half way up which is a slightly identical mannerism of that writer and therefore it cannot be attributed to the deceased.
- Q. Where do you say the new stroke joining “A” with the “R” commences?—In the first signature.
- Q. Your evidence was there is a new stroke by which the “A” is joined to the “R”?—Yes.
- 10 Q. Where do you say that commences?—I did not say anything of that kind. I say that a new stroke joins “R” to the “A,” not “A” to the “R.”
- Q. Then it is not your evidence that at the top of the capital “A” a new stroke has started?—No. It is not my evidence that a new stroke had been started but it is my evidence that the up stroke of the “J” is close to the “A” but is not part and parcel of that “A.”
- Q. I am now talking of the “A” in conjunction with the “R”? It is my case that the oval of the “A” has been formed completely and then a new line has been written against it to make up the “R.”
- 20 Q. Do you say that there is no case where in the genuine signature and the standards the capital “R” has been joined to the next letter A. ?—There may be. But we have once instance where it has been joined with a new stroke.
- Q. Your evidence is that in the impugned signature that “R” has been joined to the “A” with a new stroke?—Yes.
- Q. Is it not likely that the pen slipped a little lower the base line so giving the impression of a new stroke?—It will be a mere fantastic theory.
- 30 Q. Why is it fantastic? More than or absolutely scientific there is the “R” in the impugned signature which was originally written with a definite curve and the curve has been altered into an angular mark.
- Q. That is largely dependant on the fact that there is a kind of elongation of the connecting stroke?—No. There is distinctly a new stroke.
- Q. You say that the writer stopped after making the curve, stopped in the “R,” then started the connecting stroke a little lower down?—Yes. The corrected form in other words.
- 40 Q. Have you considered the question of spacing?—Yes.
- Q. That is, taking the whole document does the spacing agree with the spacing that you found in the standards?—Yes. There are two kinds: the line spacing and the interspacing between the letters.
- Q. I am talking of interspacing?—There is no general agreement but as in all other features there are departures from the general position,

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- Q. What are the examples, you have not given any examples of that as yet?
- (Mr. Obeyesekera says that this question relates to the whole of the writing in the impugned document).
- A. Take line 38. There is the 's' in interests close together. It is squeezed in.
- Q. May not that be due to the writer first having in mind "all my other interest" and later interpolating the 's'?—I do not think so. The deceased would not have said "all interest." I say that because of the writing in his income tax notes—fairly simple and clear English. "All other interest in foreign countries" does not commend itself to the sense because we are not thinking of accumulated interest scattered over many foreign countries. It would be an interest in this country, an interest in that country and an interest in the other country. So he would have said "all my other interests." 10
- Q. You are not now giving evidence as examiner of questioned documents?—I am comparing Ratnayake's English with the copyist's English.
- I would not say that it would be bad English if "all my other interest" had stood there. 20
- Q. So that conceivably the writer may have had in his mind the same expression "all my other interest" written the word interest and then altered his ideas and interpolated the letter 's'?—That would be on the supposition that the copyist knew better English than the deceased.
- Taking all the circumstances of the case I say, because the rest of the will also contains confused sentences, that we cannot attribute to the writer such a clear idea of language—an idea of clear language to credit him with having written the word "interest" as a collective noun for "interests." 30
- Q. "All my other interest" as I said may have conceivably been altered by the writer in the process of writing to "all my other interests"? May have been.
- Q. You have taken upon yourself to say that the interpolation of 's' is only consistent with the variation of space; therefore I am putting it to you as another probable possibility that it may also come?—I agree with you.
- Q. What is the other? In that same page, line 44 the word "executors."—I say that the interspacing between the 'e' and 'x' and the 'x' and the 'e' and the 'c' and the 'u' is irregular. 40
- Q. May that be due to the fact that the writer was in doubt as to how to spell "executors"? Undoubtedly that was so.
- Q. And Mr. Ratnayake himself may have been in doubt? I have no evidence of that.
- Q. So that is consistent with Mr. Ratnayake or with some other person who has done it?—It is not consistent with Ratnayake because he has written more or less flawless English with regard to spelling.

Q. People who sometimes speak flawless English are not quite sure of how to spell particular words? Yes.

I have not made a study of Ratnayake's spelling habits. I have looked through his writing and I have gathered that he spells correctly.

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10 Then in line 37 in the same page there is the word "equal." There are two aspects, one is the rewriting and the other is the interspacing. The rewriting may produce an unevenness of space. I can give more examples. My point is that as a rule the spacing agrees but there are particular instances where it is irregular. My submission to Court is that the writing as a rule is
10 deceptive. When you look at it there seems to be general agreement in alignment and in interspacing but if you look closely there are differences.

Q. Have you given your mind to how the deceased crossed his simple 'ts'?—He writes several kinds of ts, some crossed some not crossed.

Q. Does he cross his 't' sometimes?—Yes.

Q. And did you make any deduction or inference from that matter?—I have given all this in my notes to Counsel.

20 Q. Will you give your mind to that now—whether the deceased had a particular habit in the crossing of the ts?—In cases where the 't' followed the 'h,' the deceased crossed the 't' sometimes about two-thirds up of the stem of the 't,' not at the very top. There are a few examples in the Will writing of similar crossing but there are unprecedented forms of crossing the 't' in the Will writing. I will invite the Court's attention to line
20 27 on the first page to the word "everything" and to the word "the" in the next line and to the word "the" in the last line.

Q. You say that the crossing of those t's are not found in the standards?—Yes. The deceased did not cross a 't' with the simple stroke at the top as a rule. The crossing was a part of the letter itself. That is a writing habit.

30 Q. And that writing habit is generally reproduced in the document?—That form is reproduced.

Q. Have you given your mind to the dotting of the 'i'?—Yes. More or less at the same distance away. That again agree generally.

Q. Was the deceased giving any kind of flourish at the end of a word—when he finishes up with a word did he end it up with any kind of flourish? He did so in the case of his writing. In the ordinary writing he had a decided form of embellishment of it—the 'k' is an example.

40 Q. I am dealing with the embellishment at the end of a word?—I suppose a person writing the word "any," then in ending the 'y,' you do not normally do it, but you elongate it with some kind of flourish. It is sometimes a feature of some writers. I found such features in the deceased's writing.

Q. Can you give another word? The capital "I" I cannot now recall another word other than an "I."

Q. You agree then there is no difference in that respect between the impugned and the standards?—There may be. I am not able now to point to Court any difference in that manner.

- Q. Sometimes a writer in writing a letter or a word puts down an unnecessary stroke—unnecessary for the formation of the letter?—Sometimes. I did not notice that in Mr. Ratnayake's writing.
- Q. Did you see any unnecessary formation in the impugned document?—Yes. The correction of the letter "D" in Dehiowita in line 16 on the first page.
- Q. Would you say in "D" there the loop is an unnecessary stroke?—Absolutely unnecessary.
- Q. A copyist ordinarily does not produce an unnecessary stroke? 10 Ordinarily he is inclined to do so unless he is mentally alert. If he withdraws that vigilance from his mind, which is a psychological problem because he cannot both imitate the style and concentrate on imitating it, he soon lapses; and in a word like Dehiowita he will have formed the base line in one way when he was thinking of the ornamental top of the letter. So then, seeing that he has got the ornamental top but has failed in the base line he corrects the base line.
- Q. Ordinarily a copyist pays attention to details?—No. That is a generalisation which I shall never admit. Ordinarily a copyist 20 to the best of his ability tries to do it.
- Q. Do you say the deceased never wrote an unnecessary stroke?—Yes. So far as I have been able to find.
- Q. You recall how the deceased wrote his capital "B"?—Yes.
- Q. Sometimes there was an elongated stroke at the top?—A starting stroke. That is a stylism of the writer.
- Q. A stylism which varies?—Yes.
- Q. In the same way he would write the "B" with the elongation, sometimes without?—Yes.
- Q. Those you say are normal variations consistent with the writer's 30 writing habits?—Yes.

(Shown page 6 of P9). There is a kind of smudge at the bottom of the "B." It is not exactly a smudge. It is due to the running of the ink into the paper because we find the same thing in the successive lines of writing. It is not a smudge but a contact. When the paper becomes a little old it has that tendency.

- Q. That has been written rather unusually?—No. That is one of the deceased's writing features, so that he embellished his letters. The embellishment was always not on a rigid plan; it varies according to his movement, sometimes more elaborate, some- 40 times less elaborate.
- Q. Did you form any opinion from the trends of unnecessary writing in the impugned document or did you not give your mind to that particularly?—I have done so. That is the strongest in my submission to Court, that where there is unnecessary writing by the introduction of fresh strokes it is not *bona fide* correction. I say it has never been done by the deceased.

(Shown R5): (The 'o' in Hope on the first page). This is not at all unnecessary. It is an oval within an oval. That is part of the elaboration of the deceased. The oval can be written that way with the loop beginning lower down or going up.

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Q. Is there any difference between the inner writing of the "O" there or between what you called attention to, in the capital "D" in line 16? Fundamental differences. If a thing can be formed there is no unnecessary writing. That is, if it can be done it would not be an unnecessary writing.

10 What I called the unnecessary writing in the capital "D" in line 16 could not have been written as a continuous letter. I challenge anybody to write the "D" without lifting the pen from the paper and form that extra stroke as it appears in line 16. So with the initial "J" in "JAR"—there is that extra line.

Q. You are not giving any other examples of unnecessary writing?
I will give you half a dozen examples.

20 Q. Will you give one other example?—"J" in "JAR" has that unnecessary stroke which cannot be produced with one continuous movement of the pen. There is the correction of "Rat" in both signatures which cannot be produced with one continuous movement of the pen. All those are unnecessary writings.

Q. When it could not be produced with one pen movement you say it is unnecessary writing?—It is.

Q. Always?—I say in those particular cases.

Q. Did you find any unnatural stop in the middle of a stroke or letter?—Pen pauses.

Q. I am using the word 'stop,' pen pauses may be natural?—I have given one example, of that monogram.

30 Q. First give me an example in the body of the document?—Take line 31, first page, last para. "My sister's children" 'c' and the stem of the 'h' are drawn in one movement. Then the pen is lifted and the correction is made on the stem of the 'h.'

Q. May not that be due to the fact that the nib ran dry and it was necessary to dip the pen?—One would never lift the pen in the middle of the letter.

40 Q. Can a writer dipping his pen in an ink pot say precisely when the the ink might dry—he might find at the end of a letter in the initial not sufficient ink and he might dip his pen and continue it?—No. I cannot prevent a person from dipping his pen into the ink-well as often as he likes, but still a practised writer knows how much of writing he can do with one fill of the pen and he has trained himself at distinct and different intervals to refill his pen. He does not do so in the middle of a letter. That would only be the copyist's form of making up letter, building up letters.

- Q. My point is this: that it is within the realm of possibilities that the ink may have dried at that particular point and he may have raised the pen?—As an abstract proposition I cannot deny something outside pure mathematics. So that looking at the probabilities of that case, it is only a copyist who would stop to end a letter or to write the middle part of that letter with a new pen dip because he is building up letter by letter.
- Q. Will you give me another unnatural process?—Line 9 on the first page, the word “Adliet.” After ‘l’ comes ‘i,’ and then there is a sudden stop and the ‘e’ is written as a new letter. 10
- Q. Is it not a writing habit of this writer to make normal stops in the course of his writing, that is to say, every word is not written to an end but there are stops in the course of the words?—The deceased also sometimes broke his words up.
- Q. Not merely sometimes, I say frequently he did so, will you admit that? I will say sometimes.
- Q. Will you not say frequently? I am quite prepared to say frequently; it does not make any difference.
- Q. This might have been one of those cases where he stopped?—The reason for the deceased stopping his writing to make a letter and the reason which can be inferred from here are different. The deceased stopped to make a flourish. For instance he put an “I” like that, took his pen off and made a circle at the bottom. But here in Adliet he ought to have known if he had really written this how it was spelt and then when he came to ‘i’ he would not come to a dead halt and write the ‘e’ afterwards. 20
- Q. You say when the deceased did break a word like that it was to make a flourish?—Generally.
- (Shown R8 page 1): 30
- Q. Take the word “claim”—he has written the letter ‘c’ the letter ‘l’ separately then ‘aim’ then the letter ‘s.’ In other words in a word of six letters there are three breaks?—Yes.
- Q. Will you show me any flourish which occasioned those breaks?—Quite clearly the letter ‘s’ at the end ought to be separated, because he forms the ‘s’ in that peculiar way always that it cannot be written continuous. That reason must apply to ‘l’ and ‘a.’
- Q. So when he broke it to write ‘c’ and ‘l’ it is not inconsistent?—No. I have always said that he breaks up his words frequently. 40
- Q. Take the next word “allowance”—after ‘all’ he breaks it, writes ‘ow,’ there again no particular reason?—Yes.
- Q. That feature is reproduced in the impugned writing?—Yes. My only submission is that where the writer breaks up his words he is responding to a natural instinct to break his words up, but a copyist is guided by a sheer necessity to build up his words.

I do not claim to be a psychiatrist. That has nothing to do with handwriting. Psychology comes because one has to weigh the reasons for the writing of letters or words in a particular way. I do not claim to know the psychology of the deceased, except so far as one could understand from his writing that he was moved to write in a particular way.

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Q. Those are writing habits, not psychology?—It is the writing habit taken together which gives us an idea as to whether those same habits have been reproduced in the same manner in another writing.

10 Q. If you say that the deceased had particular writing habits in the sense of writing in a particular way, then you look for those same habits in the impugned writing?—Yes. Psychology does not enter into that because we know that the deceased knew to spell his name. He writes Ratnayake in a particular way that he has never had to write his name incorrectly and then proceed to correct it with such fineness so that it may be undetected. I say those writing habits are part and parcel of the psychological habit.

20 Q. Do you find close similarity or identity in writing the same kind of word—for instance if the writer had to write “the” more than once was there a close similarity in making that word?—I just pointed out that the word “the” in those three lines of the Will is written differently from the genuine writing.

Q. Look at the capital “TO” in line 7 and “TO” in line 9, those two words are identical but written differently?—Slightly different.

30 The fact that in two consecutive paragraphs the initial letters of the word is differently written is not an indication of genuineness because there is nothing to show that from start to finish the copyist maintains the same level of alertness and vigilance in copying. I said that a copyist has a model and tries to copy the model. The model itself will have hundreds of variations of the same character. The fact that in consecutive paragraphs the word has been written differently is not a point in favour of genuineness. I would not fix upon such a fractional point as indicating genuineness. I say it is a fractional point with regard to form resemblance. I admit that if the same letter had been written in the same way in a model and had been differently copied, the copyist would take a certain risk in importing to his copy an appearance of genuineness by that variation.

40 Q. May I pay you this tribute: that that is a matter which you have stated in your own evidence more than once as a point in favour of genuineness when you are on the other side of the fence?—I do not adopt the evidence to suit a particular case.

Q. Have you not done so?—I have done so but the instance is different. If for instance I had a signature which was exactly a replica of another signature it would be the work of a copyist. But if a person writes his signature a thousand times he would write it in thousand different ways; therefore if it were exactly alike it would not be genuine.

I find no evidence of tracing. Tracing is a common device of the forger for signature purposes. A considerable quantity of writing would

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not be traced. For instance where the signatures on these documents are concerned they are not traced. If they had been traced the correction would not be necessary.

With regard to the underscore of the first signature I do not say that it is shorter than the underscore of the genuine signature. I only said generally it started at a point in the middle of the lower loop but here it starts on a higher level. It does not start outside the 'J.' It starts higher up. The deceased nearly always wrote an underscore with some cipher marks. In the one shown to me yesterday part of the cipher was missing. Despite that omission I said that it might be genuine. 10

The lower loop of the 'J' varies in length and shape but in the genuine writing it is always fuller than the compressed form shown in the impugned signature. The length of the loop varies.

Q. Will you admit that the position of the underscore depends upon the length—where it is a long loop it begins sometimes in the middle of the bulge, where it is short, at the top of the bulge?—With regard to the loop itself it may begin a little higher or a little lower but my submission is it begins against the loop not against the junction of the two loops as it does in the impugned signature. 20

The underscore commences at the top of the lower loop. There may be instances where the underscore commences up. There are two instances in R3 where it commences a little up—higher than it does ordinarily.

(Shown the signature at page 1 of R5). There it is almost at the junction. I really cannot lay much emphasis on that point. I stated before there might be exceptions. I spoke of those ciphers at the bottom in the first signature. That consisted of two lines below the "A" and an angular stroke below the "R."

Q. That generally accords with the genuine signature in appearance pictorially?—The underscore is such a variable piece of writing the pen has moved back and forth in so many irregular ways. I can standardise the form to say it is so here and it is not so elsewhere but I call the attention of the Court to the fact that that cipher mark is the only case where a third line has been rewritten for no reason whatever. 30

Q. The underscore is written with free sudden movement of the pen with no apparent effort at regularity? That is so. That won't account for the cipher mark which is written after the pen has been lifted. It would normally be written after the pen is lifted. Therefore when the third one of those strokes is written there must be some reason for it. 40

Q. I am talking of the underscore under the "A," those two marks would be normally written?—Yes.

Q. As regards the cipher under the capital "R" that would normally be written as the final stroke—the pen would be drawn to the left and downwards?—No. It need not be written that way. I invite the attention of Court to R5, page R5a. You will see that it cuts through the horizontal underscore. Therefore it may not be part and parcel of that line,

Q. You admit that can be written differently? Anything can be written differently.

Q. Even the deceased sometimes wrote the same thing differently?—He has written in so many ways but there is a certain unity in his style which persists in spite of the apparent diversity of his writing.

Q. May I put in this form: that apart from what you note, rewriting in the underscore, it generally resembles the underscore?—Resembles, yes.

10 The underscore in the second signature is written longer than the usual underscore. There again I would not say that there can be no instance where it is longer one way or the other. Here it is long both ways. In itself it is a very small point. The ciphers below that do not agree in appearance to the ciphers in the genuine signature. I pointed out yesterday the third of those marks resembles the numeral 5, whereas the conventional symbol is a small 's.'

Q. It all depends how that symbol is written—sometimes it may have the appearance of 5 sometimes it may have the appearance of 's'?—I say it may have an appearance. It is not like the numeral 5 in any of these standards.

20 Q. It is like a numeral 5 here because it is going with the rest of the underscore?—Were the substantial part of the writing has been made in a way closely to resemble the deceased's writing then little points were put in without that same extent of care. You will see a good example of it in that last line "23rd day of May"—after 'rd' there is a hyphen. There are many cases where you had "23rd"—not one of them has that.

(To Court:

30 I have not come across in the standards the word "until." I find the deceased wrote "till" and he spelt it "till").

Numerals generally have an initial tick. In "3" in "31" in line 34, that is not a tick. It is merely the starting point of the pen—the pressure of the pen. We can take the form of the tick made by the deceased. That is not in the form of a pressure of the pen. "31" in line 34 has a remote appearance of a tick. The "3" in "1943" in line 37 has no tick.

Q. A tick downwards?—In that case it will be an opposite feature.

Q. After all when you speak of a tick it is some initial stroke?—It is a mannerism.

40 Q. It is a mannerism generally speaking so produced in 3 in 1943?—I do not agree because Counsel points out it is downward and I say it is diametrically opposite. If it is downwards it is not a tick of the genuine writing.

Q. Look at 2 in 21 in line 21?—There is nothing of a tick there.

Q. Tick in the sense of a thickening at the beginning of the numeral?—No. This is a special type of 2 with a loop formation.

It is not a loop formation that gives generally the appearance of a tick? The loop formation does not result in the appearance of a tick.

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Q. Do you say that it was not a habit of the deceased to make frequent corrections when he wrote—rewrite, correct and cut?—
I say it was not.

(Shown pages 3, 4, 6 and 10 of P9) I have not examined this book before. It is difficult for me to say whether this book had been kept by the deceased.

(Shown R8).

Q. Take the 1st and 2nd pages, something is written, struck out and something written in red ink?—That is so. The figures are corrected; figures struck out and new figures written above them. That is one of the hallmarks of genuineness because there is nothing done there to conceal the original writing. 10

(Shown page R5c in R5 the word “February”):

Q. The “R” has been erased, rewritten or altered?—No eraser and no alteration.

Q. There is a difference in the appearance of the ‘b’ and ‘r’? No.

(Shown page 77 of P9): Will you take it that that whole page is in the handwriting of the deceased?—Appears to be. There is no correction at the bottom of that page in the words “next page.”

Q. Are there erasures or corrections on that page? The only one I can see is in the figures 65 on the second page marked 77, from 05 to 65. 20

Page 79 of this book appears to be in the handwriting of the deceased. There are alterations on that page. Against the entry March 30, the figures have been altered. There are three alterations on that page.

Page 85 of this book also appears to be in the handwriting of the deceased. There is one alteration on the right hand side of page 85 in the figure 8 just above the total and the corresponding figure in the total.

Page 89 of the same book again appears to be in the handwriting of the deceased. There is an erasure at the bottom. 30

Q. You said yesterday that in line 3 of the Will there was apparently a revision of thought?—I suggested that it was intended to write “I do hereby” and then said “I distribute.” I say it was not impossible for Mr. Ratnayake to change his thought at any time. It is a revision of thought of the copyist, or Mr. Ratnayake—that may be so.

In line 9 I say there is an alteration in Adliet. I suggest that the loop of the ‘l’ is an alteration.

Q. The person writing Adliet and in bringing the pen down there was probably a slight unusual movement?—No. 40

Adliet according to the evidence was his wife or whatever she was. It is not likely that he did not know how to spell her name. It is less likely that he did not know how to write the letter ‘l.’

The ‘l’ was originally written shorter and had been extended and in extending it the angle has also varied.

(Evidence in chief put to witness).

Q. What are the various other matters?—That is, the contents of the Will. I felt that a methodical man as Ratnayake, from the writings I have examined, would not make a reference to banks without enumerating the banks.

Q. Did you give that reason to Mr. Felix Wijesinghe or did he give it to you?—Neither did.

10 Q. Felix Wijesinghe also says that his uncle just referred to banks without particularising them and his suspicion was roused for those reasons?—It is an omission of such a striking character that it must strike anyone.

Q. Did you found your opinion again on the absence of reference to banks—is that one of the reasons?—No.

Q. Then why do you refer to it at all?—These facts, apart from the actual facts of the writing, confirm the general findings to which I came. My opinion is perfectly independent. This is a collateral line of argument.

As examiner of questioned documents it is part of my duty to examine language also; the precision of the language as compared with the precision of the writer whose language it is imputed to be.

20 Q. Apart from that there is nothing inherently improbable for a man to say “ I give all my money in the banks to so and so ? ”—That is not the reason. The reason is, if the copyist had meant bank A. to bank B. and if it is unknown to him that there is a bank C. he would have committed a serious mistake.

30 Q. What are the other matters apart from omission to particularise the bank?—The next para. “ foreign countries ” I do not know if the word foreign would have been used, but assuming that it had been used at any time by Mr. Ratnayake then in a case of this kind he would indicate where these countries were and what those interests were. Supposing a man owns shares in a company, the body of the Will would state “ I leave to my wife all my shares in such and such a rubber company, such and such a tea company ”—that is my experience.

We are not dealing with immovable property in a localised area, we are dealing with foreign countries which means the rest of the world.

Q. What do you say the testator should have done?—He should have at least said what shares in companies.

Q. Then do you say “ other interests in foreign countries ” does not take up shares?—It does.

40 Q. You have an omnibus term which accepts everything?—Copyists find refuge in that omnibus clause.

Q. You say that is unlike the deceased?—Yes. The income tax book shows specifically the terms enumerated.

Q. Those are copies of actual terms—no assessor is going to be satisfied with an omnibus term?—Anyway he should have given some helpful indication.

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- Q. You don't derive any assistance from the books to form that opinion?—I find that in the copy of the returns he has mentioned his shares.
- Q. He had to do it, he had no option in the matter?—That is so. He did not write the will with the same precision as the income tax return. He should have at least said "my shares in Companies . . ." and not "my foreign interests."
- Q. Do you suggest that a Last Will must have the particulars of an income tax return?—No.
- Q. There is then no analogy between the two?—None. 10
- Q. Therefore when you say this, this is another matter—this is your own conception of what a Last Will should contain?—Founded upon general observation of wills.
- Q. Over a period of 35 years?—That is so.
- Q. Any other matter?—Oh yes. He leaves out the names of his sister's children except this: "Sister's son Felix" and then in two instances where the name occurs he puts within brackets the word "Sonny" which does not in any way assist in the identification of Felix, because if there were several Felixes, one of them Sonny and the other Bunny, then that would have 20 been a helpful indication.
- Q. Did you know that Felix Wijesinghe is known as Sonny?—I did not know.
- Q. If he were known as Sonny it would be an indication?—No. In this case there was no necessity for that double designation. It is that particularisation, the absence of which I complain. If he is so called there, the deceased would certainly mention the other names.

To Court:

- Q. Do you agree that you have based your opinion on extraneous 30 matters?—It is untrue because I have given my opinion on a particular examination of the handwriting, having arrived at a definite opinion on the handwriting and on the nature of the entry on page 47. I find that my conclusion is supported by these other words in the Will—the language, the mis-spelling, the indefinite reference to banks and so on.
- Q. Look at the penultimate clause "of this Will" in line 45, there is an alteration in the word "this?" Yes.
- Q. Have you referred to that before?—No.
- Q. You notice two dots over the 'i'?—Yes. 40
- Q. What is the alteration exactly there?—I find it difficult to say.
- Q. But would a copyist then put two dots over the 'i'?—There was originally apparently no 'i' there, the 'i' is put in there and then the 'i' is dotted. My submission is that a copyist could do so and this copyist probably did so because he had wrongly positioned the dot; he had first written the dot on the left and then finding that that dot was in a wrong position he put the other dot.

Q. Do you say under the letters ' ah ' the figure 61 are visible?—Not visible in ink.

Q. Visible at all?—Visible by inference.

(Witness examines the writing through the microscope).

It is quite easy to see the manner in which the original writing was erased. The manner in which that erasure was made shows the track of the writing which was so obliterated, and if that track is followed along with the still visible portion of the top of the original 6, there is that ink mark still.

10 Q. Do you say 6 and 1 are visible?—I do not say they are visible now. A fractional part of the top of the 6 is visible. From ordinary inference I made out that the rest of it was 6.

I said that I drew the attention of the Secretary of the Court to the fact that pages 61 and 62 were missing. I went with the Proctor for the Respondent. I spoke to the Secretary. In my experience I know that people revoke Last Wills. I do not know whether they tear them.

20 Q. Is it your suggestion that a genuine will appeared at pages 61 and 62 and some person has torn that page and rewritten another Will on pages on which the Will is there now?—My suggestion is that any will on pages 61 and 62 was also a fictitious Will—a fabricated Will, because if it were genuine, then the reference to that Will on page 47 must be in the deceased's handwriting. That is one reason.

Q. The reference to page 47 is to the Will at page 223? Now.—Originally there was nothing to infer that there was a Will referred to. It was simply " see page 61."

To Court:

It is not my position that there was a genuine Will at pages 61 and 62. Counsel put it into my mouth whether the Will on pages 61 and 62 could have been a genuine Will. He assumes there was a Will. It might have been a 30 microscope that was written on those pages).

Q. What is the inference you draw from the alteration on page 47?—That is a very suggestive alteration of deceit and fraud because the figures there were removed and words added which do not make proper sense; because 223 must necessarily come ahead, it cannot come behind.

To Court:

" See page 61 " was written first. It was not the handwriting of the deceased.)

40 Q. You say the entry on page 47 is itself not the deceased's handwriting?—I say so. The whole of that line.

Q. And for that reason you say if there was a Last Will on pages 61 and 62 that itself must have been a forgery?—Yes.

Q. But you do not know what there was?—No.

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RE-EXAMINATION.

Cross-examination was directed to certain ways the impugned document resembled the deceased's.

In certain respects I said there were certain resemblances—in matters of form, general form; but in the more important matters of detail there was an absolute lack of identity between the Will writing and deceased's writing.

I was asked with regard to the habitualness and unhabitualness of the writing. I was asked whether there were illustrations of unhabitual characteristics. I pointed out to the extension of 'l' in Adliet. 10

I pointed out to the 'l' in all. I also mentioned about the retouchings. In my evidence in chief I spoke about the full stop after "No" for number. That may be ever so unobtrusive a feature but it is highly significant with regard to habitual characteristics. I referred to the dash in "Rs"; to the crossing of the "Rs," to the length of the underscore, to the resemblance of the cipher mark in the second signature, to the overwriting of the three vertical lines of the cipher, to the level of the underscore of the first signature, those are matters which I spoke to in my evidence in chief.

Q. Do you say they are all matters which show failure to conform to the pattern of the deceased's accustomed style?—The placing of marks and symbols are of significance because they would not be marks upon which the copyist would ordinarily bestow much attention. 20

I spoke about the "23rd" and drew attention to that in cross-examination. With regard to alignment I pointed out in cross-examination that there was general agreement in interspacing but on a close analysis there would emerge differences in this impugned document.

I pointed out that the capital "A" was made in two strokes whereas in the genuine writing it consisted of three strokes—About the "Y" I was questioned yesterday. I was restricted to two points of agreement between the "Y" in the disputed and the genuine writing. 30

I stated the two points of agreement in the form. There are points of differences. That is, the second part of the cup of "Y" is higher than the first part in the genuine writing, whereas they are equal in the Will writing.

To Court:

Q. Is there any other difference in the "Y"?—I said, however, imperceptible it may be there was a movement which shows that the pendent stroke went over the final part of that cup in the genuine writing but not in the Will writing. I drew attention to the fact of a similar feature in the capital "G." Similar form of the letter and an absence of it in the impugned writing. 40 I referred to the "D" yesterday. As to the capital "I", I said in the Will writing there was a foot whereas in the genuine writing a circle at the bottom. I referred to the alteration in the word Dehiowita. There was no necessity to interfere with that letter except for the purpose of modifying it to suit some model before the copyist.

I was referred yesterday to a passage in Osborne. I do not base my opinion on any single factor. I say that the score of reasons or more that I have given are not all of equal importance but there are certain features there which I invite the Court's attention which are incapable of any rational explanation—that is, if it was genuine—*viz.* the alteration of the curve of the 'r' with an angle, by a new base of writing in "Dehiowita," the rewriting of even that little cipher mark, these are things which cannot be got over.

(Counsel reads from Osborne at page 230): I agree with the passage there read out to me.

10 I was shown signatures on two blank cheques yesterday. I stated that it was highly improbable that they were genuine.

(Shown P4a and P4b): Briefly, most of the reasons I have suggested there determining the second signature appended to the Will as being evidence of its forgery, would apply to these two signatures as well. But here again in view of the deceased's methodicalness and of the fact that he had between Rs. 50,000/- and a lakh in the banks according to the declaration of the value of the estate—and he is said to have died of pernicious anemia, he did not die a raving lunatic—I say it would be a great strain on one's credulity to believe that a man of his disposition would leave two blank cheques fluttering
20 about with nearly a lakh of rupees in the banks.

I gave a report containing my detail reasons to the lawyers who asked for my opinion. That report is dated 5th December, 1944. The reasons that I gave in my cross-examination are contained in that report. That report has been with Counsel here in Court.

I was asked about the 6 that was erased in page 47. That 6 is not visible. I said that track of erasure in that area indicates, with the still visible ink mark at the top, in my opinion that it was originally the figure 6 and the rewriting over the 1 by the stem of the H, which can be clearly seen, is the other 1. Therefore I say that was 61.

30 I can demonstrate to Court the track of the erasure. Pending that I draw the Court's attention to the fact that the '1' is still there because the stem of the H is shown quite separately. At the top of the stroke which is intended to be the stem of the H, the Court will see two points, showing that it could not have been a single stroke.

(At this stage Mr. Muttukrishna fits up his microscope and places the two letters "a" and "h" of the word "ahead" on page 47 under it for my inspection. With regard to the first letter the letter "a" appears under the microscope over a clear erasure. At a slight interval above the "a" I can see the remains of a pen mark which is more than a point directed downwards. Between that mark and the existing "a" the erasure appears. In
40 the initial stem of "H" I see a slight projection to the right, below the top of the existing "H").

Sgd. S. J. C. SCHOKMAN,
Additional District Judge.
7-3-45.

(Mr. Wickramanayake closes his case reading in evidence R1 to R19).

Sgd. S. J. C. SCHOKMAN,
Additional District Judge.
7-3-45.

50 (Interval),

ADDRESSES TO COURT

Mr. Wickramanayake addresses Court.

He cites

10 C.L.W. page 10 at 11;

6 C.W.R. page 362;

1 Lorensz at page 116.

For want of time further hearing adjourned for tomorrow.

Sgd. S. J. C. SCHOKMAN,
Additional District Judge. 10
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8-3-45.

Same appearances.

Mr. Wickramanayake continues his address.

He cites 2 N.L.R. p. 199. In the present case, however, Section 68 of the Evidence Ordinance has no application, as it is not a case of putting the Will in evidence.

Mr. Obeyesekera replies.

The case in 1 Lorensz 116, which was decided in 1856, is out of date.
See 33 N.L.R. page 8 at 10. 20

There is no distinction between a notarially attested Will and a five witnesses Will.

See also Section 134 of the Evidence Ordinance.

20 N.L.R. page 481 at 492.

(Mr. Wickramanayake brings to my notice that two documents produced by the respondents have been marked R11. In view of this, the copy of the Last Will referred to by witness Wijesinghe at page 103 is marked R20, and I make the correction in the record on that page accordingly. R20 was also read in evidence by Mr. Wickramayanake).

It is now 4 p.m. Further hearing on the 19th instant. 30

Signed S. J. C. SCHOKMAN,
Additional District Judge.
8-3-45.

19th March, 1945.

Same appearance.

Mr. Obeyesekera continues his address.

On the evidence of the Handwriting Expert, Mr. Obeyesekera cites
10 N.L.R. 355.

Osborne page 293.

Judgment reserved.

Signed S. J. C. SCHOKMAN,
Additional District Judge. 40
19-3-45,

JUDGMENT OF THE DISTRICT COURT
JUDGMENT

This was an inquiry into an application for Probate of a Last Will, dated 23-5-43 alleged to have been executed by one James Albert Ratnayake, whom I shall refer to hereafter as the deceased. The original petitioners were: (1) H. Dona Adliet Ratnayake, of Bank Hill Estate, Talangama and

(2) Felix Wijesinghe of Dehiowita who are named as executors in the Will propounded. The affidavit filed with the petition has been sworn only
10 by the 1st Petitioner in which she says that she is the wife of the deceased and refers to the execution of the Last Will and of its being in her custody. The schedule to the affidavit contains a statement of the property left by the deceased and their values making a total of Rs. 138,114/24.

The 1st and 2nd Respondents are the minor children of the 1st Petitioner and the deceased; the 3rd Respondent who is the brother of the 1st Petitioner has been appointed their guardian-ad-litem. The 4th, 5th and 6th Respondents and the 2nd Petitioner are the children of a sister of the deceased. On 12-8-43, the 2nd Petitioner moved to revoke the proxy granted
20 by him along with 1st Petitioner to Mr. P. C. Seneviratne. This was allowed on 28-8-43 and the 2nd Petitioner thereafter joined the 4th, 5th and 6th Respondents in opposing the application for Probate. The case went into inquiry on three issues which raised the question as to whether the Will propounded was one executed by the deceased and the 2nd Petitioner and the 4th, 5th and 6th Respondents challenged the Will as a forgery.

In considering the evidence in this case I have borne in mind the following principles laid down by the Supreme Court:—

(a) “ It lies upon the propounders to prove:

- (1) the fact of execution;
- (2) the mental competency of the testator;
- 30 (3) his knowledge and approval of the contents of the Will.
If the circumstances are such that a suspicion arises affecting one of these matters, it is for the propounders to remove it.” (See 22 N.L.R. page 4 at page 6).

(b) “ The Court is not necessarily bound to give a decision upon the truth or falsity of the conflicting evidence adduced before it upon the question of fraud. What it has to ask itself is whether in all the circumstances of the case it will give credit to the subscribing witnesses, or the other witnesses adduced to prove the execution.” (See
40 20 N.L.R. page 481 at page 494).

The Will propounded has been written at page 223 of a book of accounts kept by the deceased marked P1. The accounts in it go up to 14-5-43 on page 47. At the end of the accounts on that page there appear the following words:—

“ See page ahead 223 for my Will,”

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There appears an erasure in the area of the letters "ah" of the word "ahead." The objectors suggest that the figures 61 and first been written there, the 6 was subsequently erased and the word "ahead" written. Page 61 has been torn out of the book. If the Will was one written out by the deceased it is of course quite possible that he originally wrote the whole or part of it on page 61, then tore it off and made a fresh draft on page 223. The objectors, however, challenge the writing on page 47 referred to above as not being that of the deceased but of the forger. I shall consider the writing on page 47 also when I deal later with the handwriting of the Will.

The Will is one which has been attested by five witnesses, four of whom were called at the inquiry. The 1st Petitioner herself gave evidence relating to the execution of the Will. The entire Will purports to be in the handwriting of the deceased. There is no evidence of when it was written. If the deceased wrote it he must have done so after 14-5-43 as the entry on page 47 of P1 appears after that date in the accounts. According to the evidence of the 1st Petitioner on the day that the Will was signed the deceased sent for her brother Martin who was the watcher on Bank Hill Estate, Talangama, and asked him to fetch one James de Alwis who had previously been employed as a watcher on the same estate. When de Alwis arrived the deceased told him to fetch Loku Dissanayake (the witness J. D. A. Dissanayake) and two others without mentioning their names as he wanted them for a certain purpose. James de Alwis then went off and returned later with Loku Dissanayake and two others. As they arrived she says that she got up from her seat by the deceased and went into an adjoining room. The deceased himself followed her into the same room, got her to open an almirah in that room and removed the book P1 from it. He then took it to where the witnesses were, told them that he was going to sign his Last Will and asked the four people who had arrived and Martin who was in the house at that time to sign as witnesses to it. Just after they had all signed the deceased ordered tea to be brought for the witnesses but they said that they did not want tea and left. Thereafter the deceased handed the book P1 to the 1st Petitioner and asked her to keep it. She put it along with the deeds in the almirah. She says that although she knew that the deceased had executed his Last Will that day she was not aware of its contents until after his death. The witnesses who have been called *viz.* Martin, James de Alwis, J. D. A. Dissanayake (Loku Dissanayake), and J. R. de Alwis Dissanayake (also referred to as Podi Dissanayake) support the story of the Petitioner of their having gone to the house of the deceased on Bank Hill Estate in the afternoon of 23-5-43 and say that they saw the deceased sign the Will propounded which he told them was his Last Will. The 5th witness to the Will is one W. P. Perera who has not given evidence. According to Loku Dissanayake at whose request it is stated Perera accompanied them to the deceased's house on 23-5-43, Perera is the Manager of a Co-operative Stores at Talangama and has difficulty in attending Court to give evidence owing to his work.

The Will itself cannot be said to be an unreasonable one. Although the 1st Petitioner in her affidavit and at a certain stage of her evidence tried to make out that she was the wife of the deceased, she was not married to him. But though she was the sister of the watcher on the estate and of a lower social status than the deceased it is clear from the evidence that the deceased treated her as his wife and took her with him when he went to church and

attended public functions. There is also evidence that he was attached to his two children by her and was interested in their education and welfare. The Will makes a legacy of Rs. 1,500/- to the deceased's motor car driver, Girigoris. It is established by the evidence that besides being his car driver Girigoris performed other services for the deceased like getting coconuts picked from his coconut lands and being entrusted with large sums of money in connection with the deceased's business and was employed under him for a considerable time. This legacy is therefore one which would naturally find a place in a Last Will of the deceased. The Last Will also contains devises to the
 10 deceased's nephew the 2nd Petitioner and his sisters. No suspicion therefore can attach to the Will from the dispositions contained in it. Counsel for the objectors, however, urged that that alone is insufficient to show that the Will is valid for a person who forges a Will would attempt to make the Will a reasonable one so as to enable the mistress and illegitimate children of the testator to obtain a substantial portion of his estate while they would get nothing if he died intestate. The 2nd Petitioner himself who is now challenging the Will has been left the business which the deceased was carrying on at Dehiowita, the deceased's house property at Yatiyantota subject to a
 20 monthly payment of Rs. 10/- to the church, a share of certain premises at Magamma and of two rooms at Dehiowita and a 1/16th share of the cash in the banks, the total amount of which is Rs. 69,911/87 according to the 1st Petitioner's affidavit and a 1/4th share of the deceased's 'other interests in Ceylon and foreign countries.' The 2nd Petitioner has given evidence and the objectors have also called Girigoris Perera, the motor car driver in support of their case besides Mr. L. Muthukrishna, the handwriting expert.

The deceased appears to have been a methodical business man who was running an estate supply business at Dehiowita. He lived for part of the time each month at Dehiowita and spent the rest of the month on his estate called Bank Hill Estate at Talangama. He had been twice married
 30 and his second wife died about 1927. Not long after he began to keep the 1st Petitioner as his mistress. Herath the 3rd Respondent who is a brother of the 1st Petitioner was employed under the deceased at Dehiowita. The 2nd Petitioner says that he (2nd Petitioner) was employed by the deceased at Dehiowita from 1934 right up to his death and was quite familiar with the deceased's business there. He says that he never visited Bank Hill Estate at Talangama during the life time of the deceased after he had taken up employment under him and that he only went there on receiving information of his death on 3-6-43. It is common ground that the deceased came to
 40 Talangama from Dehiowita on 10-5-43 on one of his monthly visits but never returned to Dehiowita. At the time of his death he is said to have been about 65 years old and for some time previously had been suffering from anaemia brought about by bleeding piles. According to the 2nd Petitioner the deceased was ill though not very ill when he left for Talangama on 10-5-43 and the news of his death which he received in a telegram from Girigoris the driver came as a surprise to him. According to the 1st Petitioner the deceased did not go out of the estate at Talangama at all after he arrived from Dehiowita on 10-5-43 and he was treated by a priest called Metananda during that period. The 1st Petitioner has referred to a conversation between
 50 that physician and the deceased during his last illness about making provision for her and her children, but as the priest has not been called as a witness there is no evidence of what that conversation was. The deceased's corpse

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was removed from Talangama for burial at St. Barnabas' churchyard in Avissawella to which church a legacy of Rs. 1,000/- has been left by the Will. The 2nd Petitioner says that after the funeral the 1st Petitioner came up to him and appealed to him to support her and her children as she had no one to depend on except himself. This is denied by the 1st Petitioner.

According to the 2nd Petitioner the circumstances under which he came to sign the proxy in favour of Mr. Seneviratne, Proctor to enable him to apply for Probate of the Will are as follows :—A few days after the deceased's funeral he sent the car driver Girigoris and Herath from Dehiowita to Talangama with a message to the 1st Petitioner at Talangama to hand over the deeds of the deceased's properties for the purpose of applying for letters of administration. The 1st Petitioner sent a message back that she could not give him the deeds but that he could examine them if he came with a Proctor. About a week later he sent Mr. Burhan, a Proctor, who lives at Dehiowita to the 1st Petitioner but he did not succeed in getting the deeds. The 1st Petitioner in her evidence admits receiving the messages for the deeds from the 2nd Petitioner and also having sent the reply that he should come with a Proctor, but she says that at the time the Proctor had arrived she had already handed over the papers to Mr. Seneviratne, her Proctor. Thereafter the 2nd Petitioner went himself to Bank Hill Estate, Talangama, in a car driven by Girigoris accompanied by Mr. Burhan and Herath. From there they went along with the 1st Petitioner to Proctor Seneviratne's office. The 2nd Petitioner then says that Mr. Seneviratne then showed him the Last Will and at the Proctor's request he signed a proxy to enable him to file papers in Court. When he signed the proxy he noticed that the 1st Petitioner's signature was already there. He was given a typed copy of the Will which has been marked R20 and then left the office. According to the 1st Petitioner, after the 2nd Petitioner had examined the Will in Mr. Seneviratne's office he suggested destroying the document and dividing up the estate admitting that the Will was in his uncle's handwriting. She then said that she could not agree to it unless the Proctors approved of it and thereupon the 2nd Petitioner signed the proxy. If the evidence of the 1st Petitioner is true, the conduct of the 2nd Petitioner appears exceedingly strange as he was to get substantial benefits under the Will. The 2nd Petitioner states that thereafter when he scrutinised the Will in greater detail and had given further thought to it doubts began to arise in his mind as the Will was not in keeping with his uncle's ordinary procedure and was lacking in attention to details which his uncle was used to; for example he says that the names of the banks in which the deceased had cash balances are not given and he has also not mentioned the sterling companies in which he had shares although he was aware of them, but has included them in the phrase "interests in foreign countries." He was further struck by the omission to pay attention to commas, apostrophes and semi-colons about which the deceased was very particular. He therefore asked Girigoris whether the deceased had discussed the execution of the Last Will with him, but Girigoris replied that he knew nothing about it. He then sent a message to Martin to come and see him as he was the only one of the five witnesses to the Will whom he knew. As he found that Martin had left Talangama for Matara he went to the latter town with his brother-in-law, J. H. Amerasekera and on questioning Martin about the Last Will he replied that he had signed a document a few days after the deceased's death purporting to have been executed by the deceased. After that talk with Martin he

revoked the proxy granted to Mr. Seneviratne on his return to Colombo. The 2nd Petitioner denies the suggestion put to him that he and Amerasekera had offered to give Martin Rs. 2,500/- if he falsely testified that the Will was executed after the death of the deceased.

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It would be convenient if I, at this stage, dealt with Martin's evidence and his version of what transpired at the 2nd Petitioner's visit to him at Matara. With regard to the actual execution of the Will Martin in his evidence supports the story as given by the 1st Petitioner. He says in his evidence that he left for Matara on 15-8-43 and that the 2nd Petitioner and Amerasekera visited him there on 23-8-43. He fixes that date by means of a telegram which he says he sent to his sister the 1st Petitioner asking her to come to his house at Matara immediately because the 2nd Petitioner and Amerasekera had come there. The reason for his sending that telegram was because they wanted him to give false evidence that the Will was written after the death of the deceased promising to give him Rs. 2,000/- if he did so. Although Martin says that the telegram he sent was with the Proctor it was not produced in evidence. When Martin returned to Colombo from Matara he says he swore an affidavit on the suggestion of the Proctor for the 1st Petitioner on his informing him of the request made to him by Amerasekera and the 2nd Petitioner. That affidavit has been produced and is marked P5. In it he says that he left the estate at the beginning of July, 1943 and was living in his village in Matara, though in his evidence he was positive that he left on 15-8-43. This affidavit has not been sworn to till 4-10-43. If Martin had got so alarmed at a request made to him to give false evidence about the execution of the Will and sent the telegram to his sister to come immediately, there is no explanation as to why he should have waited till October, 1943 to inform the 1st Petitioner's Proctor of the attempt made to suborn him and to swear the affidavit. As the motion of the 2nd Petitioner to revoke the proxy granted to Mr. Seneviratne was filed on 12-8-43 it seems clear that Martin in his evidence has attempted to fix his visit to him at Matara after that date: hence the discrepancy between his evidence and the affidavit as to the date that he left for Matara and the omission to produce the telegram assuming that he did send one to the 1st Petitioner. A certified copy of a case in the Magistrate's Court of Colombo, No. 4615 has been put in evidence marked R7 in which an accused was charged with theft of coconuts from Bank Hill Estate, Talangama, during the life time of the deceased when Martin was the watcher. Martin gave evidence in that case and in the course of it denied that the 1st Petitioner who was present in Court was related to him. The accused in that case was acquitted and it was suggested to Martin in cross-examination that the accused's defence was that he was falsely charged in that case because he was on terms of intimacy with the 1st Petitioner and was found visiting her. Martin is the 1st Petitioner's brother and it was urged by Counsel for the 1st Petitioner in explanation of this false evidence given by Martin in that case that in view of the allegation made by the accused of his intimacy with the 1st Petitioner Martin whose evidence was to the effect that he had seen the theft of the nuts being committed may have, with his village mind, thought that the best thing to do was to deny that he was the 1st Petitioner's brother. I do not think I can accede to such a proposition for on the question of truthfulness the standard cannot vary whether a person has a village mind or a more educated mind. His evidence in that case shows that he is a man quite willing to commit perjury when it suits his purpose. In his evidence

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in this case he also gave a most unnatural story of his visit along with the 1st Petitioner and the other witnesses to the Will to Hulftsdorf to swear the affidavit in support of the application for Probate before Mr. Weerakoon, J.P., and is contradicted in material particulars by Loku Dissanayake and by Mr. Weerakoon himself. His demeanour was most unsatisfactory and I am not prepared to accept his evidence either with regard to the alleged offer by the 2nd Petitioner to him at Matara or his evidence regarding the execution of the Last Will by the deceased. I am satisfied that Felix Wijesinghe the 2nd Petitioner is a truthful witness and I am prepared to accept his evidence of how he came to sign the proxy in favour of Mr. Seneviratne and of the information which he says that Martin gave him regarding this Will. 10

The rest of the evidence regarding the execution of the Will consists of that of the 1st Petitioner, James de Alwis, Loku Dissanayake and Podi Dissanayake. In the Will the 1st Petitioner is described as the wife of the deceased. She has called herself his wife in her affidavit and attempted in her evidence to establish a marriage according to customary rites which was not proceeded with when Counsel for the objectors took the objection that there was no issue on the point. In cross-examination she admitted that she was not married to the deceased. Her evidence regarding the deceased putting a chain round her neck and giving a wedding breakfast before she started to live with him is not supported by any other witness and is denied by Girigoris. She also denied that she was ever known by the name of Alice. She is contradicted on that point by Loku Dissanayake and also by the entries in Case No. 4615 of the Magistrate's Court of Colombo marked R1 where she is referred to by that name. In view of her false evidence on these points and also of the great interest she has in getting the Will upheld I am not prepared to accept her evidence as to its execution unless she is strongly corroborated by reliable evidence. For that corroboration one has to look to the evidence of the four witnesses to the Will who have been called. As I have already stated, I am not prepared to believe Martin. 20 30

The story related by these witnesses to the Will does not appear to be a probable one considering the position in life of the deceased and his business habits. The 1st Petitioner herself admits that the deceased engaged the services of lawyers in connection with his business. According to the 2nd Petitioner his lawyers were Messrs. F. J. & G. de Saram in Colombo and Messrs. Jacolyn and Seneviratne in Avissawella. The 1st Petitioner also says that the deceased was working till three or four days before his death. If her evidence is true he must have thought out the terms of the Will and written them down some time before 23-5-43 and there was no reason for any urgency in executing the Will on that date. If the deceased desired to make a Will after he came to Bank Hill Estate, Talangama, on 10-5-43 he had ample time to get down one of his lawyers in his own car to the estate if he was not able to go to the lawyer's office himself. If he had decided to execute a Will before five witnesses he also had ample time to get five reliable witnesses together to attest it either from Talangama itself or elsewhere. As the document produced and the oral evidence in the case disclose that the deceased was a methodical and careful business man and as his estate was fairly large it seems natural to expect that he would have desired five reliable witnesses to attest his signature to his Will. Instead of that according to the 1st Petitioner's case Martin is said to have been sent to fetch James de Alwis 40 50

who had some years before been a part time watcher on the estate while living in his own house and looking after his own lands and was not the sort of person who could be considered as a trusted servant or friend of the deceased. According to Girigoris he had not seen this witness come to the estate at all after he (James de Alwis) had left the deceased's employment. James de Alwis is then said to have been asked by the deceased to bring Loku Dissanayake and two other persons chosen by the latter for an undisclosed purpose. Though at first Loku Dissanayake posed as being a man worth Rs. 20,000/- his worth was considerably whittled down in cross-examination. He at

10 first stated that he did not claim relationship with James de Alwis who was his father's cousin's son. Later when names were supplied to him in cross-examination he had to admit that James de Alwis was his first cousin. The other witness Podi Dissanayake is a first cousin of Loku Dissanayake. Podi Dissanayake said that his name was J. R. de A. Dissanayake and that he was never known as Dissanayake Galagedera Alwis. He admitted, however, that he was prosecuted recently under the latter name in the Magistrate's Court and gave a very unsatisfactory explanation as to how it happened. He claimed to have been cultivating a field of the deceased at Talangama and in that connection said he used to go to his bungalow, but in cross-examina-

20 tion he admitted that it was his father who had taken the field to cultivate for a cultivator's share from the deceased and altered the reason for his visits to the deceased as being for the purpose of signing documents on behalf of his father when the latter bought coconuts from the estate and had to give an advance as well as a writing to pay the balance. According to Girigoris it was one William who was working the deceased's fields at Talangama for an ande share and he was not aware of either Loku Dissanayake or Podi Dissanayake having had anything to do with the deceased. The 5th witness to the Will W. P. Perera who apparently is not related to any of the other witnesses has not been called. The reason given by Loku Dissanayake for

30 Perera not wanting to give evidence to which I have already referred is unconvincing. If the 1st Petitioner wished to place his evidence before the Court she had only to take out summons on him when he would have had to appear. One is therefore justified in drawing the inference that he has changed his mind about supporting the due execution of this Will after he had signed the affidavit which he swore along with the other four witnesses for the purpose of being filed with the petition for Probate. The witnesses who have given evidence have limited the period of time they were in the deceased's house on 23-5-43 to the bare minimum necessary for the signing of the Will by the deceased and themselves. Although they did not have to walk very far to

40 get to the deceased's bungalow on the estate, it seems hardly likely that after sending for them to sign as witnesses he would have let them go without giving them some tea or other refreshment or even without any further conversation. There was no reason why all the witnesses should want to hurry away just after they signed the Will and if as they say they were previously known to him or had worked for him it appears to have been a more natural thing for some of them at least to have remained longer in the house. If on the other hand these witnesses are giving evidence regarding an incident that did not take place in the deceased's house one can understand their anxiety to limit their evidence to the bare signing of the document so as not to be

50 called upon to speak to other incidents and conversation which may have taken place on the same visit.

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According to the evidence of Girigoris the Will could not have been executed on 23-5-43 which was a Sunday in the manner stated by these witnesses with his knowledge for he was on the estate the whole of that day and if these witnesses had come that afternoon to the bungalow as stated by them he would have known about it. The 1st Petitioner stated that Girigoris had gone to Hendala that day to get coconuts picked on the deceased's lands there, but Girigoris says that the deceased did not allow his employees to work on Sundays and he could therefore not have gone to Hendala to get nuts picked on 23-5-43. The 1st Petitioner could not explain why the deceased should have waited for a day when Girigoris went to get nuts picked to sign his Will though she admitted that he was the one servant he trusted. He has been left a legacy of Rs. 1,500/- under the Will and stand to lose it if the Will is not proved. Counsel for the 1st Petitioner urged that Girigoris' position was "Heads I win tails you lose," as he must have been promised some consideration by the objectors to balance the loss of the legacy under the Will. There is, however, nothing to show that Girigoris is giving evidence as the result of any such promise. I was favourably impressed by his evidence and I am satisfied that he is speaking the truth. If the deceased had decided to sign his Will in his bungalow before five witnesses it seems much more probable that Girigoris is the person whom he would have sent either with a note or message to bring witnesses nominated by him (deceased). Grave suspicions therefore arise on the evidence as to whether the Will propounded was the act of the deceased. The evidence of the 1st Petitioner and her witnesses have not removed those suspicions. On the contrary their evidence is not such evidence as I feel I can act on with any confidence.

Learned Counsel for the objectors raised an argument of law that all five witnesses to the Will should be called unless there was satisfactory evidence that the witnesses not called were not available. He relied on a case reported in 1 Lorensz page 116. Counsel for the 1st Petitioner relied on the Judgment of the Privy Council reported in 33 N.L.R. page 8 at page 11. After considering these authorities I agree with learned Counsel for the 1st Petitioner that it is not necessary in law to call all the witnesses to a Will even if they are available to prove it. But for the reasons which I have already given an adverse inference can justifiably be drawn in this case from the fact that the 5th witness Perera has not been called.

There remains for consideration the evidence regarding the handwriting in the Will. The deceased had two signatures, one which starts with a monogram composed of his initials J. A. and the capital R of Ratnayake. This was the signature he used on his cheques (*vide* cheques marked R14 to R17 the signature of which have been enlarged in the photograph marked R13). His other signature was merely J. A. Ratnayake which he used on other documents signed by him like passbooks, rent receipts, etc. In the Will both signatures appear. It strikes one as being rather strange if the deceased signed this Will that he should have decided to sign with both his signatures. The objectors have called Mr. L. Muthukrishna, an examiner of questioned documents who has compared the signatures to the Will with the undisputed signatures of the deceased and also compared the writing in the body of the Will with other documents written by the deceased marked R2 to R5 and R9. His opinion is that the writing in the Will is not in the handwriting of the deceased and that the signatures on the Will are also not

those of the deceased. He has referred to various points of dissimilarity between the disputed and undisputed signatures and also drawn attention to various alterations and retouchings in the Will writing which are not likely to have occurred if the deceased wrote out the Will. He has further referred to the presence or absence of stops, dashes, etc. which differentiate the Will writing from the deceased's admitted writing which he says indicate an absence of the mannerisms to which the deceased was used and to indicate that the forger has unconsciously introduced his own mannerisms. In a case like this a Court would not hold that a document propounded as a Will is a forgery merely on the opinion of an expert, but would only accept his evidence as slight corroboration of conclusions come to independently on the other evidence if it is of opinion that there is any substance in the difference in the writing referred to by the expert. A photographic enlargement of the writing in the Will has been produced marked R11 and Mr. Muthukrishna has also in giving evidence furnished the Court with sketches of various letters or combinations of letters referred to by him indicating the points of difference between the disputed and admitted writings. It has therefore been possible for me to follow the various points made by him in his evidence regarding the difference in the formation of the letters, in pen movements and the alterations and retouchings in the writing in the body of the Will. A consideration of the various points made in his evidence does incline one to have serious doubts that the deceased wrote out and signed the Will propounded. His genuine writing is not of the kind which it is difficult to copy. The 2nd petitioner at the request of his Counsel wrote out two signatures of the deceased which appear on the last page of the pass-book marked R5. Pictorially they resemble the deceased's signature on documents other than cheques but comparing them with the genuine signatures of the deceased in the light of various points in the latter's signature referred to by Mr. Muttukrishna differences can be found. Though therefore there is a general resemblance between the writing in the Will and the signatures attached to it and the undisputed writing of the deceased a close examination with the assistance of Mr. Muttukrishna's evidence discloses a large number of substantial differences from the undisputed writing and signatures.

Mr. Muttukrishna is also of the opinion that the words on page 47 on P1 " see page ahead 223 for my Will " have not been written by the deceased. This matter is not of much importance as far as the handwriting is concerned, but if the deceased had written out his Will on one of the later pages of the book P1 it strikes one as strange that he should have made an entry in this manner on page 47. In the first place it is something out of the ordinary for a person to decide to write out his Will in an account book of this nature, but assuming that a person did so one would normally have expected him to put some kind of a mark at the page of the book where the Will appears and so informed the person to whose custody he was entrusting the book. But even if the deceased in this case for some reason did not decide to do so but decided to invite attention to the page where the Will appeared on page 47 where his accounts ended one would have expected him to write " See page 223 " or " See page 223 for my Will." If he had previously written out the Will on page 61 or on any other page and thereafter wrote out a fresh Will on page 223 he could easily have scored off the previous number on page 47 and written page 223 in its place. There appears to have been no reason for him to have introduced the word " ahead " into this entry

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at all. As I have already stated there is an erasure in the area of the letters " ah " of this word. According to Mr. Muttukrishna what it had been written there before was " 61," the " 6 " being erased and the " 1 " being converted into the letter " h." This is possible, but I am not in a position to say that it is so definitely from my own observations.

In the result I hold that the 1st Petitioner has failed to satisfy me that the Will propounded was executed by the deceased. I answer the three issues framed in the case as follows:—

- (1) No.
- (2) Does not arise in view of the answer to issue No. 1. 10
- (3) No.

I accordingly refuse the application of the 1st Petitioner for Probate and discharge the Order Nisi entered the case.

I also order the 1st Petitioner to pay the objector's costs of this inquiry.

I regret the delay that has occurred in the delivery of Judgment in this case which was unavoidable. Soon after the Judgment had been reserved I was transferred to another station at short notice when I had Judgments in some other heavy cases also awaiting attention which Judgments had been reserved earlier and had therefore to be dealt with in the midst of my new duties prior to this case. 20

Signed S. J. C. SCHOKMAN,
Additional District Judge,
August, 1945.

Pronounced in open Court in the presence of Mr. Seneviratne for Petitioner and Mr. S. R. Amerasekera for 2nd Petitioner and the Respondents.

Signed V. E. RAJAKARIER,
Additional District Judge.
2-8-45. 30

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Petition of Appeal
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NO. 20

**PETITION OF APPEAL TO THE SUPREME COURT
IN THE SUPREME COURT OF THE ISLAND
OF CEYLON**

HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama.....1st *Petitioner-Appellant...*

vs.

- 1. FELIX WIJESINGHE OF DEHIOWITA.....2nd *Petitioner-Respondent*
and
- 2. PERCY ARNOLDA RATNAYAKE, and 40
- 3. PEARL BANDARA MENIKA RATNAYAKE, both of Bank Hill Estate, Talangama, minors by their Guardian-ad-litem the 4th Respondent.
- 4. HETTIARATCHIGE DON HERATH of Peliyandara,

5. ELLEN WIJEYESINGHE.
 6. GERTIE WIJEYESINGHE, both of Reverton, Matale Road,
 Kandy.
 7. MURIEL AMERASEKERA *nee* WIJEYESINGHE of Deal Place,
 Colpetty. Respondents.

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

On this 10th day of August, 1945.

The Petition of Appeal of the 1st Petitioner-Appellant abovenamed
 10 appearing by her Proctor Paulus Cornelis Seneviratne states as follows:—

(1) The Appellant and the 1st Respondent applied to the District Court of Colombo for Probate of the Last Will of James Albert Ratnayake dated 23rd May, 1943, as Executors named therein and Order Nisi was granted on 9th July, 1943.

(2) Thereafter the 1st Respondent intimated to Court that he refused to act as Executor and revoked the joint Proxy given with the Appellant to their Proctor. Later, along with the 4th and 5th Respondents to the Petitioner, who are the 5th and 6th Respondents to this Appeal, he filed objections to the grant of Probate, stating that the Last Will was not the
 20 act and deed of the deceased.

(3) The matter was fixed for inquiry which was held on the 27th March, 1944, 22nd and 23rd August, 1944, 17th, 21st and 22nd and 26th January, 1945, 6th, 7th and 8th March, 1945. Nearly five months later by his order dated 2nd August, 1945, the learned Judge refused the application of the Appellant for Probate and discharged the Order Nisi entered in the case. He further ordered the Appellant to pay the objector's costs of the Inquiry.

(4) Being dissatisfied with the said order the Appellant appeals therefrom to Your Lordships' Court on the following among other grounds
 30 which will be urged by Counsel at the hearing of this Appeal.

(a) The Judgment is against the weight of evidence and contrary to Law.

(b) The learned Judge has stressed and been greatly influenced by the fact that the Appellant claimed to be the wife of the deceased and later admitted she was his mistress. It is quite clear however that she only claimed to be his wife on a marriage by habit and repute and her Counsel did not pursue this question as it was not directly relevant to the grant of Probate and on account of an objection by the other side to evidence being led without the framing of an issue. The learned Judge therefore erred in holding that
 40 she gave false evidence on this point especially as he states in his Judgment "it is quite clear from the evidence that the deceased treated her as his wife and took her with him when he went to church and attended Public functions."

(c) The learned Judge has omitted to consider the important fact that the deceased was most unlikely to have failed to make testamentary provision for the Petitioner whom, at the least, he treated as his wife, and

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his 2 children by her whom he acknowledged before the Registrar of Births and in whose education he evinced great interest. It is clear from the evidence that the other intestate heirs rarely visited the testator and their relations with him could not have been close or intimate.

(d) The learned Judge has not appreciated the extent of the benefit which the 1st Respondent stood to gain by Probate being refused. In testing the credibility of the Appellant he refers to evidence which she gave to the effect that the 1st Respondent suggested an abandonment of the Will and says "if this evidence of the 1st Petitioner (Appellant) is true the conduct of the 2nd Petitioner (1st Respondent) appears exceedingly strange as he was to get substantial benefits under the Will." An examination of the Inventory and of the Will shows that the "substantial benefits" were considerably less than the benefits the 1st Respondent would have received according to his Case. 10

(e) While holding that no suspicion can attach to the Will from the dispositions contained therein, the learned Judge appears to regard favourably the argument of the objectors that a person who forges a Will would attempt to make the Will a reasonable one so as to enable the mistress and illegitimate children of the Testator to obtain a substantial portion of his estate while they would get nothing if he died intestate. The relationship however between the deceased and the Appellant and their children as disclosed by the evidence is so close and intimate that any Will that did not make substantial provision for their maintenance and advancement in life would on that ground alone be suspect. This fact has not been taken into account by the learned Judge. 20

(f) The learned Judge has misdirected himself by approaching the evidence on the footing that he was not bound to give a decision on the conflicting evidence but only to decide whether on a very critical examination he could accept the evidence of the witnesses called to prove due execution, while he has meticulously examined and tested the evidence called for the Petitioner he has failed to test the evidence of the 2nd Petitioner-Respondent even on the probabilities of his own story. *inter alia:* 30

(i) The 2nd Petitioner-Respondent states that the Appellant came up to him after the funeral and appealed to him to support her and her children as she had no one to depend on except himself yet that when she later produced a Will under which she received substantial benefits, he signed a proxy and agreed to an application for Probate without demur and without even consulting his legal adviser who was present;

(ii) The reason given by him for his suspicions being aroused thereafter are entirely inadequate. Amongst them he mentions the failure on the part of the testator in the Will to pay attention to commas, apostrophes and semicolons. The testator according to the evidence was weak at the time of the making of the Will; it is indisputable that he died ten days after the date of the Will and any failure on the part of the testator to pay attention to commas, apostrophes or semi-colons could not have struck the 2nd Petitioner-Respondent as strange. The evidence was artificial and unconvincing on the face of it but the learned Judge has not regarded it with favour. 40 50

(iii) He states that on his suspicions being aroused he went all the way to Matara to meet Martin who is a brother of the Appellant and a witness to the Will to get the truth from him and that Martin volunteered the statement that he attested a Will as witness after the death of that testator. It is most improbable that even if Martin had been guilty of such a serious offence he would have admitted it in this way and on such an occasion. At the time the 2nd Petitioner-Respondent had the names of the 4 other witnesses who were not related to the Appellant but made no inquiry from any of them.

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(g) The learned Judge says that the Appellant “could not explain why the deceased should have waited for a day” when Girgoris (a trusted servant) was not available. Girgoris was a beneficiary and could not have been a witness and it does not appear that his presence could have served any purpose.

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(h) The date of the Will is the 23rd May and the Testator died ten days later on the 3rd June. Apart from the uncontradicted evidence that the Testator was very weak on the 23rd May, the dates suggest strongly that the Testator on the earlier date felt the urgency of the need for making a Will. He alone could have testified precisely to the factors such as fellings of suddenly worsening illness which induced him to make the Will as he did, but the urgency alone suffices to explain the conduct which has been testified to by the Appellant and four attesting witnesses. The learned Judge in reviewing the evidence has failed to give due weight to any sense of urgency that the Testator may have felt, and failed to realize that the Testator could not have known that he would live even a further ten days.

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(i) The Judgment states “The 1st Petitioner has referred to a conversation between the physician and the deceased during his last illness about making provision for her and her children, but as the priest has not been called as a witness there is no evidence of what the conversation was.” It is submitted that this view is erroneous in Law and that the statement of the Petitioner is admissible as establishing a conversation between the priest and the testator which renders probable certain conduct on the part of the Testator, namely the making of a Will. The learned Judge has failed to realize that the truth of statement made by the priest or the Testator on the occasion of the conversation was not relied on.

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(j) The learned Judge has failed to evaluate correctly the evidence of the handwriting expert and has merely followed the conclusions or findings put forward by him without bringing his own mind to bear on problems in the light of that evidence. Amongst other matters to which he has failed to give weight is a statement made by the expert who in an unguarded moment revealed his true opinion of the disputed Will. Asked whether he had had instructions as to the “state of physical disability” when the Testator wrote his Last Will (as asserted by the Appellant) the expert said, “I inferred that from the tremulous writing which I examined.” The witness later attributed the tremors to fraud. It is submitted that it is established from this evidence and from the context in which it occurs that the witness was convinced that the impugned document was written by a person who was very ill and not by a forger. The learned Judge has not taken into account the revealing nature

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of this evidence and the light that it throws upon the degree of partnership properly to be attributed to the witness.

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(k) The Appellant's case has been greatly prejudiced by the long interval between the hearing and the Judgment as the dispute between the parties was closely contested on facts and the burden placed on the Appellant was very heavy in that she had to remove even suspicions that might have been aroused in the mind of the Court.

Wherefore the Petitioner-Appellant prays that:—

- (i) The order of the learned District Judge be set aside and order be made directing the issue of Probate to the Petitioner-Appellant;
- (ii) For costs and for such other and further relief as to this Court 10 shall seem meet.

Signed P. C. SENEVIRATNE,
Proctor for Petitioner-Appellant.

No. 21
Application by the
2nd Petitioner and
the 4th, 5th and 6th
Respondents for
Payment
20-9-45

NO. 21

APPLICATION BY THE 2nd PETITIONER AND THE
4TH, 5TH AND 6TH RESPONDENT FOR PAYMENT
IN THE DISTRICT COURT OF COLOMBO

No. 10504/T

In the matter of the Last Will and Testamentary of J. A. RATNAYAKE.
..... deceased. 20

- 1. H. DONA ADLIET RATNAYAKE of Talangama.
- 2. FELIX WIJESINGHE of Dehiowita.....*Petitioners.*

and

- 1. PERCY ARNOLD RATNAYAKE and others.....*Respondents.*

This Court by its Judgment and order has refused the application of the 1st Petitioner for Probate of the Last Will and Testament of the deceased filed of record in this case and the Order Nisi entered has been discharged with costs. The 2nd Petitioner and 4th, 5th and 6th Respondents have now become the sole heirs of the estate of the deceased.

Under the said Last Will sought to be proved the 2nd Petitioner and 30 his sisters 4th, 5th and 6th Respondents (children of a deceased sister of the deceased abovenamed) is given 1/4th share of the moneys in the Bank.

If the estate of the deceased is administered intestate the only heirs will be the 2nd Petitioner and 4th, 5th and 6th Respondents who will become entitled to the whole estate left by the deceased. There was a sum of Rs. 70,127/- deposited by the deceased in the National Bank and the Hongkong and Shanghai Bank, Colombo, and which amount is now in deposit to the credit of the Public Trustee administrator-pendente-lite.

Under the circumstances I move for a notice on the 1st Petitioner Dona Adliet Ratnayake and the 3rd Respondent H. Don Herat guardian- 40 ad-litem of the 1st and 2nd Respondents and the Public Trustee administrator-pendente-lite to show cause, if any, why for the present, one-fourth of Rs. 70,127/- should not be paid to the 2nd Petitioner and 4th, 5th and

6th Respondents jointly less the share due from them as Estate Duty and fees of the Public Trustee.

Colombo, 20th September, 1945.

Signed S. R. AMARASEKERA,
*Proctor for 2nd Petitioner
and 4th, 5th and 6th Respondents.*

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Application by the
2nd Petitioner and
the 4th, 5th and 6th
Respondents for
Payment
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—Continued.

NO. 22

INQUIRY AND ORDER RE APPLICATION FOR
PAYMENT

No. 22
Inquiry and Order
Re Application for
Payment

10 **27th September, 1945.**

Mr. Advocate Jansz instructed by Mr. P. C. Seneviratne for the 1st Petitioner.

Mr. Advocate E. G. Wikramanayake instructed by Mr. S. R. Amarassekera for the 2nd Petitioner and 4th to 6th Respondents.

Mr. Wikramanayake appears in support of the application of the 21st of September, 1945.

Mr. Jansz says that he takes notice of the application of Mr. Amarassekera of the 21st September, 1945 and objects to the application.

20 Mr. Jansz appears in support of the application of Mr. P. C. Seneviratne of 21st September, 1945. Mr. Wikramanayake objects to that application with regard to the payment of the allowance to the 1st Petitioner of a sum of Rs. 100/- pending appeal from the order in this case.

Consideration of both motions on 17th October, 1945.

Signed V. E. RAJAKARIER,
Additional District Judge.
27-9-45.

17th October, 1945.

Mr. Advocate, E. G. Wikramanayake instructed by Mr. S. R. Amarassekera for the 2nd Petitioner and 4th to 6th Respondents.

30 Mr. Advocate, Jansz instructed by Mr. P. C. Seneviratne for the 1st Petitioner.

In view of the nature of the application made by the 2nd Petitioner and the 4th, 5th and 6th Respondents and also by the 1st Petitioner, I consider that a notice should be issued with regard to these two applications on the Public Trustee, returnable 5th November, 1945. The notice that is to be issued on the Public Trustee also to state that the matters will be inquired into on the 5th of November.

Signed V. E. RAJAKARIER,
Additional District Judge.
17-10-45.

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5th November, 1945.

Mr. Advocate E. G. Wikramanayake instructed by Mr. Amarassekera for the 2nd Petitioner and the 4th to 6th Respondents.

Mr. Advocate Jansz instructed by Mr. Seneviratne for the 1st Petitioner,

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An officer of the Public Trustee's Department is present.

Mr. Wikramanayake submits that the deceased left Rs. 70,127/- in cash. The deceased did not leave any legitimate children. On an intestacy the entirety of the estate would go to the 2nd Petitioner and the 4th to 6th Respondents. The deceased is said to have left a Last Will which the 1st Petitioner sought to prove. That Will has been rejected and not accepted to probate in this Court and that there is an appeal pending. Under that Last Will the 2nd Petitioner and the 4th to 6th Respondents are entitled to a one-fourth of Rs. 70,127/-. The application is to draw that one-fourth. He submits that the Public Trustee who is the administrator pendent-lite has no objection to that one-fourth being drawn out provided Rs. 10,000/- out of the whole amount is left behind with him for Estate Duty and other administration expenses. 10

He also submits that the 2nd Petitioner was entitled to carry on a business left by the deceased and the Public Trustee has allowed him to carry on that business by getting an indemnity bond No. 7533 dated 11th April, 1944 in a sum of Rs. 7,500/-. The 2nd Petitioner is prepared to leave that Rs. 7,500/- with the Public Trustee.

Mr. Wikramanayake files marked X1 an affidavit setting out who the heirs are. 20

Mr. Jansz says that he is opposing the application. He submits that the matter is up in appeal and that there is no finality in the matter. He also submits that the 2nd Petitioner has the management of a business of the deceased in which a lot of money is being earned. Mr. Jansz says that he has no objection to the 2nd Petitioner drawing a lesser amount.

Mr. Jansz at this stage addresses Court in respect of the 1st Petitioner's application to be allowed to draw Rs. 100/- a month. He states that the deceased has left two children by the 1st Petitioner and that they have to be maintained. Under the Will the deceased has made provision for the 1st Petitioner and her two children by the deceased. 30

Mr. Jansz refers to the order of Court dated 5th October, 1943. He submits that as the matter is not yet finally determined the 1st Petitioner's application to be paid Rs. 100/- a month be allowed.

Mr. Jansz says that he is not leading evidence in support of his application.

Mr. Wikramanayake says that he wishes to place evidence to prove that the 1st Petitioner is not entitled to ask for this monthly allowance. He calls:

Don Albert Atale—Sworn.

I am the Superintendent of Talangama Estate appointed by the Public Trustee after he took over its management. I was appointed in October, 1943. There is one bungalow on the Estate. That is occupied by the Petitioner Mrs. Ratnayake. Along with her there are about 10 or 11 persons living in the bungalow. The watcher of the Estate is the 1st Petitioner's uncle. He was the previous watcher. I am unable to supervise the Estate properly because so many thefts are going on. I am not able to be on the premises. I have made complaints to the Public Trustee and to the Police. The coconut crops are steadily going down. Owing to rain and shortage of labour 40

the rubber trees are not being tapped. Therefore the produce is also less. There was no rubber roller after I went to the estate. After I went there to my knowledge there was no machinery in the estate.

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Inquiry and Order
Re Application for
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—Continued.

(Shown a document). The signature on the document is that of Mr. Crossette-Thambiah the Acting Public Trustee.

Rubber trees are easily damaged. There is no attempt made to damage rubber trees. Any attempt made to collect more latex than normally done would damage the trees. The rubber from the estate is collected and taken half a mile away to be rolled. There is a smoke room and pans in the estate.

10 CROSS-EXAMINATION

I have not seen the 1st Petitioner damaging the rubber trees. I have not seen the 1st Petitioner taking any roller. I have been to the house where the 1st Petitioner resides once. I know personally the people who are living with the 1st Petitioner on the estate. The Public Trustee has not asked me to allow only the 1st Petitioner to live in that house. My duty is to collect the income from the property. The 1st Petitioner is allowed the exclusive use of the house.

RE-EXAMINATION

Nil.

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Signed V. E. RAJAKARIER,
Additional District Judge.

5-11-45.

S. F. C. J. Edirisinghe—Sworn.

Chief Accounts Clerk of the Public Trustee's Department.

I have been dealing with the accounts of the estate of the late Mr. Ratnayake.

(Shown X2). This is a letter written by the Public Trustee. There is a sum of Rs. 300/- spoken to in it regarding rollers. My file shows that that amount in due on account of rollers sold. It is not stated that is the roller on the Estate.

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CROSS-EXAMINATION

The Public Trustee does not accuse the 1st Petitioner of removing the rubber rollers. The Public Trustee has asked someone to supervise the estate. That is the last witness who gave evidence.

RE-EXAMINATION

A sum of Rs. 300/- is still due from Dona Adliet for rubber rollers. Dona Adliet is the 1st Petitioner.

Signed V. E. RAJAKARIER,
Additional District Judge.

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5-11-45.

Mr. Wikramanayake opposes the application of the 1st Petitioner and invites the Court to consider the circumstances under which the application is made in the light of the order made by the District Judge with regard to the application by the 1st Petitioner for Probate.

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Inquiry and Order
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—Continued.

Mr. Wikramanayake says that if the 1st Petitioner leaves the house on the estate he has no objection to the payment of Rs. 100/- a month.

ORDER

There are two applications before Court, The first application is by the 2nd Petitioner and the 4th to 6th Respondents asking that a one-fourth of the Rs. 70,127/- in deposit in the National Bank and the Hongkong and Shanghai Bank under the control of the Public Trustee be paid over to them jointly. The Public Trustee has no objection to this application provided that a sum of Rs. 10,000/- out of the total amount mentioned earlier is reserved for purposes of administering the estate and paying all legitimate dues incurred by him. 10

The learned Counsel for the 1st Petitioner does not entirely oppose this application but limits his approval on condition that an amount smaller than what the 2nd Petitioner demands be paid over to the 2nd Petitioner and the 4th to 6th Respondents, provided also that the 2nd Petitioner and the 4th to 6th Respondents consent to the 1st Petitioner continuing to draw the Rs. 100/- monthly allowance fixed by this Court, which allowance as I read the order of Court of 5th October, 1943 was to continue *pendente-lite*. The 1st Petitioner came to Court seeking to prove the Last Will of the deceased J. A. Ratnayake but the Court by its order of 2nd August, 1945 held against the Petitioner that the 1st Petitioner had failed to satisfy that the Will propounded was executed by the deceased. An appeal has been preferred against that order and the case is yet *sub judice*. If the Will is proved and the 2nd Petitioner and the 4th to 6th Respondents will be declared entitled to a one-fourth of Rs. 70,127/- but if the Judgment of this Court is upheld the 2nd Petitioner and the 4th to 6th Respondents will become entitled to the entire amount of Rs. 70,127/-. On a consideration of the merits of this application by the 2nd Petitioner, I allow the application and direct the Public Trustee to pay a one-fourth of Rs. 60,127/- which will be Rs. 15,031/- less a sum of Rs. 7,500/- which amount has been given by way of an indemnity bond to the Public Trustee for the proper working of the business concern left behind by the deceased. 20 30

There remains to consider the other application by the 1st Petitioner. That matter came up before Court on the 5th October, 1943 on an application by the 2nd Petitioner that limited letters of administration be issued to the Public Trustee and that the Public Trustee be appointed for the purpose of collecting and holding the assets of the estate until the right of succession was determined. Along with that application there was also the application by the 1st Petitioner asking the Court that some provision be made for her and her children by the deceased till the right of succession was finally determined. I find with regard to that application that the learned Counsel who appeared for the 2nd Petitioner and the 4th to 6th Respondents stated that he did not object to the 1st Petitioner and her children living in the house on Bank Hill Estate and the Public Trustee making an allowance sufficient for their needs; and further there is this entry on record:— 40

“ It is agreed that the amount to be paid to the 1st Petitioner is Rs. 100/- to herself and her two children,”

Upon these matters the Court made the following order:—

“ I allow the application of the 2nd Petitioner and direct that the Public Trustee take charge of the estate of the deceased both movables and immovables and collect the assets and pay the debts until the right of succession is determined.”

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Inquiry and Order
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Payment
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and the Court made the further order which runs thus:—

“ The 1st Petitioner and her two children will be allowed to continue to reside in the house on Bank Hill Estate, Talangama *pendente-lite* and the Public Trustee will pay them a monthly allowance of Rs. 100/- from the assets of the estate.”

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The case is yet pending and I find it difficult to vary that order in any form or revise or stop the payment of this monthly allowance to the 1st Petitioner specially as the Court made it clear that this allowance was to be paid *pendente-lite*. There is no doubt that there is an appeal from the Judgment of this Court to Their Lordships' Court and I do not think that I could disturb that order made by this Court on the 5th October, 1943, that the 1st Petitioner and her two children be allowed to continue to stay in the house on Bank Hill Estate and also receive from the Public Trustee a monthly allowance of Rs. 100/- from the assets of the estate.

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I also allow the application of the 1st Petitioner and direct the Public Trustee to continue to pay her the monthly allowance of Rs. 100/-.

I make no order as to costs.

Signed V. E. RAJAKARIER,
Additional District Judge.

5-11-45.

NO. 23

JUDGMENT OF THE SUPREME COURT

S.C. 20/D.C. (INTY.) COLOMBO No. 10504/T

Present: KEUNEMAN, J. AND CANEKERATNE, J.

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N. Nadarajah, K.C., with V. Tillainathan and Koattegoda for 1st Petitioner-Appellant.

H. V. Perera, K.C., with H. W. Jayewardene for 1st, 5th and 7th Respondents.

Argued: 17th, 18th and 19th February, 1947.

Delivered: 6th March, 1947.

Keuneman, J.

The main question in this case was whether the alleged Will (P1) of 23-5-43 was duly executed by James Albert Ratnayake in the presence of five witnesses. The 1st Petitioner who propounded the Will was the mistress of Ratnayake, who had treated her as he would a married wife, and who had two children by her to whom he was devoted.

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The District Judge has held that the Will itself was not an unreasonable Will, and that no suspicion can attach to the Will from the dispositions

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contained in it which were just and equitable. In fact it is not improbable that the Will represented the wishes of the Testator. No doubt the Will was written in an usual place, *viz.*, an account book of the Testator. But it is also to be noted that this moderately long Will was written out entirely in handwriting strongly resembling that of the testator in this account book which contained pages of the Testator's writing. If the Will was a forgery, the forger was courting immediate detection. The Will certainly was accepted for a time as genuine by the 2nd Petitioner who is now a strong opponent of the Will, and he signed the original affidavit asking for probate as one of the executors named in the Will. The 2nd Petitioner was familiar 10 with the handwriting of the deceased.

One matter may be specially mentioned. The District Judge says—
 “Grave suspicions arise on the evidence as to whether the Will propounded was the act of the deceased.” We have carefully examined the judgment and we do not think that in this case an element of suspicion relating to the Will can be said to have arisen. The questions which did arise according to the findings of the District Judge related to matters which may have affected the credibility or the reliability of the various witnesses called and cannot properly be said to relate to the circumstances under which the Will was made. We do not think that any suspicion with regard to the genuineness of the 20 Will can be said to have arisen.

In *Shama Charu Kandu vs. Kettromoni Dasi* (I.L.R. 27 Cal. 522, at 528) the Privy Council had to consider a similar problem. “In this case the suspicion, if there was one, would be that on the morning when the Will was said to have been made the deceased was in an unconscious state and was unable either to sign the Will or to understand what he was doing, that is that the witnesses in support of the Will were not telling the truth. If they were, their Lordships do not see anything to excite suspicion. The question was simply which set of witnesses should be delivered.”

In the present case the question was whether the alleged Will was duly 30 executed by the Testator and attested by the five witnesses. It was a pure question of fact—as to whether the witnesses who spoke to the due execution and attestation were to be believed. If they were believed no element of suspicion arose. If they were not believed, then the Will could not be held proved.

In our opinion the District Judge has been misled into the belief that there were elements of suspicion which it was the duty of the propounder to remove. This belief has influenced the District Judge into thinking that a heavier burden of proof rested on the propounder than the law had in fact imposed upon her. There can be no doubt, on the facts present in this case, 40 of the mental competency of the Testator, and if it were proved that he in fact executed the Will there can be no doubt that he knew and approved of the contents of the Will. The real question to be decided was whether the Will had been executed and attested in due course.

In dealing with the witnesses who spoke to the due execution of the Will the District Judge mentioned certain facts which in his opinion affected their reliability. Some of these reasons relating to particular witnesses are fairly cogent, some are not so convincing. In the end the District Judge said—“The evidence of the 1st Petitioner and her witnesses have not removed

those suspicions. On the contrary their evidence is not such evidence as I feel I can act on with any confidence." In our opinion the District Judge expected an especially high degree of proof for the removal of the suspicion which he thought had arisen in the case.

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Judgment of the
Supreme Court
6-3-47
—Continued.

One matter has been argued, *viz.*, that the District Judge has accepted the evidence of the witness Girigoris called by the opponents of the Will. There are however some matters relating to this evidence on which we should have been glad to have had the assistance of the District Judge. The point of the evidence was that Girigoris had been present on the 23rd May, 1943
10 on the premises and that he did not see the witnesses to the Will coming to or going from the house of the deceased. But Girigoris had made a statement in cross-examination as follows:—

"Coconuts used to be plucked on the Hendala lands" (these were different lands to that in Talangama on which deceased was living) "in the odd months, January, March, May, July, etc. There would have been a picking in March, 1943. I supervised that picking. The next picking I supervised was in May. That picking took place about the 22nd or 23rd May. I did go to the lands for that picking."

20 This evidence on the face of it seriously reduced the value of Girigoris' evidence. Later however Girigoris was reminded that the 23rd May was a Sunday, and stated that no work was permitted by the deceased on Sundays; and Girigoris added that on each of the Sundays from the 10th of May to the 23rd of May, he was on the estate where the deceased resided. The District Judge does not deal with the passage I have cited or consider its relevancy. Apparently the point was not made, when the 1st Petitioner's witnesses were in the witness-box, that work on Sunday was not permitted by the deceased. Examination of the account book in which the Will P1 was written does not
30 at first sight appear to be consistent with that, and we do not think this point has been sufficiently explored. In all the circumstances we do not think we are obliged to regard the evidence of Girigoris as conclusive of the case.

The evidence of the handwriting expert was not relied on by the Judge except as "slight corroboration of the conclusions come to independently on the other evidence." It did not conclude the case.

There has been in this case delay in the delivery of the Judgment. The District Judge has explained the reasons of the delay, and no fault appears to attach to him in this respect. The delay however may have affected his recollection of the witnesses, some of whom gave evidence a considerable time before the date of the judgment. At any rate it makes us less reluctant
40 to interfere in this case.

In the circumstances we set aside the judgment appealed against and send the case back for trial before another District Judge. If the parties agree the evidence already recorded may be utilised, but it is desirable that all the witnesses be presented again for cross-examination.

The 1st Petitioner will have the costs of the appeal, and all other costs will be in the discretion of the District Judge who tries the case anew.

Signed A. E. KEUNEMAN,
Puisne Justice.

Canekeratne, J.
I agree.

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Signed A. R. H. CANEKERATNE,
Puisne Justice.

DECREE OF THE SUPREME COURT

IN THE SUPREME COURT OF THE ISLAND OF
CEYLON

D.C. (INTY.) No. 20 OF 1946

HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Es-
tate, Talangama *1st Petitioner-Appellant.*

against

1. FELIX WIJESINGHE of Dehiowita *2nd Petitioner-Respondent.*
2. PERCY ARNOLDA RATNAYAKE. 10
3. PEARL BANDARA MENIKA RATNAYAKE, both of Bank Hill
Estate, Talangama, minors, by their Guardian-ad-litem, the 4th Res-
pondent.
4. H. DON HERAT of Peliyandara.
5. ELLEN WIJESINGHE.
6. GERTIE WIJESINGHE.
7. MURIEL AMARASEKERA *nee* WIJESINGHE.....*Respondents...*

Action No. 10504.

District Court of Colombo.

This cause coming on for hearing and determination on the 17th, 20
18th and 19th February and 6th day of March, 1947, and on this day, upon
an appeal preferred by the 1st Petitioner before the Hon. Mr. A. E. Keune-
man, K.C., Puisne Justice, and the Hon. Mr. A. R. H. Canekeratne, K.C.,
Puisne Justice, Justice of this Court, in the presence of Counsel for the Ap-
pellant and Respondents.

It is considered and adjudged that the Order entered in this action
by the District Court of Colombo and dated the 2nd day of August, 1945,
be and the same is hereby set aside and the case is sent back for trial before
another District Judge. If the parties agree the evidence already recorded
may be utilised, but it is desirable that all the witnesses be presented again for
cross-examination. 30

And it is further ordered and decreed that the Respondents do pay to
the 1st Petitioner-Appellant her taxed costs of this appeal, and that all other
costs be in the discretion of the District Judge who tries the case anew.

Witness the Hon. Sir John Curtois Howard, K.T., K.C., Chief Justice,
at Colombo, the 6th day of March, in the year of our Lord One thousand
Nine hundred and forty-seven and of Our Reign the Eleventh.

Signed N. NAVARATNAM,
Deputy Registrar, S.C.

1ST PETITIONER'S EVIDENCE

1-9-47.

Advocate Samarakone with Advocate Kottegoda for petitioner.

Advocate R. L. Pereira, K.C. for 2nd Petitioner, and 4th, 5th and 6th Respondents to the original Petition with Advocates Navaratnarajah and Mahadevan.

Mr. Samarakone opens his case and says the only point to be decided is whether the Last Will was duly executed.

10 He reads the judgment of the Supreme Court and frames the following issues:—

- (1) Was the document P 1 dated 23rd May, 1943 duly executed by the deceased J. A. Ratnayake and attested by the witnesses mentioned therein.

Mr. Samarakone refers to the facts and reads the Will. He says the 2nd Petitioner acquiesced in the position set out in the Will and Order Nisi was granted; proxy was signed on the 7th June, 4 days after the death. On the 5th July, the witnesses came to Colombo and swore an affidavit. On the 12th August 2nd Petitioner filed a motion to have the proxy revoked; up to 20 this time there was no objection. On the 26th August, his application was allowed and on that date the 6th Respondent filed objections stating *inter alia* that the Will was forged. 2nd Petitioner and 4th, 5th and 6th Respondents are the deceased's sister's children and they would be the sole heirs if the deceased had died intestate.

During this period Wijesinghe had met Martin and Martin says an attempt was made by Wijesinghe and Amarasekara to get him to say that he signed a document some 3 days after the death of Ratnayake, offering him Rs. 2,000 for it; this took place on the 23rd August. Martin got excited over it; he is a brother of the widow and he got in touch with his sister and 30 on the 4th October, 1943, he filed an affidavit referring to this visit and the attempt made by Wijesinghe and Amarasekera to bribe him. In this state of things the case went up for trial.

Mr. Samarakone sends the Petitioner out of Court stating he will call her at a later stage. He now calls:—

J. De Alwis Dissanayake—Affirmed 65, Cultivator, Talangama South. **J. de A. Dissanayake**
Examination

I was in employment and now I am doing cultivation work. I am the local Manager of the Buddhist Vernacular School, a Committee Member of Co-operative Society and also Vice-President. I am a Vice-President of the Hewagam Korale Co-operative Union, I also possess property.

40 I knew the deceased Ratnayake for 10 or 15 years since the time he bought Bank Hill Estate at Talangama. I used to visit him. In connection with the school whenever I required assistance I went and spoke to him and he helped me. I had no other special friendship with him.

One day he sent for me, may be in May, 1943 but I cannot remember exactly. I remember his death; it was 10 or 12 days prior to his death. One James Alwis Weerasinghe came and told me that Mr. Ratnayake wanted

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Examination
— Continued.

to see him with two or three other reliable persons. I was at that time in the Talangama South Co-operative Store. I called the Manager of the Co-operative Store, W. P. Perera who happened to be there; he, Weerasinghe who brought the message, and I got on to the road and proceeded towards Mr. Ratnayake's house. On the way we met Podi Dissanayake a cousin of mine. I am called Loku Dissanayake. All four of us went to Ratnayake's bungalow. It was about 2 or 2-30 p.m. Mr. Ratnayake was resting on an easy chair; his wife the 1st Petitioner was also there sitting but she went inside the house on seeing us coming. Mr. Ratnayake asked us to sit down. Then he got up and went inside the house saying he wanted to call Hewarala. 10
Later I understood from him that Hewarala was the name by which he referred to Martin; he may have been a watcher of that estate but I cannot say exactly what he was doing there. Martin is the brother of the 1st Petitioner. Mr. Ratnayake came from inside the house with a book and sat down at a table which was near the easy chair. He opened that book; while opening it he said he got us down because he wanted to sign a Last Will and he wanted us to sign as witnesses. Having opened the book he signed twice. When he signed there were present all five of us *i.e.*, myself, W. P. Perera, James Alwis Weerasinghe, Podi Dissanayake and Martin. Martin also came there along with Mr. Ratnayake. After Mr. Ratnayake signed, I signed first. 20

(Shown P1). This is the book. When Mr. Ratnayake signed there was something written there and he signed below that. (Shown P1 A, the Last Will). This is the writing which was there; (Witness points to Ratnayake's signature in two places). I was the first to sign (witness points to the first signature). I saw Mr. Ratnayake signing; while he signed the five of us were in a row looking on. After me W. P. Perera signed and after him, I think James Alwis Weerasinghe signed. Then Podi Dissanayake and lastly Martin. I saw them all sign. (Witness identifies all the signatures).

Later I came to swear an affidavit which I signed before Mr. Weerakoon (Shown P1 A) I have signed P1 A on that day identifying my signature 30 and the writing. The other witnesses also signed it; it was signed in the presence of Mr. Weerakoon.

(Shown the affidavit of 5th July, 1943 filed with the Petition) I have signed this also. (Mr. Samarakone marks it X1).

After I signed the Will, Mr. Ratnayake asked us to keep the matter to ourselves, not to tell it to anyone else; he did not give us any reason for it. Then we got up to come away. He asked us to wait for tea. We said we were just after tea, we did not want tea and came away.

P1 A was signed in a verandah enclosed by glass shutters and made into a room. 1st Petitioner was inside the adjoining room and we could see 40 her standing by the window and looking.

Mr. Ratnayake at that time was only weak; he had no other apparent sickness.

To my knowledge Mr. Ratnayake treated the first Petitioner as his wife; he used to take her about in his car with the children. I have seen them going to Church together, he, 1st Petitioner and children. Once there was a special function at the Roman Catholic Church and I saw them going there

to preside with his wife the 1st Petitioner. Mr. Ratnayake told us that the writing which we signed was his Last Will and then asked us to sign. He did not read it to us.

Signed N. SINNETHAMBY,
A. D. J.

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Examination
—Continued.

Adjourned for lunch.

1-9-47.

J. De Alwis Dissanayake—Affirmed.

CROSS-EXAMINATION

J. de A. Dissanayake
Cross-Examination

10 In the examination-in-chief I said that I knew Mr. Ratnayake for about 10 or 12 years. I have not signed as a witness to a Will before. I know there are many notaries in Ceylon. There are notaries in Cotta. There are also proctors there. The distance from Cotta to Talangama is about one-and-half miles. There are not many notaries in Talangama. There is a Notary Public about one mile away from this estate in Talangama. I have no idea of the fact that five witness wills are contested in the Supreme Court or in any Court. I have also no idea of the fact that witnesses of this type are being tried in the Supreme Court and sent to jail. I know that a Notary Public is required to attest a Will of this type. I did not tell Mr.
20 Ratnayake that it would be better to get a Notary Public to attest this Will. It did not occur to me that I should give such an advice to Mr. Ratnayake about this. I am not aware that Mr. Ratnayake had a relative in Avissawella by name Jakalyn Seneviratne, a retired Crown Proctor and Notary Public. I know that Messrs. F. J. & G. de Saram are proctors but I do not know that they were Mr. Ratnayake's proctors.

In the examination-in-chief I said that I saw Mr. Ratnayake going to Church. I have never gone to that church. I am a Buddhist. On Sundays if he happens to be on the estate he goes to church. I have not seen him entering a church. On Sundays he passes through Talangama and people
30 say that he was going to church. But I have not seen him entering a church. There is an Anglican Church in Cotta. I cannot say whether he was going to that church. I know that Mrs. Ratnayake the first Petitioner is a Buddhist now. I cannot say for certain to what religion she belonged at that time. I cannot say whether she was a Buddhist then. I have no idea whether she belonged to any particular church those days.

Of these five witnesses I am supposed to be the most respectable man. I know that James Alwis was recently fined Rs. 400 for selling illicit arrack. I do not know whether he had any other cases. He might have had other cases. But I cannot say whether he was found guilty or was acquitted in
40 those cases. James Alwis is a cousin of mine. My father was named Robert. Robert's sister was D. Dona Lucia and James Alwis is the son of Dona Lucia. At the last trial, I cannot remember now what I said about James Alwis. I cannot say whether James Alwis was an accused or not in the other cases.

Podi Dissanayake is also a relative of mine.

He is the son of my uncle. That uncle is my father's cousin. I call Podi Dissanayake's father "bappa". The latter is not a full blood brother of my father.

According to what I have heard, Martin was working on that estate as a watcher. Paulis Perera one of the witnesses to this Will may be a respectable man. He did not give evidence at the last trial in this case. He did not come for this trial also.

(To Court.

Paulis Perera is the Manager of the Co-operative Store where I am a Committee Member and that is his job.)

I cannot say whether he is a more respectable man than myself. The five witnesses to this Will are myself, Paulis Perera, Dissanayake, Alwis and Martin. 10

The Petitioner was known as Alice Nona. The other women of the area used to call her Alice Nona. It may be her usual name before.

This estate consists of 2/3rd coconut and 1/3rd rubber. It may be about 35 acres in extent. I do not know whether Alice Nona was a tapper or not, on that estate.

I first knew her when I went to Ratnayake's residence for help in connection with improvements to the school. Mr. Ratnayake had had helped the school on two occasions financially. It is to get this type of financial assistance that I went to Mr. Ratnayake. Personally I have not obtained any sort of assistance from him, financially or otherwise. Even during the depression I did not go to him for any financial assistance. I was a despatch clerk at the Commercial Company. I was retired with gratuity. I got about Rs. 500 as gratuity from that company. After I retired from that firm I joined again, worked for some time and retired again. On the first occasion I received Rs. 100 as gratuity. On the second occasion I received about Rs. 350 gratuity. 20

Q. At the last trial you said that you received Rs. 100 on the first occasion and Rs. 150 on the second occasion as gratuity from that firm.

A. I cannot remember that I said that. 30

Q. You are now raising the amount to Rs. 500, but on the last date you said that you received only Rs. 250 in all, that is Rs. 100 on the first occasion and Rs. 150 on the second occasion.

A. I do not know that. I received Rs. 100 on the first occasion and Rs. 350 on the second occasion.

Q. Could you have said on the last trial that you received Rs. 150 on the second occasion.

A. As far as I remember I said that I received Rs. 350 at the second retirement.

I did not get any monthly pension from that firm and I did not say at the last trial that I was paid a pension from the Commercial Company. What I said was that I was given a gratuity. I said that I received a lump sum as gratuity. 40

Q. You started by saying that you received a pension and when you were questioned further you said that, you only received a gratuity.

A. I never received a monthly pension. So I could not have said that I received a pension. I cannot say whether the proceedings as taken down are wrong.

At the last trial I said that I was a landowner worth about Rs. 20,000/-.

Q. And later you had to admit that you were residing in a rented house.

A. Yes, the house that I was residing then belonged to me and I had sold it out. I had eight pelas of paddy. I sold out a portion of that, at present I am living in a house with my son-in-law. My son-in-law is not the sole owner of that house.

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Cross-Examination
—Continued.

(To Court.

That is my property.)

10 My wife and daughter also have shares in that property. I cannot say in rupees and cents what my income is. I get a yield of about 40 bags of paddy for a year. Forty bags is roughly 30 or 40 bushels. My coconut estate is about four acres in extent. I get about 600 nuts for a plucking. That is after plucking nuts on occasions for our domestic use. We pluck a few nuts once in two or three days for our domestic use. And the balance we pluck every two months. Those that I pluck every two months I sell for about Rs. 8/- or Rs. 10/- per hundred. In all I realise about Rs. 360 for a year on coconuts that I sell. I have my children depending on me.

20 The "Kumbura" that I sold is called Diggana Kumbura. That whole field had two pelas and I was entitled to one and it is that which I sold. I did not give that money to the Petitioner. Nor did I spent that money for the appeal. I think I live to the east of this Bank Hill Estate. I live about one-fourth of a mile away from this estate. That distance is even less than a quarter mile.

30 Podi Dissanayake lives near the Co-operative Store which is about quarter of a mile from this estate. The police Headman lives a little away from the Co-operative Store. That is close to the Co-operative Store. The retired headman lives near the house of the present headman. Both these people are living on the east side of the Colombo Road. Mr. Jayasinghe, a clerk, lives on the land adjoining the Bank Hill Estate. That is to the north of the estate. A General Hospital Overseer lives on the same land as Jayasinghe's. One Simon lives on the next land. Then comes Mr. De Mel's estate. That is also a fairly big estate. I think it is about 30 acres in extent. There is a Conductor on that estate. I do not know whether Mr. Ratnayake was on friendly terms with his neighbours .

40 Every month he used to go to his estate and stay there for two weeks. For the rest of the period he goes to Dehiowita to look after his business. Pahalawita Road runs along the border of this estate. There is a Roman Catholic School close to this estate. And there is a headmaster in that school. James Alwis lives on the road leading to Pahalawita.

When we, the witnesses went to Mr. Ratnayake he said: "This is my Last Will and I am going to sign it today." I did not ask him why it was going to be in a book. I did not suggest to him that I bring a piece of paper for that purpose. I did not make any suggestion to him on that occasion. There was no necessity for me to do so. It was not my concern and I was not interested in it. Because he wanted me to come there I went. I did not want to offer any advice to him. I know that Makalage Edwin Perera lives about quarter of a mile away from the estate; that is to the south of the estate.

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Cross-Examination
—Continued.

I do not know whether a proctor's clerk lives close to that estate. Magalage Edwin Perera is a peon in the Fiscal's Office. I know the peon of Proctor Weerakoon. He lives about a mile away from this estate. He is not living opposite to this Edwin Perera's. I know Girigoris Perera. He may have been working under Mr. Ratnayake as his driver for a long time. I think he may have been a trustworthy employee of Mr. Ratnayake. Mr. Ratnayake may have given advances to his employees on his estate. I do not know about his driver going to the bank with cheques of about Rs. 20,000 or Rs. 30,000. Girigoris stays in the garage. Any one should have to pass the garage before he goes to the bungalow of Mr. Ratnayake. In front of the house there is something like a porch. The house itself is wider than this porch. The house is rectangular in shape behind. It was not in this porch that the signing took place. On the side there is an entrance to the house and a verandah which has been enclosed like a room with glass shutters is there. It is in that room that the signing took place. That room is not in front of the house. It is on a side of the house. It is an enclosed verandah. 10

(To Court.

We signed in this enclosed verandah and not in the porch in front of the house.)

There are glass shutters in that room. A man can enter this room from outside the house, as there is an entrance. I have already said that this room is on a side of the house and not in front. There are rooms on both sides of the house. Behind this house there is a step. In front also there are steps leading to the porch. Usually the entrance to the house is through the portico which is in front. Behind the portico the house is wider. I have never had any meal there but once I had tea there. 20

James Alwis came there at about 2-30 or 3 p.m.

James Alwis did not come with Martin. He came alone. James came and told me that Mr. Ratnayake wanted me to come along with two other persons of reasonable standing. I did not ask James Alwis why Ratnayake wanted me. Before that James Alwis had not come to me with a message from Mr. Ratnayake as far as I can remember. At that time it did not strike me to ask from James Alwis why Mr. Ratnayake wanted me. I thought that he might have wanted me for some purpose. Accordingly I went to see Mr. Ratnayake. 30

Q. Ratnayake was not a police officer to call you up like that?

A. I thought that he wanted me for some urgent matter. So I went. When James Alwis came I was in the Co-operative Store. I was talking to the Manager of the Store.

(To Court.

The Manager is this Paulis Perera). I cannot remember about what I was talking with the Manager then. But I remember that I was talking to the Manager then. Manager is Paulis Perera. There is an Assistant Manager also in that Co-operative Store. If Paulis Perera wished to come and give evidence in this case he could come. Paulis Perera at that time did not ask me why Mr. Ratnayake sent for me. As far as I know Paulis Perera was not under any obligation to Mr. Ratnayake. I did not ask Paulis Perera. 40

to accompany me to Mr. Ratnayake's. Paulis himself wanted to go of his own accord. Paulis Perera overheard the message which James Alwis brought to me. Podi Dissanayake was in his house. It is when I was going to Mr. Ratnayake's with Paulis Perera that I spoke to Podi Dissanayake. From the Co-operative Store to the headman's house it may be a little over 100 yards. I did not suggest to James Alwis that we take the headman also there. Podi Dissanayake did not say that he could not be bothered. Nobody refused to go. Sometimes I have a nap after noon meals, but when I work I refrain from doing so. But on this particular date I did not have a nap.

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Cross-Examination
—Continued.

10 Q. If you had a nap on that day you would have not gone there?

A. The instruction to James Alwis was to take the message to my home and accordingly James had gone to my house; but as I was in the Co-operative Store he came to the Store.

Four of us went alone together to Mr. Ratnayake's.

The distance to his bungalow was less than a quarter of a mile. It may be about 1/8th of a mile. On our way we did not discuss about what we were wanted by Mr. Ratnayake.

20 Q. I put it to you you being human beings and not buffaloes must have had the natural tendency to talk to each other as to why Ratnayake wanted all of you?

A. Yes. We were merely asking each other why we were wanted but no one suggested a solution.

Q. On your way you did not ask from James Alwis why Mr. Ratnayake wanted you?

A. I asked him. He said that his master had been ill and that he did not know why he wanted us. He added it might be for something in connection with his illness.

30 I was asked to bring along some persons of a reasonable standing. It did not occur to me to take the headman along with us. I thought that those who were going with me were good enough.

40 When we went there Mr. Ratnayake and the first Petitioner were seated there. Ratnayake was lounging on a chair and the Petitioner was seated on another chair close by. The Petitioner was seated on a chair like the ones in this Court. It was an arm chair. Mr. Ratnayake was lounging on a cane chair that is usually occupied by invalids for resting on. It was not a wooden chair. It was a long chair made of cane. In getting out of the chair he did not find any difficulty. He got up in the usual way. It is after we got into that room that he got up from the chair. After getting up he went into the house. We were in the room which I described earlier as the the enclosed verandah. We were not in the portico room. The portico room is in front of the house. We were in the room that is with glass shutters and which is on the side of the house. There is only one portico room in front. This room where we signed is on the side of the house. One can get into this room through the portico room in front but we went in by the side where there is an entrance. In all there are three entrances to this house. There is no such portico in this house as is generally used for parking cars. The room that we got in has dwarf walls and glass shutters. The portico room is also with such walls and glass shutters. When we got into the room

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—Continued.

Mr. Ratnayake got up and went into the house. There are many rooms to that house. There may be a dining hall but I did not know. As he entered he turned to his right and went into a room. The Petitioner also went in to this room. There are five or six rooms to that house.

After about two minutes he came back to the room where we were, with a book in his hand. I did not see any servants about the place. They may have been in the kitchen. There are women to assist Alice. There may be two or three women to assist her in the house. There are no men in the house. There are men working outside but I do not know the number. Mr. Ratnayake sent for Martin and Martin came into our room as Mr. Ratnayake entered. Mr. Ratnayake told his wife to send for Hewarala. I did not hear anybody calling out Hewarala aloud. 10

(To Court.

What I said was he told his wife to call Hewarala). I did not hear the name Martin or Hewarala being called out aloud. Martin came in after Ratnayake entered the room. I did not ask Martin "Martin, what is all this for." Up to this point of time I did not know why Ratnayake had wanted me.

Mr. Ratnayake came back with a book in his hand.

There was a table in the middle of the room and Mr. Ratnayake pulled out a chair and sat by this table. It is a four legged table. It is not a teapoy. It is about four or five feet in length. 20

(Witness points to the Mudaliyar's table in Court and says that it was about half the size of that table.)

One side of that table was a little longer than the other. There was an ink stand and a pen on the table. Mr. Ratnayake was dressed in a white cloth and a banian. I cannot say whether that banian had a pocket. I cannot remember whether he had a fountain pen with him at the time. I do not know whether he usually used a fountain pen. I did not notice him taking a fountain pen out of his banian. For the signing he used the pen that was on the table. He sat on the chair that was by the table. The five of us were also seated. All five of us were seated. Martin was not seated. 30

Q. You said just now that all five of you were seated. But now you say that Martin was not seated.

A. Yes, Martin was not seated. James Alwis was seated. I know that James Alwis was Martin's predecessor on that estate. Yes, James Alwis was seated and Martin was standing. Mr. Ratnayake sat down and then opened the book.

As he opened the book he said: "I have prepared my Last Will and I have sent for you to sign as witnesses to it." As Mr. Ratnayake sat down we did not shift our chairs from their original places. We were seated facing the table and we continued to remain in that same position. The table was placed in the middle of the room not exactly at the centre but a little towards one side of the room. That is towards the left side. Apart from the ink stand and the pen there were a few books on the table, some small and some big. I cannot say exactly whether they were children's books or any other books. I did not pay attention to them. I have no grand children going to school. My son in law has no children. I cannot say whether there were 40

exercise books on that table. There were about 2 or 3 books. I cannot remember their sizes. The table was 4 by 3 feet. Mr. Ratnayake was seated by the longer side. We were seated by the shorter side of the table, but a little distance away; about two feet away from the edge of the table. We were seated in a row. Mr. Ratnayake then opened the book, took the pen and signed twice in the book. I saw him signing twice. He did not write anything else. He only signed twice. I was seated 4 feet away from Mr. Ratnayake and 2 feet away from the edge of the table. I could see what Ratnayake was doing from the place I was seated. At that time I was not
10 using specs. But now I am using. I use specs only for reading. I am quite certain that he signed his name twice in the book. I did not ask why he signed twice. I had not seen him signing before that. I pointed to his signatures because I saw him signing.

Q. Are you quite certain that he did not write a date?

A. He only signed in two places.

Q. Do you know the date on which this was signed.

A. I cannot remember.

Q. At the last trial you actually gave the date on which it was signed.

A. Yes.

20 Q. And today you say that you cannot remember the date?

A. I cannot remember the date definitely. But I am sure it was on a Sunday. It might have been on the 23rd of May.

I am not aware that Mr. Ratnayake on principle did not do any work on Sunday. It may be that Ratnayake observed the Sunday as a special day according to the Bible and did not do any work. But I do not know exactly. It did not occur to me that such a pious man as Mr. Ratnayake was going to do an important job like this on Sunday. I do not consider that such a thing as signing of a Will is an important work not to be done on Sunday.

30 My father did not leave a Last Will. My Co-operative Store is not closed on Sundays. It is closed on Thursdays. That is the general rule as far as our Co-operative Store is concerned. I was never the Vice-President of this Co-operative Store. I was the Vice-President of the Co-operative Credit Society. Last year I resigned from that office. I resigned of my own accord. Not because of any trouble that I had with that Society. I am now a Committee member of that Credit Society. I am a Committee Member of this Co-operative Store also. The President and the Treasurer of the Credit Society are the same persons as the President and Treasurer of this Co-operative Store.

Signed N. SINNETHAMBY,

A. D. J.

40

2-9-47.

Appearances as before.

J. de A. Dissanayake—Recalled—Affirmed.

Cross-Examination (Contd.)

The Petitioner is called Alice Nona. I refer to her as Alice Nona. When calling Martin I refer to him as Martin. Martin is Alice Nona's brother. Herath is another brother of the 1st Petitioner Alice Nona. We refer to Herath as Herath Singho. I cannot say whether these people are in

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a better status than mine. They are all of a lower status than Mr. Ratnayake's. I address Mr. Ratnayake as "Mahatmaya." He called me Dissanayake. I know Mr. Ratnayake's previous wife. I do not know whether Mr. Ratnayake was married twice before. I had not spoken to Mr. Ratnayake's previous wife. I am not aware whether Alice Nona was cooking for Mr. Ratnayake and his wife at the time when they came to Talangama. I only knew that she was on the estate. I do not know whether Alice was a tapper in that estate. I did not see any list of tappers employed on that estate in 1930 nor do I know whether Alice's name was in that list. I cannot say that. About her receiving 35 cents a day for working as a tapper in 1930, I do not know. 10

At the last trial I said that the 23rd of May was the date on which the Will was signed. I remembered that date because from that time it was not very long ago that the signing took place and therefore the date was in my memory. It was about a month after that date that I went to sign the affidavit. I cannot remember the exact date. I did not make a note of these dates. I have said that five of us signed the Will one after the other and that thereafter Mr. Ratnayake asked us to wait for tea. We said we don't want as we have had our tea already. I took tea before I started from home for Mr. Ratnayake's. 20

It was after my noon meal that I left my home. I had a tea immediately after my noon day meal. I usually take tea in the morning. After that I take tea again in the afternoon. But whenever I feel it I take a cup of tea soon after my mid-day meal. On this particular day before I left for Mr. Ratnayake I took a cup of tea immediately after my mid-day meal. I had that tea alone. I cannot say whether the other four witnesses had had their tea.

Q. But when Mr. Ratnayake offered to give you tea you said you had had your tea all of you?

A. What I told Mr. Ratnayake was "what tea at this time; don't worry about giving us tea." 30

This happened about 3 p.m. That is about one and a half hours after I took my mid-day meal and tea. I did not want tea at that time because I did not feel like having it.

I told him that we must go away and attend to our matters. I had nothing in particular to attend to at home, but I felt it was not proper for me to stay on after our mission was over. We did not consider it necessary to take tea there. I did not consider it rude to refuse his offer for tea after helping him signing the Will.

Aran de Alwis is a brother of James Alwis. Aran de Alwis had sold half of his property to Simon. I know about that. I instituted an action against Aran de Alwis claiming that that property had been mortgaged to me. I cannot remember now what Aran said in his answer. I did not file action against the buyer. I filed action only against Aran de Alwis. I cannot remember now whether my action was against anybody else also. I cannot remember whether the answer was to the effect that no money was due to me. If I had said that at the last trial it may be so. I cannot remember now whether I was the only person who gave evidence on my side in that case. If I had said that at the last trial it may be so. If the record shows that I had said such a thing then it should be so. Yes I say it is so. 40 50

Q. Half way through the cross-examination you consented to the action being dismissed?

A. I consented to the withdrawal of the case.

Q. No you moved that the action be dismissed.

A. My counsel said that he was withdrawing the case and I agreed to that.

I first knew Mr. Seneviratne, Proctor when this Will Case was instituted. He is not a resident of that area. I have no idea whether he has a clerk resident there. I did not suggest to Alice any particular proctor for her to retain in this case. I do not know who suggested to Alice to retain Proctor Seneviratne nor do I know how she came about to retain him.

I have been to a proctor's office in connection with this case. I went in connection with the signing of the affidavit. It was Alice Nona who said that we should all go to the proctor's office. So we all went. She sent for me to her bungalow in the Bank Hill Estate and told me that an affidavit was required to be signed by us. When she told me this in her bungalow none of these other witnesses were there. She said that we must all go to swear an affidavit. She said that we must all go on a certain date. He did not mention a particular date. It was about three or four days after she said this that we went to sign the affidavit. I cannot remember the date. I cannot say whether it was more than three or four days after she said this. It was about five or six days after Mr. Ratnayake's death that she sent for me and said it, and as far as I can remember it was about three or four days after she sent for me that we went and signed the affidavit. She did not ask me to inform the other witnesses about our going. But I told W. P. Perera what the Petitioner had told me saying that we all would have to go some day to sign the affidavit. I did not mention any date to W. P. Perera. I told him that the 1st Petitioner would inform us of the date and added that till she informs us we would have to wait. Later Alice Nona informed us of the date. It was about 3 or 4 days after I spoke to Alice Nona in her bungalow that we went to sign the affidavit. Alice Nona informed me of the date through a messenger. On receipt of that message I did not go to see Alice Nona. It is not Martin who brought that message from Alice Nona. It is another person who is also working on that estate. I do not know his name. He is a relative of Martin. That man is referred to as watcher. He is also a watcher on that estate. Everybody refers to him as watcher. Even I refer to him as watcher. James Alwis was also a watcher on that estate at one time. This is another person not James Alwis. I think this man is also a relation of the Petitioner.

I cannot say the exact relationship of theirs. It is this watcher who brought me the message from Alice Nona about the date on which to go and sign the affidavit. This man did not tell me that he was asked to inform the other witnesses also similarly. Nor did I ask him whether he was going to inform them also. The date fixed was about three or four days after this man brought the message not the following day. That makes about 7 or 8 days after Alice Nona sent for me and spoke about it in her bungalow. It was about four or five days after the death of Mr. Ratnayake that Alice Nona sent for. The message was that we should go to Mr. Seneviratne's office in the morning of that date of which I do not remember now. This was about 14 or 15 days after the death of Mr. Ratnayake. After that mess-

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age no further message came from Alice Nona. I did not go to her and speak further about the matter.

We arranged to go by bus. By "we" I mean myself, James Alwis, W. P. Perera and Podi Dissanayake. We arranged to leave at a certain time in the morning. The message from Alice Nona was that we should all go in the morning. So the four of us got into a bus. Alice Nona did not get into our bus. We did not see her leaving her house. As we got down the bus at the bus stand in Colombo we saw her coming by the next bus. She came with Martin. We then joined together and went from Borella by tram. We were six in number with Alice. So the six of us got into a tram and went straight to Mr. Seneviratne's office. There we were told by Mr. Seneviratne that we have to sign an affidavit. The affidavit was read out in that office. 10

Q. Is it not true that only three of you went to the office of Proctor Seneviratne and when you went to that office the other two witnesses were there? You have said that at the last trial. It is on record.

A. If it is so said in the record it may be correct. This is what I can remember?

Q. Your statement that six of you went to the Proctor's office together is all false? 20

A. What I remember now is that six of us went together.

(Mr. Pereira refers to page 37 of the proceedings of the last trial).

It was not Herath who brought the message to me.

Q. At the last trial you had said that the Petitioner's brother Herath brought the message to you.

A. If I had said so it may be correct. I cannot remember now what happened long ago. What I said at that time should be more correct than what I say now. The 23rd of May, I can remember well.

Q. At the last trial you had not mentioned about Alice Nona. What 30 you had said was that three of you went and met the other two in the Proctor's office.

A. If I had said so it is so.

I do not remember now whether the Petitioner went with us. What I had said at the last trial is correct. I cannot now remember whether all six of us left Talangama for Colombo by bus together. It is according to my present recollection that I said that four of us went together and met the other two.

Q. Is your statement at the last trial that six of you came from Ta- 40 langama together true or not?

A. I cannot remember now. It may be so.

Q. It is Martin who had made this statement at the last trial. Is that statement true or untrue?

A. If Martin had said so it must be true.

Q. Then what you said just now is utterly false?

A. I said according to what I could remember. What Martin said should be correct,

As far as I can remember now it is about 12 or 13 days after the death of Mr. Ratnayake that Alice Nona sent me the message. The affidavit may have been signed on the 5th of July. It may have been signed 32 days after the death of Mr. Ratnayake. I have already said that I cannot quite remember these things now.

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The affidavit was read out to us at Proctor Weerakoon's office but the principal points of it were mentioned to us at Mr. Seneviratne's office. The Petitioner also went to Mr. Weerakoon's office according to what I remember. It was Mr. Weerakoon who read out the affidavit and explained
10 it to us. He read the whole affidavit and then we signed it.

That was the first time I saw Mr. Seneviratne. Alice Nona knew him earlier. I say that because Mr. Seneviratne went to Alice Nona's bungalow and took away the deeds and other documents of Mr. Ratnayake. I was not there when Mr. Seneviratne took these away. I only heard about it. It is James Alwis who told me that Mr. Seneviratne had been to the Petitioner's bungalow and removed the deeds and other documents of Mr. Ratnayake. James Alwis did not mention to me who took the message from Alice Nona to Mr. Seneviratne for the latter to call and take these documents away. James Alwis referred to him as Proctor Seneviratne. I do not know how
20 Alice Nona came in contact with Proctor Seneviratne nor did I ask James Alwis about it. Nobody by name Weerakoon Proctor lives in Talangama. I know some one by that name going to Talawathugoda but he does not live there. There are several Proctors in Cotta.

Why another Proctor was not retained by the Petitioner is because Seneviratne had already removed the deeds and other documents. It is about 3 or 4 days after the death of Mr. Ratnayake I think that Proctor Seneviratne removed the documents away. This is as far as I can remember. James Alwis did not tell me that he was there when Proctor Seneviratne came to the Petitioner's house. He only said that Proctor Seneviratne removed
30 the documents. James Alwis did not tell me that it was he who took the message to Proctor Seneviratne to come to the Petitioner's house. I cannot say how Seneviratne happened to go there. The funeral of Mr. Ratnayake took place at Dehiowita. I do not know whether Proctor Seneviratne attended the funeral or whether he visited the house later to pay his respects.

I can remember the 23rd of May because this particular date has remained in my memory. But I cannot remember the date on which the affidavit was signed. Nor can I remember the date on which I sold my property or the date on which my daughter got married. She got married somewhere in 1936 or 1937.

I said yesterday that Mr. Ratnayake was resting on a cane chair when we went there. At the last trial I may have called it lounge. It is a leaning chair. In Sinhalese we call that "Hansi puttuwa." Whether it is an easy chair or arm chair we call it Hansi Pittuwa.
40

Mr. Ratnayake wore his specs before he signed the Will. He had his specs in his hand. I said yesterday that I could not recollect whether the banian Mr. Ratnayake was wearing at the time had pockets or not. I cannot remember now whether Mr. Ratnayake, before we left the place took the book inside the house after signing. We left the place after signing.

What I said yesterday was that Mr. Ratnayake was in poor health when we went there. But nobody helped him when he got up from the chair and went inside the room.

Q. You have told us that Mr. Ratnayake till two or three days prior to his death was attending to account keeping himself.

A. It may be so.

Q. But the account book shows that after the 14th of May he had not written anything therein.

(At this stage Mr. Samarakone objects to evidence of physical infirmity being led. He says that if the object is to show that the deceased was so physically infirm that he could not have signed, then there should be a specific issue on that point. 10

Mr. Pereira states that evidence to show that the deceased was physically infirm to is relevant to the issue that has already been framed with regard to whether the Will was actually signed by the deceased or not.

In my opinion such evidence is relevant to the issue and I therefore allow the question being put.)

Q. This book shows that after the 14th of May, Mr. Ratnayake has not entered any item therein?

A. I do not know that. Mr. Ratnayake was suffering from piles and he died of that. This is according to what I have heard. I also heard that he was being treated by a Buddhist Priest, but I do not know his name. 20

I do not know whether his name is Methananda Thero. I do not know whether there is a priest by that name.

Mr. Jayatilleke a retired Government doctor lives about one and a half miles away. He is a man of position and for a man of that type who owns a car this distance is nothing much.

Mr. Jayasinghe of the Income Tax Department lives on the adjoining land. 30

I am not aware of anybody by name Moragoda Veda Mahatmaya. As far as I know no such person lives there. I do not know whether a firewood seller by name Isthegu lives there. I do not remember whether I gave evidence to that effect at the last trial. There was never a man by the name of Moragoda Veda Mahatmaya, in that area. (Mr. Pereira refers to page 39 of the Proceedings of the last trial wherein the witness had said as follows: "On the eastern side of the deceased's estate is the house of Moragoda").

I remember having referred to Moragodawatte and not to Moragoda Veda. 40

I know Mr. Kaviratne. He was living in the property of Mr. Weerasooriya.

I said that the deceased signed twice. I do not know why he did it. I did not look so far as to find out whether there was any difference between the two signatures he wrote. (Shown P1). I notice a difference between the two signatures. One is decipherable and the other is not. In one signature the words J. A. R. have been written together and in the other separately.

I do not know how Mr. Seneviratne came in contact with this case nor did I enquire about it. To my knowledge I do not know whether any of the other witnesses were present at the funeral of Mr. Ratnayake. I cannot say whether any person by name Rura came with Seneviratne for the funeral. I heard about one Mr. Felix Wijesinghe coming there. Prior to this I had never signed as a witness to a document which was signed by Mr. Ratnayake.

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Cross-Examination
—Continued.

RE-EXAMINATION

J. de A. Dissanayake
Re-Examination

It is about three years ago that I gave evidence in the last trial. The evidence I gave then may be more correct than that which I give now.

10 The entire value of my lands is about Rs. 10,000. This includes the shares of my wife and children. I own about Rs. 6,000 worth kumburus.

I know the difference between a gratuity and a pension. A pension is a sum of money that is given monthly. A gratuity is money that is given in a lump sum at retirement. I have said that I received gratuity twice from the Commercial Company. I asked from James Alwis why Mr. Ratnayake wanted me. He said that he did not know. I have also said that after the signing of the Will Mr. Ratnayake told us to keep the matter a secret. The date on which I signed the affidavit may appear in the affidavit itself. I cannot remember exactly how many days after the death of Mr. Ratnayake that
20 the affidavit was signed. I spoke about the signatures of the deceased. But I am not an expert. I can say that they are Mr. Ratnayake's signatures only because I saw him signing on that day. I have also said that in signing the affidavit I signed along with the other witnesses.

(At this stage Mr. Samarakone suggests that his issue be amended as follows:—

“ Was the document dated 23rd May, 1943 appearing at page 223 of P1 duly executed by the deceased and attested by the witnesses? ”

Mr. Pereira has no objection.

I accept this issue in place of the one already framed) The man re-
30 ferred to in the cross-examination as selling firewood is living at Moragodawatte. His house is on the eastern side of this estate. It is this house that I referred to at the last trial and on that day what I said was “ Isthagu in Miragodawatte.”

I was questioned about the dismissal of an action that I had instituted against someone. Why I consented to the dismissal of that action was because my Counsel asked me to withdraw the action. The time elapsed and therefore the claim was prescribed. I admit that my Counsel told me that. That is why I consented to this withdrawal.

Signed N. SINNETHAMBY,
A. D. J.

40

Weerasinghage James De Alwis.—Affirmed, 48 years, Cultivator, Talangama South.

W. J. de Alwis
Examination

I knew the deceased Mr. Ratnayake for about 12 or 15 years. I was at one time employed by him as a watcher. That is about 12 or 15 years ago. The reason why I left his employ i because I wanted to pursue my cultivation. After I left his services I used to visit him for my purposes as well as for his

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purposes. Whenever he wanted me for any of his purpose he used to send for me. Right up to the time of his death I was visiting him.

I call the 1st Petitioner "Nona Mahatmaya" I call her boy "Hamu Mahatmaya" that is the first child of Mr. Ratnayake.

From my own personal observations Mr. Ratnayake was treating the 1st Petitioner as his wife. He used to go about with her. He used to take her in his car.

I remember Martin bringing a message to me from Mr. Ratnayake. That was about 10 or 12 days prior to the death of Mr. Ratnayake. I think it was on a Sunday, I am not quite sure. I cannot remember the exact date. 10
When I went there Mr. Ratnayake was resting on an easy chair in a room. At that time he was alone there. He asked me to go and tell Loku Dissanayake that he wanted him to come along with two others.

(To Court.)

He did not tell me what type of persons those two others should be.)

This Loku Dissanayake is the last witness. So I went in search of him. I first went to his house. I did not meet him there. On information I received there I went to the Co-operative Store and met him there. The Manager of that Co-operative Store is Paullis Perera, and Paullis was also there in the store when I went there. I told Dissanayake that Mr. Ratnayake wanted him to come along with two others. So Dissanayake took Paulis Perera also along and we all three proceeded towards Ratnayake's house. On our way we had to pass Podi Dissanayake's house which is close by and we took Podi Dissanayake also along. So all four of us went to Mr. Ratnayake's. 20

We got into the same room as I saw Ratnayake earlier. Mr. Ratnayake was there and he asked us to sit down. Then he got up from the chair and went in. As he went in he told the 1st Petitioner to send for Hewarala. Then Martin came up. Then Mr. Ratnayake brought a book from inside the house, kept it on a table that was there and sat down and said: "I have asked you to come up here because I have written my Last Will and I want you to sign as witnesses to it." He said this while opening the book and turning the leaves. Those present at the time apart from myself were Loku Dissanayake, Paulis Perera, Podi Dissanayake and Martin. Then Mr. Ratnayake signed in that book. He signed twice. He signed below a writing that was there. I saw him signing. (Shown P1). This is the book (Shown P1b.) He signed here. (Witness points out the two signatures of the deceased). After that we signed. Loku Dissanayake signed first. Then Paulis Perera signed. Then I signed, Podi Dissanayake signed next and then Martin signed. (Witness points to his signature.) My signature is the third signature. I saw the other witnesses also signing. All five signed in the presence of each other and in the presence of the deceased. 30 40

The Petitioner was in the next room standing near a window and from there she could see what was happening. When we had all signed we wanted to go away but Mr. Ratnayake said: "Wait, have some tea and go." We said: "No, not necessary." Then he thanked us for coming and signing the Will and asked us to go and not to speak about it. We then left the place.

Sometime thereafter I remember signing an affidavit in Colombo before Proctor Weerakoon, J.P.. Martin had told me that in regard to the Last Will we would have to go and sign an affidavit. Martin said that the 1st Petitioner wanted us to go to a proctor's office to sign an affidavit and for that purpose we would be required to go. I cannot remember exactly whether any date was fixed. So I came from Talangama to Colombo to sign that affidavit. All five of us came together. We went to Mr. Seneviratne's office first. From there we were taken to Mr. Weerakoon who was in a room in the Police Court.

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—Continued.

10 (Shown X1). This is the affidavit which I signed. My signature is the third signature. All five witnesses signed this affidavit. It may have been on the 5th of July, the date given in the affidavit. But I do not remember it now. (Shown the Last Will.) My signature is there on Pla. We were asked to sign in the presence of Mr. Weerakoon.

CROSS-EXAMINED

W. J. de Alwis
Cross-Examination

The last witness Dissanayake is a relative of mine. He is the son of my uncle. But I do not observe the relationship. At the last trial I did not try to make out that he was a distant relative of mine. What I said was that he was a relative but I do not claim the relationship. I did describe the relationship. I deny that I said I did not know whether he was a relative of my mother. Dissanayake's father is my mother's brother. At the last trial I did not originally deny and later admit this. Mr. Pereira refers to page 48 of the proceedings of the last trial.

I admitted that we were related to each other. I did not say Loku Dissanayake and I were not cousins. If there is such a mention in the proceedings I do not know why.

What I said then was that we were relations but that I did not visit him as a relation.

30 Q. Did you say this: "I do not know whether he is a distant relation of my mother?"

A. I do not remember whether I said it or not.

Q. Finally you were asked whether your mother was not Luwissa de Alwis Dissanayake or not?

A. Yes.

Q. You were then asked whether she was not a sister of Robert?

A. Yes.

Q. And then you were asked whether Robert was Dissanayake's father.

A. Yes.

40 Q. And then you admitted that Dissanayake and you were cousins?

A. What I said was although we were relations we were not on visiting terms.

I did not say that he was a cousin of mine. I said that he was a relation of mine. They do not consider me as a relation of theirs on occasions of weddings and other similar functions. Some of the people in the area may be knowing about this. Some may not. I do not know whether Mr. Ratnayake knows about it or not. Mr. Ratnayake's message to Dissanayake

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was taken by me. I did not refuse to take the message to Dissanayake because though they do not invite me for their weddings and other functions we are in speaking terms. I do not know whether Dissanayake's family, consider me as "a black sheep" in the family. For selling illicit arrack I was recently fined Rs. 750/-. I paid that amount and appealed.

(To Court.

That appeal has not yet been decided.)

Signed N. SINNETHAMBY,
A. D. J.

After Lunch.

10

Weerasinghege James de Alwis, recalled, affirmed.

Cross-Examination Continued.

I know Richard Dissanayake; I know Cornelis Perera *alias* Cotta. I was never charged in a cariminal case along with Cornelis Perera. I did not say at the last trial that I was charged with Cornelis Perera. (Counsel refers to the evidence of this witness at page 46 para. 3).

Q. Did you say "I was charged for the commission of an offence along with Cornelis Perera; I was not convicted and bound over; I was warned"?

A. I did not say that.

20

I had no case whatever with Cornelis. I deny having admitted that I was charged with Cornelis and was warned but not convicted. (Counsel moves to mark in evidence original document R6.

Mr. Samarakone objects to that document on the ground that it does not refer to this witness; there is no evidence to show that it does and that it is irrelevant.

ORDER:

I agree with Mr. Samarakone that there should be satisfactory evidence identifying the person mentioned in the register with the witness before it can be of any value as evidence against the witness; but as it is a certified copy of a public document, I allow it to go in for what it is worth.) I know Thigoris Almeida; I know Suwaris Pinto, my father-in-law. Almeida had a bus and he is a cousin of mine. Once I wanted his bus stopped for the purpose of taking my son to hospital; the bus was not stopped and I engaged a car to take my son to hospital. I caused damage to the bus to the extent of Rs. 200 and I paid the amount. I was prosecuted for it and was asked to give Rs. 200 for repairing the bus; I was not fined in addition.

I know the 1st Petitioner ever since I was employed on the estate as a watcher. I address her as "Nona Mahatmaya." I don't know whether she was a tapper on Bank Hill Estate or that she was known as Alice; nor am I aware that she was paid 35 cents a day. She has a mother, but I don't know her name. I do not know whether the mother too was working on this estate. I know her step-father was a watcher on this estate; he is still there. After I went to the estate he was not a watcher. I went there as a watcher, 15 or 16 years ago. At the time of the birth of 1st Petitioner's child I was on the estate; that was the time I started to work there. I do not know

Ratnayake's married wife. About 1935 or 1936 I resigned my job on the estate. I was not dismissed by Ratnayake. I have no recollection of any other case against Cotta for theft of coconuts from the estate. Even after I left the estate, if I had any business with Mr. Ratnayake I went there and if he wanted me he used to send for me. I never tethered cattle on that estate. I cannot remember having tethered cattle. I did not have many cattle. I did not have buffaloes. For my work sometimes I used other's cattle and sometimes I borrowed. I do not know whether Cotta was prosecuted for theft of 7 coconuts from the estate nor whether he summoned 1st Petitioner to give evidence in that case. William charged me once for assaulting a child of his; I was the only accused in that case. I beat a head of cattle and the blow slighted on William's child; only one child was hurt. I was watcher on that estate for 5 or 6 years. Martin was appointed watcher after I left. When I was watcher I used to live my house. I did not then stay on the estate. 1st Petitioner was living in the bungalow then and her mother used to visit her from her home somewhere at Kesbewa. At that time Martin was not on the estate. When Martin was appointed watcher he was living in a watch-house in the middle of the estate, a fairly big house with a verandah, 2 rooms and a kitchen; this was not the bungalow. When Martin was appointed watcher I used to visit the estate and I never saw Kalo Nona and her husband living in that house. I had passed that way and had seen Martin and his wife in that house, but not Kalo Nona or anyone else.

Martin came to fetch me saying the master wanted me. I did not ask him what it was for. I was then seated on my couch. There were chairs in my house but we often sit down on couches which we have in the house. I was not lying down. I went with Martin; when I got to the bungalow Mr. Ratnayake was on a lounge. I asked him why he wanted me; then he wanted me to get down Dissanayake and ask Dissanayake to bring two others with him. I did not ask him why; when he gave an order to us, we did it without asking questions. He never gave me any reason. He did not tell me to bring two other respectable persons with Dissanayake; he wanted me to bring Dissanayake and two others. There are some who know that Dissanayake and I are not very friendly and there are others who do not know. I did not refuse to take this message; I went straight to Loku Dissanayake's house. Loku Dissanayake did not sever relations with me; nor did he think of me as a "chandiya," but because I married a woman of my choice—Suwaris Pinto's daughter—and he disapproved of it, he did not associate with me very much. My wife is of the same caste. Dissanayake's people are called "Appuhamy"; Suwaris Pinto though of the same caste is not known as Appuhamy, but simply as Suwaris Aiya or Suwaris Pinto; people of the place called Loku Dissanayake "Dissanayake Appuhamy" or "Dissanayake Unnahe." My father-in-law was also a cultivator; neither his son nor his son in law had a bus. Almeida is a relative of his and I am related to Almeida through him. Almeida is not my brother in law.

I did not find Loku Dissanayake in his house, then I went along to the Co-operative Store passing Jayasinghe's house; on the right hand side is the Co-operative Store and on the left Jayasinghe's house; next to Jayasinghe's house lives the Overseer of the General Hospital and next to that is Simon Mahatmaya's house. Jayasinghe works in a Government Office—I don't know which—and he is my cousin. He lives in a house adjoining Bank Hill

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Cross-Examination
—Continued.

Estate. I did not myself invite people on Mr. Ratnayake's message. Podi Dissanayake was called by Loku Dissanayake. He also called Paulis Perera. I cannot remember whether I also called Podi Dissanayake and Paulis Perera. If I have stated so at the last trial it may be so. From the Co-operative Store to the bungalow on the estate the distance is not over 1/4 mile; it is not even 1/8 of a mile. Dissanayake may have said it is about 1/4 mile, but that is his idea of it. To go to the bungalow one has to go along Pahalawela Road which is a Devata road from the main road. My house is about 1/4 mile from the high road. Bankhill Bungalow is on a hill. On the left of the bungalow is a garage near the gate. The driver of Ratnayake's car was Girigoris Perera; I did not see Girigoris Perera that day at all; he was a long standing and trusted servant of Mr. Ratnayake; may be that Girigoris has said that he did not see me passing that way that day; nor did I see him. Ratnayake was a religious man, but he worked on Sundays. If there was any work left over from the previous day he would continue it on Sunday—work like manuring. I don't know why such work was not put off for Monday. I myself have got work done on Sundays when I was there, e.g., plucking of coconuts. Girigoris also did that type of work. Girigoris may have been there long before me, but I don't know. I am not aware that Rs. 1,500 had been left in the Will for Girigoris. 10

I do not know exactly when Mr. Ratnayake arrived at the bungalow or how many days before he died he came there. I knew he was on the estate but I don't know when he came. The four of us were in the room on the Roman Catholic Church side to the east of Mr. Ratnayake's bungalow. Dissanayake's house is also on the east of the bungalow, further away from the church; there is a school near the Church. My house is at Pahalawela. The Pahalawela road does not lead to the school. This room is enclosed with glass shutters and is on a side. There are some steps leading to the room and we got into the room by those steps, the four of us; we did not go into any other part of the house. After we got in Mr. Ratnayake asked ue to be seated, went into the house and brought this book; there were some ordinary chairs and I also sat down. Mr. Ratnayake came out with this book (witness points out the book). There was a table a little distance away from the door which leads to the inner rooms. The "Mahage" is broader than this room; this room is narrower than the rest of the house. Ratnayake's wife was with him and she went inside the house when we were coming. I do not know whether Mr. Ratnayake has stated in Court that in 1937 he was keeping Alice as his mistress; I don't know whether they were married; I was only working for them and was paid for it. Mr. Ratnayake said this was his Last Will and he wanted to sign it as witnesses; none of us objected, all agreed to sign. (Shown 47 of P1). I cannot understand English. I can see the writing here now but cannot remember whether I saw it before (Counsel shows the writing to Court). Mr. Ratnayake signed the Will twice; no one asked him why he signed it twice. Before this he had handed me chits to be given to other persons in connection with sale of coconuts, etc. not receipts. I never had Mr. Ratnayake's signature with me at any time. When Mr. Ratnayake invited us to tea after the signing Mr. Dissanayake said: "We don't require tea now, we have our business to do, we will go." I don't know whether he had other business at that time, but he said so. I myself had nothing in particular but as the others went away I also went away. I did not decline through any pride; I did not think that way but merely went away. When we first entered the house Ratnayake told—may be to his wife—'get down Hewardala also.' 20 30 40 50

I went later to have an affidavit sworn; I had nothing to do with getting round the five witnesses for this purpose. There is another relative of Martin who was also called a watcher and was on the estate—I don't know his name—I don't know much about him. Martin brought me the message for the swearing of the affidavit. I cannot say how long after Mr. Ratnayake died that was; may be about 3 months after Mr. Ratnayake died, but I am not sure. Martin brought a message to me that I was wanted by the 1st Petitioner at the bungalow. 1st Petitioner told me that in connection with a case we had to sign an affidavit and we should go to the Proctor's office for that purpose. She did not tell me which proctor it was; she did not ask me to convey the message to the other signatories to the Will. She spoke to me towards the evening but I cannot be sure. 2 or 3 days after that—I am not sure—I came to the Proctor's office; I was asked to come in the morning; I did not take this message in any light. I did not know who and who knew the Proctor's office. The 5 witnesses and the Petitioner were in the Proctor's office. I do not know how the 1st Petitioner came there but we four or five came by bus; all five of us came by bus, and she was in the Proctor's office when we came there. I followed the others to the Proctor's office from the bus stand. Martin may have known the office, he was coming ahead; I don't know whether the others too knew the office. We travelled by tram as well. While travelling by bus and tram we were scattered and I did not ask who among us knew the Proctor's office. As they were also coming I got in and I did not consider it necessary to ask them at that time. I did not know the Proctor's name either; I did not know him before, did not know him at all till I got to his office. I do not know how he made the acquaintance of Mrs. Ratnayake. I did not ask Mrs. Ratnayake at first where the Proctor's office was. When the five of us came in to the Proctor's office we found Mrs. Ratnayake there. The Proctor had prepared an affidavit; we were explained what the affidavit was about, we were taken to Proctor's room in the middle of the Police Court building, a crowded room. Mr. Weerakoon asked us whether we signed the Will in the presence of Mr. Ratnayake, and if so certify. This was in the presence of Mr. Weerakoon himself. We first signed the affidavit and then we were asked to sign the Will itself; we used the pen and ink that were in the office, I cannot remember who gave me the pen. I ordinarily sign my name "James de Alwis." We were asked to sign, not taking much space and I did not find space to write the final "S". (Shown the 2nd signature on the Will). This is mine. After Mr. Ratnayake's signature on the Will we placed our signatures and while the book was still there we came away from Mr. Ratnayake's house. I do not know what became of the book later. I do not know what became of the book later. I have never signed a Will before; I have signed Notarial Deeds; I know that to transfer property a Notary and two witnesses are required; I do not know whether everybody knows that. I did not know that a Will should be signed by five witnesses.

I was not used to questioning Mr. Ratnayake. As we walked away from his house we did not discuss about the Will; I did not treat the matter as very extraordinary. I had not heard of another Will of this type.

At the last trial I did not say that Mr. Ratnayake died in Talangama and 'his funeral was also there.' He died in Talangama and his body was buried at Dehiowita. No one reminded me about this subsequently. (Counsel

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—Continued.

refers to the witness' previous evidence). I don't remember having said earlier that Mr. Ratnayake 'died a year ago.' If I have stated in evidence already that I could not remember the day it must be correct. What I have stated in the last trial is more correct than what I state today. It is correct that I attended his funeral. I do not remember having told that Mr. Ratnayake's funeral was also at Talangama. I do not remember now what I stated then. But I know that he died at Talangama and his burial was at Dehiowita. I may have said as recorded when I was questioned then.

Signed N. SINNETHAMBY,
A. D. J. 10

3-9-47.

Appearances as on last date.

Weerasinghege James De Alwis. Recalled—Affirmed.

Cross-Examination Continued.

At the last trial before I was given the book in which the Will was written I was asked to describe it. I said the book was like a check-roll book. (Counsel refers to previous evidence). I pointed out the length of the book with both my hands, not with one hand. I do not know how the Court has recorded it. Dissanayake did not give any reason for not having tea. (Counsel refers to the same page of the evidence at the last 20 trial).

Q. Did he say he had other work to attend to?

A. I cannot remember.

Sometime after the death of the deceased I was given a letter to bring the car from Dehiowita and I went; I know the car was at Dehiowita with Wijesinghe; I don't know whether he had gone there with Martin's brother Herat. Proctor Seneviratne gave me a letter to be given to Girigoris to bring the car and hand it over to Petitioner; that was after we came for this case, about 5 or 6 months after Mr. Ratnayake's death, but I am not quite sure. It was sometime after I signed the affidavit. 30 To my recollection the affidavit was signed some months after the death; I cannot say in which month I went to bring the car. Girigoris said the master was not there at that time, therefore he could not give the car. I complained to the Police; thereafter I came away. I am not aware of any complaint to the Police that I tried forcibly to remove the car. I did not go to the Headman also. Mr. Seneviratne wanted me to make an entry at the Police Station to the effect that I went there to claim the car, but I did not tell that to the Police.

I have no idea whether there was ink and two pens on the table on which the Will was signed; I don't remember it now. (Counsel refers to 40 page 49) I don't remember now whether I saw or did not see it. I may have said so on the last occasion. If I said so it may be correct. I cannot recollect how Mr. Ratnayake was dressed at the time, or how I described his dress at the last trial. (Counsel refers to previous evidence.) I may have described as I remembered then. I saw the Petitioner when the Will was signed; she was in the next room; there is a window as well as a door separating that room from where we were. I did not observe whether the window was opening outside or inside. She

was in the room near the window (witness points out a distance of about 10 ft.). Between her and us there was a wall, a window and a door; I cannot say to which side the window opens; it had shutters; it was not closed; it had no glass shutters, but only wooden shutters which were open; between the two rooms there were only wooden windows and right round there were glass shutters and a half wall; there were no glass shutters belonging to the room in which we were, between the Petitioner and where we were. She was visible to me. As we entered she got up and went in to that room; I cannot remember to which side of the window she proceeded; as I stood facing
10 the doorway she was on the left, and there were no glass shutters intervening.

Very long ago I was charged with others in the Village Tribunal for gambling; we pleaded guilty and were fined Rs. 6/- each. No complaint was made against me by Mr. Ratnayake. My wife is Ranasinghege Elpina de Pinto, referred to at home as Enga. I lived with her for 7 or 8 years and after the birth of the child I married her. My eldest child is now 19 or 20 years old. I did not elope with my wife; I lived in her house; I did not bring her into my house because my parents were there. I married my wife 9 or 10 years ago, whether after Mr. Ratnayake's death or before I cannot remember. I married her, but did not worry myself to know when I married
20 her. I cannot say whether it was before or after I signed the Will. I do not know whether the Pintos are of a higher status than myself. My father-in-law Suwaris Pinto died very long ago when my child was about 4 or 5 years old. I am not aware that my wife and her people insisted on my marrying after Mr. Ratnayake's death; it is an unbearable lie to say that they did so because they were afraid I would marry the Petitioner. It is not true that I was in terms of intimacy with Alice Nona; it is an utter falsehood and meant to disgrace the deceased Mr. Ratnayake.

RE-EXAMINED

W. J. de Alwis
Re-Examination

I gave evidence at the last trial about 3 years ago and my memory
30 then in regard to these events was fresher. Mr. Ratnayake was a Christian. His corpse was removed from Talangama to Avissawella; there was no ceremony at Talangama when I was there. There was a funeral ceremony at Avissawella which I attended.

I first went to Talangama immediately after his death and I went for the funeral to Dehiowita.

I said I was never charged with a man called Cotta.

(Counsel draws attention to the evidence at the last trial p. 45. Mr. Samarakone marks in evidence the portion of evidence at p. 45 referring to the allegation that witness was charged in a gambling case, X2.)

40 When I went to Dehiowita to fetch the car Herat was already at Dehiowita. Perhaps he had seen Mr. Seneviratne before that and that may be why Mr. Seneviratne gave me the letter.

Signed N. SINNETHAMBY,
A. D. J.

(Mr. Samarakone states that witness W. Paulis Perera for the defence was served with summons and appeared in this case, but he is absent. His name is called, but he is not present. The return shows he has been served

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--Continued.

with Summons and the summons states that his batta has been secured by the money being paid to the Proctor for Petitioner; this appears to be the practice prevailing in this Court. Mr. Samarakone asks for a warrant on him for the next date of trial. I allow his application. Issue a warrant returnable on the date for which this case will be adjourned.)

Mr. Samarakone calls.

J. R. de A.
Dissanayake
Examination

J. R. de A. Dissanayake, affirmed, 32, Contractor's Overseer, Talan-gama South.

I remember the death of Mr. Ratnayake. I remember going to his house 10 or 18 days prior to his death. My cousin Dissanayake who has given evidence, usually referred to as Loku Dissanayake, called me and I went. Dissanayake, Paulis Perera, James de Alwis and myself went about 2 or 2-30 p.m. As we entered the house we saw Mr. Ratnayake and the lady seated. When Loku Dissanayake first met me, he told me "Ratnayake has aksed us to come, I do not know why, let us go to the estate and come." When we entered the lady said "Mr. Dissanayake and the others are coming" and so saying she went inside. Mr. Ratnayake asked the four of us to be seated; then he said "Call Hewarala." I don't know who Hewarala was, but Martin came. He said this to the lady. Saying this Mr. Ratnayake went inside and came back with a book; he kept it on the table, opened it and said: "I asked you to come because I want you to sign as witnesses to a Last Will which I have written." After saying that he signed in two places. Five of us were there, Dissanayake, James Alwis, Paulis Perera, Martin and myself, and all five of us saw Mr. Ratnayake signing. (Shown P1b page 223). I identify Mr. Ratnayake's two signatures here, I am sure those were the signatures which he placed. Mine is the fourth signature. I saw the other witnesses also signing: the first is Dissanayake's, second Paulis Perera's, third James Alwis's, fourth mine, and fifth Martin's. I was present when we all signed and we were all present when the deceased signed. After the signing Mr. Dissanayake said "Now we will go." Mr. Ratnayake said "Have tea and go." Then Dissanayake said we don't want tea; we have our own work to do, thank you. Then Mr. Ratnayake said "Thank you very much, do not tell anything about this to others." Then we came away. Some days later I had to come to Colombo to sign an affidavit. Martin came and told me that the lady wanted to see me at the bungalow, and I went. There she told me that we had to go and sign an affidavit. Two or three days after that all five of us who signed the Will came to Colombo by bus, and then by tram and we went to Mr. Seneviratne's office; from there we went to the Police Court where Mr. Weerakoon explained to us the contents of the affidavit. He asked us whether it was correct and true that we had signed that Will and if so asked us to sign the affidavit to that effect. So we signed. (Shown XI). I see my signature here, the fourth one. The other witnesses also signed similarly. We signed the Will P1a on the top; my signature is at the top and the other witnesses who signed the affidavit also signed here again. I knew the first Petitioner. She was living with Mr. Ratnayake for a long time on the estate. We regarded her as his wife. He used to go about in the car with her and the children,

CROSS-EXAMINED

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1st Petitioner's
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Dissanayake
Cross-Examination

I am 32 years old. I don't know the time 1st Petitioner was a tapper on the estate; I never heard of it. I don't know whether she is a sister of Martin who was watcher on the estate. I have worked on Mr. Ratnayake's paddy fields. I know a man called Welikadage Cornelis Perera *alias* Cotta. I am not aware that Mr. Ratnayake charged him for theft of coconuts. I did not know Petitioner's name in the village; we refer to her as "Nona." I call Loku Dissanayake "Aiya." I have never heard him calling the 1st Petitioner "Alice." I cultivated Mr. Ratnayake's fields about 2 or 3 years; 10 my father and younger brother all worked on them. I think a clerk is higher than an overseer; I am the person who looks after the work of the labourers and keep a hand check-roll; my brother with whom I am employed does contract work for the Irrigation Department and the P.W.D. While so employed I did not work on military camps. I was charged for theft of a gear box from a camp along with one Wilson. In the Court house my name was called out as Dissanayake Galagadera Alwis; then a Police Sergeant said I was the person referred to and asked me to appear and I did so. I did not evade summons. I was not in the village at that time. It may be that I appeared in Court after Wilson was convicted. I do not know whether 20 warrant was out for me but I came to Court from Chilaw. I had been there prior to that with a cousin of mine, 2 or 2½ miles from town, for about 2½ or 3 months during which period my Contractor cousin had no work for me; he did not get contract work always; to get to that place one has to turn off just opposite the Munneswaram Temple. I was not absconding; I received a letter from my sister to the effect that there was a case against me and I appeared in Court; the letter was not from my contractor brother. It is not true that I was in hiding till Wilson's witnesses were tackled. I was later discharged. I don't know how it was. Only the prosecution evidence was called in my case. James Alwis is related to Loku Dissanayake and distantly 30 to me; the older people are not there and I cannot say what the relationship is; we don't have any relations with James Alwis, not because of this case, I never heard that Alwis was in terms of intimacy with the Petitioner, nor am I aware that he interested himself in all her affairs. I do not know whether Alwis married his wife after Mr. Ratnayake died. I know he was living with a woman who had grown up daughters; I do not know whether he was married to her or not; they were living as husband and wife; I don't know when he actually married. James Alwis and Loku Dissanayake may be children of brother and sister.

When James Alwis, Loku Dissanayake and Paulis Perera came, Dissa- 40 nayake spoke to me; he said "Child, Mr. Ratnayake has asked us to come to the estate, I don't know why, come let us go." I did not ask him what for, because he himself did not know. We did not discuss about it on our way to the estate. I do not recollect Loku Dissanayake asking Alwis what it was for, nor do I remember James Alwis saying that Ratnayake was ill; I just followed them. I found Mr. Ratnayake in the glass enclosed room; that room is on a side of the house.

I came to the verandah of the Court with James Alwis and the Petitioner; I went to Mr. Seneviratne's office after I signed the affidavit. I have not been asked about the evidence or any details. Up to date Mr. 50 Seneviratne has not asked me anything about this case. Once Mr. Obeysekere

asked me, he is now dead. The Proctor only said 'You better give evidence as you did last time'; he said that in his office. I went there the day before yesterday; at that time two other witnesses were there; it is not a fact that I was with the other witnesses on the verandah today.

Q. Did you say this on the last occasion (page 61): "I describe the room in which the Last Will was signed as a hall with glass panes?"

A. I cannot remember what I said; if I have said so, it is correct.

This room was 4 to 5 feet broad (witness points out a distance of 8 feet, and later points out a distance of about 5 feet). The length would be equal to the distance from where I stand to the doorway about 25 feet. The room had glass panes. I do not remember how I described it at the last trial, I have no recollection of it. I said that the lady remarked "Mr. Dissanayake and others are coming" and so saying she got up and went inside. The table was a little distance away from the lounge on which he was sitting, about 6 or 7 ft. away from the doorway. It was a small table. I cannot remember having said that it was about half this Court table; may be 3 or 3½ ft. long and 2 or 2½ ft. wide. It was a short distance away from where Mr. Ratnayake was seated, somewhat towards the middle of the room. The table would not cover up the width of the room—the room was 4 or 5 ft. wide and table 2 or 2½ ft. wide. According to my recollection the table was placed length-wise in the room leaving a space; I think it was placed against the wall; Mr. Ratnayake sat in that space. It was possible to get inside the house from this room through the door; the Petitioner was inside. There was a window between where I was and where she was, and we could see her through that window. My memory has not been refreshed since about the window. I do not remember what I said at the last trial. What was happening in our room could be seen from the room where Petitioner was, through this window. As one enters the glass enclosed room there is a door just opposite, in the middle of the 25 ft. long wall; the lady got in through that door. (Witness asked to draw a rough sketch of the room; he does so, and marks A, entrance steps leading into the room; B, the door; C, the window. Mr. Pereira marks the document Y1).

I cannot be quite definite with regard to the exact position of the door and window but they were on the lengthwise wall of the room. We could see the Petitioner through the window, standing near the window and within sight of us. I saw her there while the Will was being signed. I cannot remember what I said at the last trial.

Q. Did you say the only way she could be seen was through the doorway? (Counsel reads from the middle of page 59). I cannot remember whether I said, I did not see her in the room.

Q. Did you say 'I could not see the room, but I could see the things by the doorway'?

A. I cannot remember.

Q. There was a glass pane between the verandah and the room, where she was"?

A. I do not know whether I said that. I have been to the deceased's bungalow many times.

Q. "Between the room and the verandah there is only a door, no glass shutter window"?

A. I cannot remember what I said.

Q. "There is no window facing the hall but there is a door facing the hall?"

A. I don't remember what I said.

(Mr. Pereira marks in evidence the portion at p. 59 of the proceedings Y2).
I have been to this bungalow, but I have not been to all the rooms.

(To Court.

10 This room is in the front portion. Facing the house from the compound, the room is to the left; there is a hall as we enter and that projects out a little to the front; there are steps to enter it; there are glass windows, but I cannot say whether it is right round.)

(Mr. Pereira marks Y3, witness' evidence at page 61.)

I received no Summons for this trial. I do not know whether the others were served with Summons. Martin told me that the lady wanted him to tell me that the case was to be heard the day before yesterday and she wanted me to attend Court, and I came along. I was not given bus fare; I spent out of my own pocket. (Mr. Pereira draws attention to the fact that Y3 evidence
20 is in re-examination.)

I was seated; there were chairs kept on the side of the table which is 2 or 2½ ft. wide, alongside the wall; the first chair was 3 or 4 ft. away from the table. The table was along side the wall in which was the door-way. In front of the table there was a chair and Mr. Ratnayake sat facing the wall and signed the Will. I noted that he signed it twice. I did not ask anyone why he signed twice. We all saw it but we never commented on it; besides signing twice he did not write anything else at that time; at that time he only signed and we signed below. I cannot remember whether I said at the last trial that I did not see the Petitioner from the time I entered the house till I
30 left. If it is so recorded I cannot explain it.

Mr. Ratnayake offered us tea, then Loku Dissanayake said we were in a hurry to go. I had no hurry. Mr. Ratnayake was of a higher status than ourselves. I did not want tea at that time. It is not an insult to a person to refuse tea when it is difficult to take tea at the time it is offered; we had had tea. We have our noon meal at 11 or 11-30 a.m. When Loku Dissanayake first spoke to me, I had had my tea. In the morning we take rice about 7-30; about 11-30 or 12 noon we have a rice meal. About 2 or 2-30 p.m. we have a cup of tea, then till about 7 p.m. when we have dinner we don't take anything. About 4 or 5 p.m. if anyone offers us tea we take it. I was just after
40 tea, but if I had not had tea I would have accepted tea. I had no desire for tea at that particular time. The distance to the bungalow is not much and it was not very hot at this time. Besides when one said no, I don't want tea, it is not nice for the others to take it. It is only Dissanayake who said he did not want tea, and I did not say anything. Then we left the bungalow. From the bungalow to the gateway is a distance of about 40 to 50 yards (witness points out a distance of about 60 yards). Up to the gate we walked together and from there I went home. I know a little English; I can read with difficulty. I know Loku Dissanayake can read. I did not ask Loku Dissanayake

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the terms of the Will, nor hear anyone asking. I did not ask whether the document would be valid, having been signed by five of us villagers. Mr. Ratnayake died 10 or 12 days later. I can distinctly remember Mr. Ratnayake did not live for more than 10 or 12 days after we signed this document. I cannot remember how many days after his death we went to Mr. Seneviratne's bungalow. I said 2 or 3 days after Mrs. Ratnayake sent for us we signed the affidavit. This happened 4 or 5 years ago and I cannot remember exactly when. I cannot say how long after his death I met Mrs. Ratnayake; It cannot be one year later. I cannot say how many months later it was. I went to the bungalow because she sent word to me through Martin and I went with Martin. Loku Dissanayake did not come at that time nor James Appu. This was in the afternoon as far as I remember. She said we had to sign an affidavit and we had to go; 2 or 3 days later we came to Colombo. I did not ask for bus fare as it was not nice. She said we must go to the Proctor's office and sign an affidavit. I did not try to find out what it was about because I knew it would be explained to me at the office. I did not know then that it related to the Will. Even from Mrs. Ratnayake we did not ask too many questions. I did not know she was Martin's sister. I cannot believe she is Martin's sister, considering her status and that of Martin. Martin was of the same status as I. When we arrived at the bungalow Martin went towards the kitchen and I went to speak to Mrs. Ratnayake. I asked Martin why I was sent for; he said he did not know. When she asked me to come she mentioned a date, I cannot remember what it was, but I remember 2 or 3 days later we came to Colombo. Mrs. Ratnayake said we must go in the morning. There are buses that way every half hour or one hour; she did not say we must catch a particular bus. After that I was not reminded again about it. I could not meet Dissanayake. I met Paulis Perera and told him that the lady had wanted us to come on such and such a day. He said he too was informed. I did not meet Martin after that. I know James Alwis. I met only Paulis Perera. I live near Paulis Perera's Co-operative Store, about 50 yards away, both on the Main Road. Paulis also said he was asked to go and sign an affidavit. He said this affidavit must be something connected with the Last Will; he did not say in fact it was.

Signed N. SINNETHAMBY,
A. D. J.

After Lunch.

J. R. de A. Dissanayake—Affirmed.

Cross-Examination Continued.

I did not get any reminder about a date on which to come to Colombo. For the bus, I went near the Co-operative Store and I met Paulis Perera there. Paulis Perera was in the Co-operative Store from where he came out and joined with me. Both of us then got into a bus that was coming down to Colombo. It was near the Co-operative Store that we got into the bus. When we got in we saw Loku Dissanayake, James Alwis and Martin in the bus. They had got in earlier, some distance ahead. Alwis's house is on Pahalawilla Road, and opposite this road, and on the Talangama-Colombo Road lives Loku Dissanayake. There is no particular bus halting place there. But we can stop a bus there. There are two roads leading from James Alwis's house to the junction where my house is. The distance between the two

houses on one road is about 25 yards and on the other about quarter of a mile. There is a road leading to the Bank Hill Estate. To the south of that is the Pahalawilla Road. From that junction to my house the distance is about quarter of a mile. I went and waited near the Co-operative Store, and it is there that the bus stopped. That Co-operative Store is on the Colombo side of my house. When Paulis Perera and I got into the bus Loku Dissanayake, Martin and James Alwis were in the bus, but I cannot say from where they got in. I cannot remember whether there was any other member of our party in the bus. I cannot remember whether Alice Nona was in the
10 bus.

The bus came to Colombo and we all got down at the bus stand. We did not meet the Petitioner at the bus stand. Then five of us got into a tram and Martin paid the tram fare for all five. Paulis Perera and I paid our bus fare coming from Talangama to Colombo. In fact, before we got into the bus at Talangama each of us had to pay his fare. I did not tell Martin that I paid my bus fare. We got into the tram near the Borella Junction and got down at the Technical College. It was Martin who led the party and I and the rest followed. When we neared Mr. Seneviratne's office Martin showed
20 the office to the rest. At this time I required to answer a call of nature, and while the rest proceeded to Mr. Seneviratne's office I left the party for my purpose and later went and joined them in that office. I knew where the public latrine was. I know many other such latrines in Colombo. Just in front of the Colombo Police Court there is one public latrine.

So after going to the latrine I went and joined my party in Mr. Seneviratne's office. When I went to that office the Petitioner was also there. This is the second time I saw the Petitioner after I spoke to her in her bungalow. From Mr. Seneviratne's office we all went to the Police Court to see Mr. Weerakoon.

RE-EXAMINATION

J. R. de A.
Dissanayake
Re-Examination

30 I am very familiar with the house of the late Mr. Ratnayake.

(Mr. Samarakone refers to page 59 of the proceedings of the previous trial where the witness had said: "Before we went in I did not see whether she was looking at us, but she was able to see us from the road.")

I cannot now remember what I said then. If I had said that, then it is correct. I said that I could see her in that room and that she could see us from there.

Q. Later you had said, and it is recorded here (page 59) "Between the room and the verandah there is only a door—no glass shutter windows."?

40 A. There is nothing called a verandah there.

Q. What is this "hall" referred to in your previous statement?

A. That is the front room which we entered in.

Q. What is meant by "door facing the hall."?

A. That is the one which is in front.

(To Court.

That is the door through which we entered.)

No. 25
1st Petitioner's
Evidence
J. R. de A.
Dissanayake
Re-Examination
—Continued.

Q. "The only way by which we could look into the hall from the verandah was by looking through the doorway." (page 59). Could you explain that statements of yours?

A. This house has no verandah.

The evidence with regard to the particulars of the doors and windows given by my sketch today is correct.

Paulis Perera was aware that our visit to Colombo on that day was for the purpose of swearing the affidavit. It was Paulis Perera who told me about it. I do not know how Paulis Perera knew about that.

Signed N. SINNETHAMBY, 10
A. D. J.

H. D. Martin
Examination

Hettiarachchige Don Martin—Affirmed. 30 years, Trader, Talangama.

I am supplying firewood at a depot in Borella. I started this business about a year ago.

I was employed under the late Mr. Ratnayake for about 15 years at Talangama. Prior to that I worked in his shop at Dehiowita. I started to serve under him at his Dehiowita shop. Altogether for about 20 years I served under the deceased. At the time of his death I was in his service in the capacity of a watcher on a pay of Rs. 25/- per month. 20

The 1st Petitioner is my sister. I came to the Bank Hill Estate as a watcher, and at that time my sister, the 1st Petitioner was on that estate. She was the "nona" of my master. They were living as husband and wife. I cannot say whether they were married.

Mr. Ratnayake used to visit this estate once a month and stay there for two weeks and then go away. I remember his last visit to that estate. A few days thereafter he died. Some days before his death he sent for me, and when I went he asked me to fetch Appuhamy; that is James Alwis. Mr. Ratnayake did not tell me why he wanted James Alwis. So I went to James Alwis' house which is close by to the estate. James Alwis used to come to the estate whenever a message is sent to him. James Alwis was once employed as a watcher on that estate and I succeeded him. So I carried the message to James Alwis and the latter came to the bungalow. After that I went towards the kitchen and do not know what happened. I was simply seated near the kitchen. 30

Sometime thereafter I was sent for and I went there. It was my sister who called me. When I went there James Alwis, Loku Dissanayake, Podi Dissanayake and Paulis Perera were there. Then Mr. Ratnayake also came with a book in his hand and sat there. Then he opened the book and said: "This is my Last Will that I have written. I called all of you to attest it." 40 Then Mr. Ratnayake signed it. He signed first and I saw him signing. He signed in two places. After that he turned the book towards Loku Dissanayake and the latter signed. Then Paulis Perera signed. Then James Alwis signed. Then Podi Dissanayake signed, and then I signed. I signed last. We all signed in the presence of each other. I signed in Sinhalese. (Shown P1). This is that book. My signature appears in P1b and it is the last signature.

Later I remember coming to Colombo and signing an affidavit. On that day also I signed in this book. I signed on the top here. (Witness points out his signature in P1a). I signed the affidavit in the Police Court, in the presence of Mr. Weerakoon. (Shown X1). This is my signature. It is also signed by the other witnesses who signed the Will. It was also signed by Mr. Weerakoon.

No. 25
1st Petitioner's
Evidence
H. D. Martin
Examination
—Continued.

I remember the day on which we came to Colombo to sign this affidavit. All five of us came to Colombo, namely James Alwis, Podi Dissanayake, Loku Dissanayake, Paulis Perera and myself. We came from Talangama by bus, got down at Colombo and then got into a tram and went to Hultsdorp.

From the date of Mr. Ratnayake's death to the date on which the affidavit was signed I was residing in the estate at Talangama. Later I went to Matara. It was after signing the affidavit that I went to Matara; but I cannot remember the date on which I went there.

When I was in Matara, Wijesinghe and Amarasekera came in search of me. Wijesinghe is the 2nd Petitioner, and Amerasekera is the gentleman who is seated there in Court. I do not know whether the latter is the husband of the 6th Respondent. I was then able to remember the date on which they came, but now I cannot remember that. They came to my house. Then they took me to Matara town and from there to the resthouse. All three of us had tea at the resthouse. Then we went to the market and bought some vegetables. On going home they asked me to prepare breakfast for them. Then they took me to a side of the house and asked me to say that the Will was not a genuine one, saying that they would give me Rs. 2,000 if I said so. What they wanted me to say was that it was written after the death of Mr. Ratnayake. I refused to comply with their request. They had their breakfast and went away. I cannot remember what else they told me on that day. I then sent a telegram to my sister the 1st Petitioner. Why I sent the telegram was because they came and made this suggestion to me. In my telegram I warned my sister to be careful. I was not alarmed at this suggestion, but merely because I wanted my sister to be careful that I sent her the telegram. About three or four days later I went back to Talangama.

I consulted Mr. Seneviratne. On his advice I swore an affidavit on the 4th of October, 1943.

(Mr. Samarakone marks that document as P5 and reads it out.) All that is stated in that document is correct. (Shown P5). This is the affidavit which I swore and my signature is there.

CROSS-EXAMINATION

H. D. Martin
Cross-Examination

When I took service under Mr. Ratnayake I was about ten years old. I started work at Dehiowita. I came to the Bank Hill Estate in 1927 or 1928. At present I am about 30 years of age. In Dehiowita I worked for about five years, and in the Bank Hill Estate I worked for about 15 years.

Q. In 1930 the watcher in the Bank Hill Estate was Peduru?

A. There was no such person in the estate at that time.

Q. I am reading from an account book of Mr. Ratnayake.

A. I am not aware of such a person.

Nö. 25
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
-Continued.

(Shown Y4). Yes, I see the name "Martin" appearing here. The next name I see here is Alice. "60 cents per day" is mentioned here against the name Martin. "35 cents per day to Alice" is also here. "Pedrick watcher Rs. 20 per month" is stated here. "January, 1930" is also written here.

(To Court.

I cannot say who kept this book, nor can I say whose writing this is.)

I have not seen Mr. Ratnayake writing Sinhalese. I am slightly familiar with his signature. If I see his signature I can say whether it is his signature.

(To Court.

10

I do not know whether Mr. Ratnayake was keeping a book like this (Y4.) I cannot say in what type of books he kept his accounts. He gives my pay to my hand.)

My mother's name is Kalohamy. I can see here against the month of December 1929 the name "Alice" and "35 cents a day". "March 60 cents" also appears here. "Pedrick Rs. 20" also appears here. Under 1929 July, the name "Kalohamy" appears here. The name "Alice" also appears here.

Q. I put it to you, Alice your sister and you were employed on this estate as tappers in 1929 and 1930.? 20

A. I do not know to tap at all, and I never worked as a tapper.

Q. But you were employed in that estate on a daily wage of 60 cents in whatever capacity it was that you worked?

A. I never worked as a labourer there. I worked as a watcher throughout.

I can read Sinhalese a little. "Bank Hill Estate, Talangama" is written at page 11 of this book (Y4.) Under "Bank Hill Estate" is written the name "Pedrick" as having been paid Rs. 20 per month. I do not know who that Pedrick is. To my knowledge there was no watcher by name Pedrick. In 1930, I was employed on this estate. I cannot say whether there 30 was any other Martin employed on this estate. I have never heard anyone being called Alice.

(To Court.

When I was small I used to call the Petitioner "Akka." My parents used to call her "Adeliette." She was never called Alice.)

Q. Loku Dissanayake has referred to her as Alice and he said that she is known as Alice.?

A. I do not know that.

Earlier today I stated that I was paid Rs. 25 per month on that estate. I cannot now remember whether I said at the last trial that I was paid Rs. 20. 40 I may have said that in 1943, I was paid Rs. 20 though I was getting Rs. 25 in all; that is for working on the Bank Hill Estate I was paid Rs. 20 and for working on the Hendala Estate I was paid Rs. 5 by Mr. Ratnayake. I used to go to the Hendala Estate to get work done there; that is in connection with the plucking of nuts and so on. At the last trial, in 1943, I did not give details like this of how I was paid.

I remember Welikadage Cornelis Perera of Cotta. He was once charged for stealing a bunch of nuts. In that case Cornelis Perera summoned my sister as a witness. I remember all that. I too gave evidence in that case.

No. 25
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
—Continued.

Q. In that case, was your sister not summoned as Liyanaarachchige Alice?

A. I do not know how she was summoned.

Q. At the cross-examination you were shown your sister and asked whether she was your sister, and you denied?

10 A. The Proctor at the time told me not to disclose our relationship.

Q. The defence in that case was that Cornelis Perera was in terms of intimacy with your sister, that it was a false case, that one day you caught Cornelis talking to your sister in the kitchen?

A. I cannot remember all that now.

Q. You were asked whether you saw Cornelis Perera coming often to see your sister to the bungalow?

A. I cannot remember that.

Q. The evidence proved that it was not a case of theft and Cornelis was discharged?

20 A. Yes.

I do not know whether it was Cornelis Perera who summoned my sister in that case, but I know that she was in Court. I do not know whether she was summoned as Alice in that case. Yes, when I was giving evidence she was brought into Court and I said that she was not my sister. I do not remember whether I said that the accused in that case used to visit her. I cannot remember whether she gave evidence in that case. I was the plaintiff. I saw her in the Courthouse, but I did not see her in the witness box. I went out of the Court house and I do not know whether she gave evidence at that time. Cornelis Perera gave evidence in that case. I do not remember
30 whether he said that he was in terms of intimacy with Alice and that he used to come and see her. Cornelis may have said that Alice was being kept as mistress of the late Mr. Ratnayake. Yes, that case was not proved and Cornelis was acquitted. The late Mr. Ratnayake also gave evidence in that case. I do not remember whether in his evidence he admitted that he was keeping Alice as his mistress for 10 or 12 years.

(Mr. Pereira marks in evidence a certified copy of the proceedings in Case No. 4615 in the Police Court, Colombo, containing the evidence of Mr. Ratnayake, 1st Petitioner Alice, and the witness as (R1,) (R7) and (R7a) respectively.)

40 Q. Today you admitted that why you said, in that case against Cornelis Perera, that Alice was not related to you is because your Proctor asked you to say so?

A. Yes.

Q. But at the last trial you had said, "I cannot remember whether I said to Court on oath that she was not related to me"?

A. I may have not remembered that then.

(Mr. Pereira marks in evidence as Y5 an extract of a passage of the previous proceedings—Pages 64 and 65.)

No. 25
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
—Continued.

I may have said that Alice was not a relative of mine.

It was later that I recalled what I had said in the Police Court and what I could not remember at the last trial in 1944. I do not know how Alice described our relationship.

Today I have said that I am a trader and that I am supplying firewood at a firewood depot in Borella; that is my business. I deny that I cut the trees in the Bank Hill Estate for sale as firewood here. I am not aware of anybody cutting trees in that estate. I have been doing this firewood business for about a year now.

During the last trial I was working as a fitter at Walkers, Mutwal, and I said that in my evidence then. I was also working at B.C.C., as a fitter. It is at Walkers, Mutwal that I learned the work of a fitter by joining as an apprentice. I was there as an apprentice for about 7 or 8 months. At the B.C.C. I was paid Rs. 2-50 a day. I gave that up because that salary was not enough for my expenses. The Rs. 20 which Mr. Ratnayake paid me was sufficient because at that time my expenses were less. Apart from the salary Mr. Ratnayake gave me meals. 10

From this firewood business I earn about Rs. 90/- a month. I cannot say what profit I get in terms of yards on this firewood business. I buy a lorry load of firewood at Rs. 60/- or Rs. 65/- and sell it at Rs. 1/80 per cwt. Sometimes I make profit sometimes I lose, I don't keep accounts of this business. 20

At the time of Mr. Ratnayake's death I was employed on the Bank Hill Estate as a watcher. It is not a fact that in 1930 I was getting only 60 cents per day.

Q. In December, 1930 you had worked 26 or 25 days and had been paid Rs. 15-60 for that month.

A. I do not know all that.

There was also another watcher in that estate; that is, at a time there were two watchers. The name of the other watcher is Senaweera. Senaweera is the second husband of my mother. He is also mentioned in this book as a watcher. His full name is Mahagamage Senaweera. A special ledger on one full page had been kept for his name. Yes, I can see that in this book. According to this ledger Senaweera had been paid Rs. 25 per month for February, March, April, and so on. 30

Q. There was a special page for Senaweera. Why is that there was no special page for you?

A. I do not know that.

I left this estate about one or one and half months after the death of Mr. Ratnayake. Thereafter I went to Matara. Why I went to Matara is because a child of mine fell ill and I took that child there for treatment. It is about 6 or 7 years since I got married. My wife was never a tapper on the Bank Hill Estate. I met her at Matara. Matara is not my home. It is my wife's home. My home is Piliyandala, which is towards Kesbewa. It is a marriage broker who arranged our marriage. The name of my wife is Leelawathie. It is not a fact that she was a tapper on the Bank Hill Estate. I did not get a dowry, I married for love. I was offered a dowry, but I refused to accept it. From the moment I saw her I loved her and married her. I paid a commission to the marriage broker; I paid him Rs. 50 which is equi- 40

valent to two month's salary of mine. I have no property in my name. My parents have not yet gifted any property to me. To my knowledge my father and mother did not work on the Bank Hill Estate. My step-father worked on this estate as a watcher and not as a labourer. My mother's name is Kalohamy. There were other women employed on this estate by this name. There was a woman employed on this estate by name Alice. Even recently that is about the time of the death of Mr. Ratnayake there was a woman employed on this estate by name Alice. I do not know the surname of this woman Alice. I do not know whether her full name is Hettiaratchige Alice.
10 She is known as Alice. I do not know who the woman Alice who was employed in 1929.

Signed N. SINNETHAMBY,
A. D. J.

Further hearing postponed for 10th, 11th and 12th December, and 27th, 28th and 29th January, 1948.

11-12-47

Appearances as on previous date.

Errors in previous days proceedings corrected by consent.

H. Don Martin—Affirmed.

20 Cross-Examination Continued.

I said on the last date that all the five witnesses came to Colombo to the Proctor's office. Three of us got into the bus at one place and two got in near about the Co-operative Store. I cannot remember how the Petitioner came, whether or not she got into the bus with us. I do not remember where we met her; I cannot remember anything now, I have forgotten everything. If I have stated at the previous trial that my sister and I came together to the bus stand it must be correct, but I cannot remember whether I said so. Nor do I remember having said that the other four witnesses were at the bus stand when we came there. These things happened long ago and I cannot
30 say exactly now where I met the Petitioner. (Mr. Pereira marks proceedings at pages 68 and 69 of the previous trial at Y6).

Q. Did you at the previous trial state that your sister and you went straight to the place where Mr. Weerakoon was?

A. I cannot remember; if I have said so it must be correct. To my recollection the five of us witnesses came to Mr. Seneviratne's office. I cannot remember now whether I met my sister that day.

Q. Did you swear the affidavit in the absence of your sister?

40 A. My sister was in Mr. Seneviratne's office. Mr. Seneviratne took us to Mr. Weerakoon's office. My sister accompanied us there. I think she also signed that affidavit. If I have said that when my sister and I came to the bus stand the other four witnesses were there it ought to be correct. Now I am speaking about the signing of the affidavit. My sister was in the office when we came. But if I have said at the previous trial that all six of us came together it must be correct.

No. 25
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
—Continued.

(At this stage it is agreed that whenever Counsel refers to a passage in the previous proceedings being evidence given by a witness and puts the passage to the witness, the Court should regard that passage having been read in evidence in this case and as forming part of these proceedings.)

Q. Is your recollection of what you said at the last trial this: you and your sister got down at San Sebastian from the tram, that you did not know why the other four witness were accompanying you and that when you saw them accompanying you, you did not ask them where they were going?

A. I mixed up the affidavits. I cannot remember these things now 10
as they occurred long ago.

Q. Your recollection of what took place 18 months after the death of the deceased was that you and your sister went straight from the tram to Mr. Weerakoon's office and the others followed?

A. Yes. But as far as I can remember now I went there along with the Proctor.

Q. That was in the Police Court and in that "there were a number of gentleman with black coats?"

A. Yes. The affidavit was with Proctor Seneviratne.

Q. Who reminded you about that? 20

A. I must have forgotten to tell that at the last trial. Mr. Seneviratne was there.

I said at the previous trial that I denied that Petitioner was my sister at the request of the Proctor in the Magistrate's Court. I cannot remember the Proctor's name now. I said in that case that I was the complainant.

After the two gentlemen saw me at Matara, I sent a telegram to my sister. My sister had sent it to Mr. Seneviratne. I do not know whether the telegram is in existence still; my information is it was handed to Mr. Seneviratne. A gentleman of Matara, Simon Mahatmaya, wrote that telegram for me; he knows English and he is running a shop. That was despatched 30
by me while the two gentlemen were still at Matara. After breakfast the two gentlemen went away saying they would come back in the following morning and leaving their things, treacle, juggery, & which they had bought at Matara. They did come the following morning. In between I had that telegram despatched. I cannot remember the date now. To my recollection the affidavit—the one I alone signed—was signed in the same month four or five days later, that is within a week. The two gentlemen asked me to say that the Will was signed three days after the death. I followed it up by telegram immediately and by swearing an affidavit 4 or 5 days later. If the affidavit 40
says the two gentlemen saw me on the 23rd August, 1943 it ought to be correct. They saw me about 7-30 or 8 a.m.; they remained at Matara till the next day.

Q. Is it not the case that you saw a gentleman resembling Mr. Amerasekera a few days earlier?

A. No.

Q. No such person came and questioned you about this Will?

I never told anyone that I signed the Will three days after the death and never asked anyone to save me. I did not go to Dehiowita before going

to Matara. On the day of the death I went to Dehiowita for the funeral. I did not meet Felix Wijesinghe nor leave any message for him to meet me. I deny that a C.I.D. Inspector came and saw me. I asked the two gentlemen what was the matter; they told me they came to meet me in regard to this case. I did not ask them how they found my address. I live near the 97th mile post, at Kumburugamuwa before reaching Matara where my wife's people are. I did not ask them how they found my address not because I had left my address at Dehiowita. My address was known to the driver Girigoris. I cannot write very well whenever I wanted to write home,
10 I used to get Girigoris to write out the address for me. Although I am from Piliyandala, I was residing at Talangama from my childhood. That is how Girigoris knew my address; he himself has never written to me.

I know Piyasena of Dehiowita my wife's brother. I did not give my address to Piyasena. It is not the case that first a C.I.D. Inspector came and saw me and then these two gentlemen followed. It is not true that in my house I told Mr. Amarasekera not to put me into trouble and that the Will was signed on the 6th June, three days after the death. I never said any such thing. It is not true that when I made such a statement Mr. Amarasekera suggested to me to state that before a Proctor. It is they who asked me to
20 say that the deed was signed 3 days after the gentleman died. I did not tell Amarasekera that when I signed four witnesses had already signed. It is not true that I told them that James Alwis threatened to stab me unless I signed the Will. I never asked them to save me from anything. Nor is it true that I said that Matara people would come to know all about it if I made a statement before a Proctor. I was asked to come to Proctor Amarasekera's bungalow, but I refused. I was asked to say that after the gentleman died I signed the Will as a witness and also make that statement to the Proctor. Further I was told that I would be given Rs. 2,000 for doing this. I refused to accept it. I have no land in my name. My wife has got
30 a house and property. When I got married I had some money with me. I saved the Rs. 25 which I received on the estate because my food was given from the bungalow. I first earned something and then got married. I paid Rs. 50 to the marriage broker. Although Rs. 2,000 was a big sum I could not tell a lie. It is a fact that they offered this large sum to me. They came to see me not because I had sent any message to them. I said that I could not remember the date I signed the affidavit. It may be that these gentlemen came and saw me on the 23rd August and I signed the affidavit in October. Mr. Wijesinghe introduced me to Mr. Amarasekera saying it was his brother-in-law. He did not say Mr. Amarasekera was a
40 Postmaster. Mr. Amarasekera was wearing a military uniform, khaki trousers and shirt when he was introduced to me. I did not know the initials of Mr. Amarasekera, only that his name was Amarasekera.

I swore an affidavit. I said I swore it at the suggestion of Mr. Seneviratne. I got the affidavit written by Mr. Seneviratne. I don't know whether he inserted the initials and if so where he got the initials.

These two gentlemen said they would come the following morning and they did come. I never promised them that I would come to Colombo. They left the juggery, etc. in the house saying they would remove them on their return. They came by bus. First they came to my house and went
50 back to Matara town along with me. They bought these things in the town

No. 25
1st Petitioner's
Evidence
H. D. Martin
Cross-Examination
—Continued.

and carried them to my house in a buggy cart. Having left them after their meals they went away. No sooner they got out of my house, I left the house from the other side and despatched the telegram. I don't know whether they went by train or by bus. I think they would have taken bus. The Kamburugamuwa Post Office is $\frac{1}{2}$ mile or $\frac{1}{4}$ mile from my house. I sent this telegram to the Petitioner. Its contents would have caused some alarm to her. The following day my brother came to my place in response to my telegram; he did not do anything; he came in the evening and went away the following morning. He asked me to come to Colombo and I said I would come later. My brother did not ask me to come early. There was a case and I came to Colombo from Matara on a trial date. There was a discussion about handing over the estate to the care of the Public Trustee; I knew that after I came to Colombo. I cannot remember exactly when I came to Colombo. I was entrusted with a gun on Bank Hill Estate. I handed over that gun to my sister the Petitioner before I left for Matara. The gun was licensed in my name. I am not aware of a complaint being made that the gun was missing. I was not questioned by anyone about it. I did not tell Messrs. Amarasekera and Wijesinghe at Matara that I handed the gun to the Village Headman. Nor am I aware that the gun was recovered from the Headman. I do not know how the gun came into the possession of the Headman. 10

Signed N. SINNETHAMBY,
A. D. J. 20

Adjourned for lunch.

11-12-47

After Lunch.

Hettiaratchige Don Martin, recalled—Affirmed.

H. D. Marin
Re-Examination

RE-EXAMINED

I cannot read well, but I can write. I cannot write down the characters beautifully. I can read and write sinhalese. I cannot read and write English. Prior to the signing of this Last Will I have not signed any deeds. Prior to the signing of the affidavit I signed the Last Will. Before signing the affidavit and the Last Will I have signed another affidavit alone. I signed that when I returned from Matara. Before I signed the first affidavit and the Last Will I have not signed any other writing. 30

My memory was fresh when I gave evidence at the first trial. If I said at the first trial that I came with my sister and the other witnesses to Colombo, that would be correct. I signed the first affidavit with the other witnesses.

(Shown X1). Mine is the last signature on this document. There are five signatures on this document. The other signatures are those of first, Dissanayake, second Pablis, third Jamis Alwis and after that Dissanayake. The last signature on this is mine. My sister has not signed this affidavit. What I said earlier that my sister also signed this affidavit is not correct. 40

At the time I came to sign the first affidavit I knew Proctor Seneviratne. I am sure that I first went to Mr. Seneviratne's office. After going to his

office we, the five of us went to the Police Court along with Mr. Seneviratne. We went before Mr. Weerakoon and it was there that we signed the affidavit before him.

There was a case against Cornelis Perera in the Magistrate's Court. Those proceedings were on a plaint filed by the Police. I gave evidence as a witness. After I gave evidence I was not allowed to remain in Court. I went outside after giving evidence. I did not hear the evidence given by the other witnesses in that case.

I was questioned today about my address at Matara.

10 At the last trial I was not questioned about my leaving my address with anyone. I was questioned about it for the first time today. I cannot say where Mr. Ratnayake's driver Girigoris was living after Mr. Ratnayake's death. I heard that he was living at Dehiowita. He was living there with Mr. Wijesinghe who is the 2nd Petitioner. Girigoris knew my address.

I did not know the Postmaster's wife Mrs. Amarasekra.

I saw her after coming to Court. Mr. Wijesinghe introduced me to that Mr. Amarasekera.

Q. How did you describe him to the Proctor?

A. I told him that they were the people who came to Matara.

20 I mentioned the names of Mr. Wijesinghe and Mr. Amarasekera, My brother was there and he might have mentioned the initials of those two gentlemen to my Proctor. I did not know their initials.

Q. Did you tell who Mr. Amarasekera was to the Proctor?

A. Yes. I told him.

Herath is my brother. He was doing business at Dehiowita under Mr. Ratnayake. Mr. Wijesinghe was at that time employed under Mr. Ratnayake. Herath was the Manager of the business.

Signed N. SINNETHAMBY,

A. D. J.

11-12-47.

30

Hettiaratchige Dona Adlin Ratnayake—Affirmed, 35, widow of J. Ratnayake, Talangama.

H. D. Adliet
Ratnayake
Examination

I am the 1st Petitioner. My father was Hettiaratchige Don William Appuhamy, and my mother was Atha-uda Aratchige Thalonona. They were originally living in the village Piliyandala. That is a suburb of Kesbewa. My father is now dead and my mother is alive. Herath is a brother of mine, and so is the witness Martin. I came to Talangama later. My brother Herath came earlier to Talangama. Later I came there along with my mother.

40 When I came to Talangama with my mother Herath was already in the employ of Mr. Ratnayake on his estate. Herath was in charge of the estate. I was about sixteen years old at the time I came to Talangama. My mother and I started living with my brother Herath. During the time I was living there with my brother and my mother, Mr. Ratnayake used to visit this estate. He had his business elsewhere. He had his business at Dehiowita, Mr. Ratnayake used to visit the estate once a month and he used

to stay there about five or six days, or a week. During those visits he was accompanied by Mrs. Ratnayake. I had occasion to go to his bungalow on the estate on those visits of his. I used to go and help Mrs. Ratnayake in any needle-work. Later Mrs. Ratnayake died. She died may be about 1927. I am not sure of the year. After that Mr. Ratnayake visited the estate alone.

Mr. Ratnayake first made inquiries through my brother Herath, and then again made inquiries through my mother to have me taken over to his bungalow. First Mr. Ratnayake told my brother; that was not said in my presence. Then he asked my uncle and my mother. This is what they told me. I do not know personally. (Mr. Pereira objects to this evidence as it is hearsay). 10

After about four years of my residing there and about one year after Mrs. Ratnayake's death, Mr. Ratnayake made these inquiries. After those inquiries that I referred to, Mr. Ratnayake had a feast, he tied a chain round my neck, and after that I was taken to his bungalow. This ceremony was in his bungalow. I was conducted to his bungalow. My relatives were present at that ceremony. On his side only Mr. Ratnayake was present. Since then I lived with him up till the time of his death. I lived with him as his wife. After I started living with Mr. Ratnayake he had to go to Dehiowita for his business. He used to go to Dehiowita and remain there about two weeks in the month. For about a fortnight he used to be at Dehiowita and during the other fortnight he used to be on the estate. That used to be his habitual mode of living since I went to live with him. 20

I went about with Mr. Ratnayake. I used to go to Church with him. I used to go to Colombo with him. I used to go with him to see his lands. I travelled about with him in his car. I have gone to functions with him. I have attended Church with him. Before I started living with Mr. Ratnayake I was a Buddhist. After I started living with Mr. Ratnayake I changed my religion. I adopted his religion, I became a Christian. I became an Anglican. I went to St. Peter's Church at Fort. We did not go to the C.M.S. Church at Kotte. It is closer to our house. I had prayers at home. I joined my husband in prayer. In 1932 my first child was born. That is my son Percy, who was born on the 16th of February, 1932, (Mr. Samarakoon marks the birth certificate P2 and the translation P2a.) I point to the cages 4- and 5 in the translation P2a. My name is given as the mother's name and Mr. Ratnayake's name is given as the father. Cage 7 of P2a shows that we were not married. The informants of the birth are myself and my husband Mr Ratnayake. It also shows that the informants were the parents of the child. 30

My second child was born in 1940 on the 20th of August. I produce her Birth Certificate P3 and translation P3a. Suriyagoda is Mr. Ratnayake's village. I point to cages 4 and 5 in this document where my name and Mr. Ratnayake's name appear as the father and mother of the child. Cage 7 shows that our marriage was not registered. Cage 8 shows that the informants were myself and Mr. Ratnayake. Cage 8 also shows that we are the parents of the child. When Percy was old enough we sent him to the C.M.S. School. Mr. Ratnayake spent for him. As it was difficult for him to go there, I have now sent him to St. Lawrence College. He is attending that College now. During Mr. Ratnayake's lifetime he spent for my son. After that I am spending for him. I pay for him out of the Rs. 100 I get from the Public Trustee. This estate of Mr. Ratnayake is now being administered 50

by the Public Trustee on the orders of Court. My second child is also attending school. She goes to the Talangama School. She attends that school even now. Mr. Ratnayake and I have attended some functions together with these children. We attended Church together. Latterly Mr. Ratnayake's health began to fail. He was suffering from piles. Owing to that he was not quite well. He had piles for about three years prior to his death. He came home on the 10th of May, 1943. After that he was not able to go back. Till his death he remained there. As he was not quite well he did not go anywhere. Till about three days before his death he was able to look after himself and attend to his affairs. He died on the 3rd of June, 1943. His corps was taken to Avissawella and he was buried in the churchyard at Avissawella.

Some days prior to his death, whilst I was engaged in conversation with him, I remember his asking me to send for Martin. I do not remember the date. It was some day in May. Mr. Ratnayake asked me to send for Martin. I called Martin, and he came. Then Mr. Ratnayake asked Martin to bring James Alwis. He did not say why he wanted James Alwis. Then Martin went to fetch James Alwis. I was at that time near Mr. Ratnayake seated and talking to him. Thereafter Martin came with James Alwis. Then Mr. Ratnayake asked James Alwis to bring Loku Dissanayake and two others in whom he had faith. I heard him say that to James Alwis. Martin was there. James Alwis went. Shortly after that I saw James Alwis coming back. He came with Dissanayake and two others. Out of the other two, one is called Podi Dissanayake and the other is referred to as the Manager of the Co-operative Stores. When these people arrived Mr. Ratnayake was on the easy chair going through the newspapers. I was there and went inside the house when I saw them coming.

After I went inside Mr. Ratnayake asked these people to sit down; he then went inside the room and opened the almirah and came back with a book. I had the key of the almirah with me. I opened the almirah for him. Ordinarily the key of that almirah is with me. There is also another almirah. I have all the keys with me always. Then Mr. Ratnayake took the book out and kept it on a small table in the hall. Mr. Ratnayake was leaning on the easy chair in the glass windowed hall. He kept that book on a table by the easy chair in that glass windowed hall. He took the book from inside the house on to that hall and kept it on a small table. After that he opened the book and said "This is my Last Will, I asked you to come to sign this Last Will." All those five people were there at that time, including Martin. The five people were James Alwis, Martin, Loku Dissanayake, Podi Dissanayake and the Manager of the Co-operative Stores. Having said that Mr. Ratnayake sat down and signed it. I was at that time in the adjoining room. I saw Mr. Ratnayake signing the book. I saw him signing. There are doors and windows to that room and that hall is visible from that room. I saw it through the window. At that time I was standing inside the room by the window. I was standing near the window. At that time I was standing inside the adjoining room.

After Mr. Ratnayake signed, Loku Dissanayake signed, after that Manager of the Co-operative Stores signed, after that Podi Dissanayake, then James Alwis, and last Martin signed. I saw all the five witnesses signing. After all had signed Mr. Ratnayake asked tea to be prepared for them. They said that they did not want tea and went away. After they went away

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Examination
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Mr. Ratnayake gave that book to me to keep it. He came into the room and gave it to me to keep it in the almirah. (Shown book P1). This is the book that Mr. Ratnayake gave me to keep after it was signed. I put the book back in the almirah. (Shown page 223 of P1—P1a). (Witness points to two signatures on this page as Mr. Ratnayake's signatures).

The signatures appear on page 224 of this book. (It is marked P1B.) I am quite familiar with Mr. Ratnayake's signature. These two signatures are Mr. Ratnayake's signatures. I am quite sure about it. These two signatures are not quite similar. There is a slight difference between these two signatures. (The signatures are marked 1 and 2.) The second signature in which the initials are written together, is the signature that Mr. Ratnayake uses for signing cheques. 10

The other signature, that is, the first signature, he uses when he signs letters and ordinary correspondence. The one in which the initials or letters are separate is for ordinary correspondence. I have seen Mr. Ratnayake signing cheques. I have seen his signature on cheques. I produce his Cheque Book marked P4. (Shown P4). This Cheque Book was in the almirah in the house. This is Mr. Ratnayake's cheque book. There are two cheque leaves in this book signed by Mr. Ratnayake, partly in blank. The signature of the deceased Mr. Ratnayake, appears on these cheques. The payee's name is entered in these cheques. (They are marked P4a and P4b.) On these two cheques he has signed as in the second signature on P1b. This cheque book has been in my custody till it was produced in this case. This cheque book was in the same almirah as the one in which the book P1 was kept. At the time of Mr. Ratnayake's death, I knew that there was a writing but I did not know what a Last Will was. I knew that there was a writing in this book P1. I cannot say the date on which Mr. Ratnayake died, but he died some days after signing of this book P1. I attended his funeral. I took my elder child for the funeral. He died on the 3rd of June, and I think the funeral was on the 4th of June. I went to Avissawella by car. Wijesinghe had taken Mr. Ratnayake's car, and Wijesinghe spent for another car and I went in that car to Avissawella for the funeral. Mr. Ratnayake's car had been taken by Mr. Wijesinghe. That was taken when the corpse was being taken to Avissawella. The corpse was taken in a hearse; not in Mr. Ratnayake's car. After the funeral, I returned from Avissawella on the same day. Mr. Wijesinghe was present at the funeral. He is the 2nd Petitioner. Mr. Ratnayake's nieces the 4th, 5th and 6th Respondents were not present at his funeral. They never visited Mr. Ratnayake during his illness or during his lifetime. During the lifetime of Mr. Ratnayake when I was living with Mr. Ratnayake one person came there but he was driven away. None of the others ever came there. Gertie was the person who came; she was driven away. Mr. Ratnayake did not allow him to enter the house at all. I do not know why he was driven away. During the time I was in the house with Mr. Ratnayake, Mr. Felix Wijesinghe never visited the house. Gertie is not living near the estate in Talangama. None of these people are living near the Talangama estate. 20 30 40

I did not know much about what had to be done according to law to attend to matters connected with Mr. Ratnayake's estate.

I remember Mr. Seneviratne, Proctor coming to the bungalow. He came to the bungalow to see the deeds. He came to see the deeds that were in the house. All the deeds relating to the estate of the deceased were with 50

me, and he came to see those deeds. I showed him the deeds I had. Mr. Seneviratne came there about four days after Mr. Ratnayake's death. I handed all the papers that were in the almirah to Mr. Senevirate. Mr. Seneviratne went through all those papers. Mr. Seneviratne went through the deeds. I did not tell him anything before I handed over all those documents to Mr. Seneviratne. Mr. Seneviratne took the papers and went away. Some days after that I had to come to Colombo with the witnesses to sign an affidavit. I came to Colombo on that day with my brother Martin. I do not know how the others came. I came by bus.

10 Q. Did the other witnesses to the Will know that you were going to Colombo on that day?

A. Yes.

Q. How did they know?

A. I was told that those witnesses were necessary.

Q. But did the witnesses know that they had to come to Colombo on that day?

A. I sent Martin to inform the other witnesses to come to Colombo.

I came by bus up to Borella and from there we got into the tram. We came up to St. Sebastian's Hill, and then to Hultsdorp and Mr. Seneviratne's office. I went there. Martin and I went together, and the other four witnesses were there when we went. After that we went somewhere else. We went to the place where Mr. Weerakoon was; I think it was to the Courts. I knew that we were going there to sign an affidavit. An affidavit was signed before Mr. Weerakoon. I saw the affidavit when I went there. All these five witnesses to the Last Will signed that affidavit, in the presence of Mr. Weerakoon. Then we came back and we went home. I also signed a proxy in favour of Mr. Seneviratne. That is filed of record in this Case. Felix Wijesinghe also signed that proxy. Mr. Felix Wijesinghe signed this proxy later; not on the same day. I was present when Felix Wijesinghe signed it.

20
30 It was signed on a subsequent day.

(Shown proxy marked P11). My signature appears on this proxy. (Witness points out her signature.) After I signed that proxy Mr. Seneviratne was in charge of the case. At the time Mr. Wijesinghe, 2nd Petitioner, signed this proxy, he raised no questions as to the genuineness of this Will. He said that it was correct and that it was a true Will.

Some time after Mr. Ratnayake's death, my brother Martin left for his wife's village, Matara. Martin went there with his children who were ill at the time. He was in Matara for some time. He came back and lived with me later. He came back to keep company with us as we were alone.

40 He stayed with me and my two children.

Q. Had he any other business to come to Colombo after he went to Matara?

A. Yes, he came to sign another affidavit.

Q. What was the necessity for another affidavit?

A. Wijesinghe and Amarasekera had gone to Matara and had asked my brother to sign something promising to give him money. He came to Colombo in connection with that.

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Ratnayake
Examination
—Continued.

I am not aware of what he did after he came to Colombo. He told me that he went to see Mr. Seneviratne after that. He told me that these two people had gone to him and had asked him to say that this Last Will was a false writing and had asked him to sign something to that effect. He did not say that it was an affidavit, but that he was asked to sign something by them. Girigoris was Mr. Ratnayake's driver for many years. Under the Last Will he gets Rs. 1,500. After Mr. Ratnayake's death Girigoris is working under Mr. Wijesinghe. Girigoris was not on Talangama Estate on the day the Last Will was signed. Girigoris had gone to Hendala to get cocoanuts plucked. I cannot say whether he went there the same day or the previous day. Whenever Girigoris goes there to pluck nuts he usually stays there for three or four days. 10

Loku Dissanayake is not related to me or to Mr. Ratnayake.

Even the other witnesses are not related to either of us, except Martin who is my brother.

Further hearing tomorrow.

Signed N. SINNETHAMBY,
A. D. J.
11-12-47

12th December, 1947.

20

Appearances as before.

Mr. Navaratnarajah for the 2nd Petitioner and the 4th, 5th and 6th Respondents to the main application, states that they have applied to withdraw a sum of Rs. 7,500, and notice of this has been served on the 1st Petitioner, the 2nd Respondent and also the Public Trustee.

2nd Respondent is absent.

Mr. Advocate Samarakoon for the 1st Petitioner opposes this application.

Mr. Samarakoon undertakes to file objections on the 19th of December, 1947. If he does not file objections on that day it is understood that this application will not be opposed by his client, and no further date will be given to file such objections and if objections, are filed thereafter it will be taken as if it has not been filed. 30

I shall now proceed with the trial in this case.

H. Dona Adlin Ratnayake, recalled—Affirmed.

CROSS-EXAMINED.

H. D. Adliet
Ratnayake
Cross-Examination

Even before yesterday, at the previous trial, I think I must have said about my helping Mrs. Ratnayake in her needle-work. I went there to assist Mrs. Ratnayake in the needle-work. I did not go there for cooking or to assist her in cooking. I went to assist her in needle-work. Mrs. Ratnayake had no children. I had to do the needle-work for the door curtains, tablecloths and chair covers. There was a cook for the cooking. He was a man. I was not the cook. 40

I went to St. Peter's Church, Fort, with Mr. Ratnayake. Earlier Mr. Ratnayake used to go to Christ Church, Mutwal. Later he went to St. Peter's, Fort. Mr. Ratnayake may have assisted Christ Church School at Mutwal

and known the Rev. Mr. Arndt who was there. He went to St. Peter's Church in front of Queen's House in the Fort. We went there by car.

Q. Right opposite Queen's House is that Church?

A. I cannot say if it is right opposite Queen's House, but it is quite close. It is almost opposite Queen's House.

10 St. Peter's Church is in the Fort. St. Peter's Church is on the way to the Queen's House. It is not opposite the Queen's House. I did not notice it carefully, but as you go towards Queen's House, we come across that church. I do not know if St. Peter's Church is opposite the harbour. We go by car to go to Church; therefore I have not specially noticed whether it is opposite the harbour. I do not know if next to St. Peter's Church is the G.O.H. I have gone to St. Peter's Church with Mr. Ratnayake.

As long as I was with Mr. Ratnayake, I also participated in the family prayers. I adopted his religion. I was never baptized. My two children were also not baptized. Mr. Ratnayake and I went through a marriage ceremony. That marriage ceremony is not an invention of mine for the purpose of this case. I deny that. None of Mr. Ratnayake's relations was present. I now know from the Birth Certificates of my two children that Mr. Ratnayake has given the information that we were not married.

20 Q. Was the Registrar brought to your house in connection with the registration of the births of your children?

A. No, a form was sent to our house. The Registrar did not come to our house.

Q. Did you say at the last trial that "the Registrar came to the deceased's house to register the birth?"

A. No. I did not say that. He did not come, but he sent a form to the house.

(Counsel refers to previous proceedings).

30 I did not say that the Registrar came to the deceased's house to register the birth.

Q. Did you say 'I remember signing the Registrar's book on a stamp on that occasion'?

A. The Registrar did not come. I remember signing the form on a stamp. The form was sent to us.

I cannot remember whether I said that the Registrar came to the house, but I said that the Registrar sent a form to our house and we signed the form. The Registrar did not come to the house.

Q. Why did you say at the last trial that the Registrar came?

40 A. The Form was sent and I remember we signed it later. The Registrar did not come.

My name is Hettiaratchige Dona Adliet Ratnayake.

Q. Have you ever signed yourself as "Ratnayake" before you gave evidence in this case?

A. Except the Birth Certificate Forms I have not signed any other Form or writing.

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Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

I have signed Dona Adliet to the Birth Certificates. Before this case I did not use the name Ratnayake. I did not know my vasagama at that time, so I signed the Birth Certificate as "Liyana-aratchige." It may be that in 1932 I was about 25 years old; I cannot say. In the last trial and in the present trial I gave my father's name as Hettiaratchige Don William Appuhamy. I came to know his name as such later. That was after Mr. Ratnayake died. It was after Mr. Ratnayake died that I came to know my correct vasagama.

Q. I put it to you that you knew your vasagama all along?

A. No Sir, I did not know.

10

My name was not Hettiaratchige Alice all along. I did not change my name to Adliet. I did not change my name at all.

Q. How did you come to sign your name as "Liyana-aratchige" unless somebody told you to sign like that?

A. An aunt of mine told me that it was Liyanaratchige.

My mother was Kalonona. She was living for sometime on the estate. My mother was not there when I gave birth to the first child. The Birth Certificates were written in Sinhalese. I said at the first trial that I thought the Birth Certificate were written in English; I did not know whether it was written in English. I only signed it. I did not read what was written in the Birth Certificate. 20

(Shown Birth Certificate). My first child was a son. His name is Percy Arnold, according to the Birth Certificate. My own name appears in this Certificate. My husband's name also appears on this Certificate. My name appears as Liyanaratchige Dona Adliet. An aunt of mine told me that that was the vasagama and it was written like that because I did not know my correct vasagama. That aunt is a relative of my father. She was an aunt through my father. She did not know what the vasagama of my father was. I could not ask about it from my mother because my mother was not present. She was on the estate, but she had gone away. This child was born in 1932. Mr. Ratnayake brought the Form to me filled up and signed by him; I signed for my part. It was Mr. Ratnayake who filled up the form. I applied for a certified copy of this Birth Certificate. I made that application under the name of Mrs. L. D. Adliet. No I did not apply for that certified copy. I gave the details asking for the Birth Certificate. I cannot definitely say whether I signed this application. This application was made on the 18th of October, 1943. 30

My daughter was born eight years after my son. Even at that time I did not know what my correct vasagama was. (Shown Birth Certificate P). There also I signed as Liyanaratchige Dona Adliet. I have not used the name Ratnayake. This Certificate states that the parents were not married. The name of the child is given in this Certificate as Pearl Bandaramenike Ratnayake Suriyagoda. Suriyagoda is the name of Mr. Ratnayake's village. Suriyagoda is I think somewhere near Kandy. I do not know where this Suriyagoda is. I do not know of a Suriyagoda which is in Pasdun Korale. Mr. Ratnayake never used the name Suriyagoda. This application was also made by me as L. Dona Adliet. It was after Mr. Ratnayake's death that I discovered my real ge name. 40

Q. Who told you that?

A. My elder brother, Herath. One of my brothers is younger and one is older.

Q. The fact is that you knew all along that you were never married to Mr. Ratnayake?

A. Yes.

When I swore an affidavit and applied for probate I stated that I was Mr. Ratnayake's wife. I cannot say if I came to Court on the footing of being Mr. Ratnayake's wife. (Mr. Perera marks the affidavit annexed to the Petition for letters Y7.)

I adopted Mr. Ratnayake's religion when I went to live with him.

After Mr. Ratnayake's death I gave up the religion I adopted. When I signed the affidavit I affirmed to it because, after Mr. Ratnayake's death, I reverted to Buddhism. After he died I did not know much about Christianity. I did not have anyone to accompany me to Church also, so I reverted back to my old religion. It is not true that I was always a Buddhist. I do not know if the Cotta C.M.S. Church is about 1½ miles from the estate. I do not know where the C.M.S. Church is. I have never been to that Church. I do not know that that is the nearest Church to our estate.

20 Q. Who asked you to state in the first paragraph of your affidavit that you were the wife of the deceased?

A. No one told me to do that. I did not say that I was the married wife.

I said that I was his "nona". I said that I was his "paula". I cannot remember if I used the word "Bharyawa." I did not say that I was being kept by Mr. Ratnayake as his mistress. I did not know if in the Sinhalese language the word "paula" is used to mean "legal wife."

I remember the case in which Welikadage Cornelis Perera was charged with theft of coconuts. Mr. Ratnayake and I were put down as witnesses and we both came to Court. I do not know who summoned me for that case. I came along with my husband, but I don't know who summoned me. The name on the Summons was wrong. A different name was given in the Summons. Therefore I did not accept that Summons. The name on the Summons was Alice. After the name was rectified I went to Court, I do not know if on the first date of trial I was absent on summons served and warrant was issued on me. I only know that I came to Court with Mr. Ratnayake and gave evidence. I do not know anything about a warrant. I do not know anything about my giving bail. Mr. Ratnayake took me to Court and did everything. I do not know whether the Magistrate asked Mr. Ratnayake to furnish bail. My signature was obtained to something in which my correct name was put in. I cannot remember if I gave bail in Rs. 50. I was not brought into the Court when Mr. Ratnayake was giving evidence in that case. I came into the body of the Court House after Mr. Ratnayake gave evidence and left the Court House. It was not for the purpose of identification. I do not know that.

(Counsel refers to previous proceedings.)

Q. The record shows that you were shown to Mr. Ratnayake in the Court and that he said that he was keeping you as his mistress?

A. He did not say that at the last trial. I do not know about that. Mr. Ratnayake said that I was his "nona" That was after I came into the witness box.

Q. When Mr. Ratnayake was in the witness box in the Magistrate's Court you were called in and he said you were his mistress.

A. I did not come into the Court when Mr. Ratnayake was giving evidence. I cannot remember it. 10

Q. Do you admit having made the statement "I was called into the witness box when Mr. Ratnayake was giving evidence to be identified by him. He identified me on that occasion and he said that I was his Nona."

A. I cannot remember if I said so.

Q. The defence in that case was that Cornelis *alias* Kotta was falsely charged in that case because he was on terms of intimacy with you?

A. I have never spoken to him.

Q. But that was the defence in that case? 20

A. I do not know if that was the defence in that case. I did not even speak to that man.

Q. You were summoned by the defence in that case?

A. Because that case was filed against him, in order to insult me, I was summoned by the defence.

I was summoned in that case as a witness. I did not deny that I was summoned. In the last trial I said that I was summoned by the accused just to shame me. The name was given as Alice in the summons and because it was wrong, that name was corrected.

Q. You were called by the defence in that case? 30

A. I was called by the accused as a witness in that case.

Q. And when you were called you were shown your own brother; looking at your brother you said "Martin is no relation; I cannot say."

A. Yes. I stated so at that time.

Q. Martin was a witness for the prosecution; you were called in when he was giving evidence in the Magistrate's Court?

A. Yes. I was brought into Court?

Q. And Martin looking at you denied that you were his sister?

A. Yes. He said that he was not related to me. I said that I was not related to him. 40

Q. Why did you say that?

A. I said so because my Proctor told me that it was not necessary to say that we were related. He said that it was not necessary to say that he was my brother.

At the request of my Proctor I said what was not true. Kotta *alias* Cornelis may have been acquitted in that Case. After I gave evidence I went away; I did not wait to find out what happened to the Case. Yes, Cornelis was acquitted.

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1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

Q. Your story is that you saw the deceased signing a document called a Last Will?

A. Yes. I saw it through the window.

I am familiar with his signature and I can identify his signatures on his document P1a and P1b.

10 Q. The signatures of the witnesses were obtained saying that it was the Last Will and Testament?

A. Yes.

Q. So that you knew that what was signed on that day was a Last Will?

A. Yes. I knew that it was a Last Will.

Q. So that you understand what a Last Will means?

A. I don't understand what 'Last Will' means.

I understand the words "antheema-kemaththa," but I do not know its real meaning.

20 Q. Did you or did you not know the meaning of "antheema-kemaththa?"

A. I did not understand at that time the meaning of these words.

Q. Why?

A. I had never heard these words prior to that. I never heard of Wills before that.

Q. Did you not hear of people leaving Wills before they die?

A. No. I never heard of them.

Q. What do you think happens to people's property when they die?

30 A. I thought that the children will inherit. I knew that the wife also would inherit, and also the relations.

Q. Then when he wants to give the property to someone else?

A. I never heard of any other people inheriting property.

(Counsel refers to page 7 of proceedings of last trial)

Q. At the last trial you said this: "I saw them signing a document called a Last Will"?

A. Yes.

Q. The question was "did you see them signing", and your answer was "I saw them signing a document called a Last Will."

40 A. I said that the signatures were obtained saying that it was a Last Will.

I heard Mr. Ratnayake say: "This is my Last Will" and that he wanted them to sign it. I said so at the last trial. I also said at the last trial "from that date onwards I knew that he had made a Last Will."

No. 25
1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

Q. You said, "After he brought out the book from the almirah, he did not tell me that this Last Will was in the book"?

A. Yes. I said so.

Q. You said, "but he gave me the book to be kept."?

A. Yes. I said so.

Q. You knew that the document was a Last Will because you heard the deceased and the witnesses saying that it was a Last Will?

A. Yes. I said so at the previous trial.

Q. If what you say is true that you were given a book which you put into the drawer of an almirah and kept the key with you, then necessarily you would have been most anxious to know at least after Mr. Ratnayake's death, what provision had been made for you and your children? 10

A. No. It did not occur to me.

Q. If the Will was written on the 23rd of May, I put it to you, you would have asked Mr. Ratnayake at least at dinner that day, "What have you given the children?"

A. No. I did not ask him.

Q. Why this reticence?

A. I never ask him questions. 20

Yes. I knew that I was not his married wife.

Q. And you knew if he died that you would get no property?

A. I did not know that.

Q. Unless there was a Last Will or a Deed of Gift you knew that you would get nothing on his death?

A. No. I did not know that.

Q. And you knew that people who keep mistresses if they want to give them any property do so on a deed?

A. I did not know about that. I have never heard of mistresses getting property only on deeds. 30

I was educated up to the 6th Standard. I cannot read English, I can read a little English. I know that Martin and Herath were both married before the Registrar. I was not so married. I knew that. It was after I was kept as a mistress that Martin and Herath got married before the Registrar. I knew that I was not so married.

Q. Therefore you would have taken special pains to safeguard your position; more particularly because you had got two children?

A. I do not know that.

Q. If such a Will was written, you might have asked Mr. Ratnayake what he left for the children and what he left for you? 40

A. I did not question him.

Q. Why?

A. I did not think it was necessary for him to write like that in a Will. I thought that I would get his property after his death. I did not ask Mr. Ratnayake about the Will and what he left for the children even on the following day, or two or three days later. I never question him about it.

Q. Why did you not question him?

A. There was no necessity for me to ask him about that.

10 Q. You were not interested in what you would get or what the children would get in the event of his death?

A. It was for him to know what he should do.

Q. And it was for you to know whether he was going to leave you destitute?

A. Mr. Ratnayake had no idea at all of leaving me destitute.

Q. How did you know that?

A. He would never do that.

Q. How did you know that; did you speak to him about it?

A. He told me that he would never leave me destitute.

Q. Did he tell you that before or after he signed the Last Will?

20 A. That was before.

Q. After he signed the Last Will did you ask him whether he had left anything for you?

A. No. I did not ask him.

Q. On the basis of what you say, your conduct could only be explained, if no Will had been written in the way you say?

A. I saw him signing a document saying that it was a Last Will.

Q. Do you know that the case for the defence is that this is a concoction after his death?

A. It may be so.

30 Q. You still don't know that this Will is being challenged as a bogus Will?

A. I know that this Will is being challenged as a forgery.

Q. According to your evidence at the last trial, the Buddhist priest who was treating Mr. Ratnayake, inquired from him what provision he had made for the children, and for the "nona."?

A. Yes. My husband replied and said that he had arranged for that.

(Counsel refers to previous trial proceedings.)

40 Q. Even then did it not occur to you to ask him what he had left for you?

A. No. I did not question him.

Q. Your story is that you took not the slightest interest to find out what was left by the Will?

A. Yes.

Loku Dissanayake knows to read and write English. He was the first signatory to the Will. When I returned from Avissawella I did not ask Loku Dissanayake to read this Will. I did not ask anybody to read the Will.

Q. Mr. Ratnayake was dead and buried. You were most anxious to know what your position was as his mistress ?

A. I did not get anybody to read the Will. It did not strike me, because I was overcome by sorrow at his death. I went to Avissawella for the funeral and I met Mr. Felix Wijesinghe there.

10

Q. There you had asked Mr. Felix Wijesinghe to see that you and the children were not left destitute?

A. I deny that. I did not ask him about that.

I heard him giving evidence, in the last trial proceedings.

Yes, he stated that in his evidence, but I did not tell him not to leave me and my children destitute. That is false.

Before Mr. Ratnayake died I did not know Mr. Proctor Seneviratne. Mr. Weerakoon's clerk introduced me to Mr. Seneviratne. That clerk of Mr. Weerakoon lives in Talawatugoda about a mile away from the estate.

Q. How did you contact Mr. Weerakoon's clerk?

20

A. I knew Mr. Weerakoon. I had been speaking to him. I have met him and I have spoken to him in Courts. Mr. Weerakoon has an estate in Talawatugoda. That is Proctor Mr. Weerakoon that I refer to.

I have not spoken to Mr. Weerakoon prior to my husband's death, but I had seen my husband speaking to Mr. Weerakoon. I spoke to Mr. Weerakoon when I went to sign an affidavit before him. That was after my husband's death. Before my husband's death I had not spoken to him, but I knew him.

Mr. Ratnayake had introduced me to Mr. Weerakoon. Mr. Ratnayake had shown him to me and said that that was Mr. Weerakoon. Mr. Weerakoon had never called on my husband on the estate but Mr. Ratnayake has shown Mr. Weerakoon to me whenever he goes to his estate past our house. Mr. Weerakoon goes to his estate in his car, not on foot. When Mr. Weerakoon goes in his car my husband has shown him to me. He has pointed him out to me and said that that was Mr. Weerakoon. Mr. Weerakoon's car is a saloon car. The bungalow is on the top of a hill. We used to go for a walk up to the gate and at that time my husband has shown me Mr. Weerakoon passing on the road in his car. The distance from the bungalow to the road may be about the distance from this witness box to the gate leading out of the District Court. It was whilst we were walking in the garden that Mr. Ratnayake had pointed out to me Mr. Weerakoon going in his car. That was all the introduction.

40

Mr. Weerakoon's clerk used to come to our bungalow in connection with cases. That is not the case against Cornelis. I do not know in connection with what case he came. Mr. Ratnayake had some cases.

Q. I put it to you he came to you in connection with this forged Will for the first time?

A. I deny that. This is not a forged Will.

Q. What other cases did you have for him to come in connection with ?

A. There were several cases in connection with the estate, I do not know in connection with which case he came.

There were other cases apart from the case against Cornelis and those cases were also cases of theft. Apart from Cornelis' case there were other cases. I cannot say against whom those other cases were. I say that it was Mr. Weerakoon who was the Proctor in those cases. Mr. Weerakoon did not appear for my husband in the case against Cornelis.

Q. Mr. Weerakoon will not support your statement that he asked Martin to deny or asked you to deny that you were brother and sister?

A. It was not he who asked me to say so.

It was Mr. Weerakoon's clerk who introduced me to Mr. Seneviratne. I asked the clerk to give the case in charge of Mr. Weerakoon. I told him that I wanted to hand over this case to Mr. Weerakoon. Then the clerk told me that Mr. Weerakoon would not accept cases of this type and he suggests that Mr. Seneviratne be retained and that he was good. The clerk said that Mr. Seneviratne was good for this type of case.

I did not ask Mr. Weerakoon's clerk any particulars about Mr. Seneviratne. Mr. Weerakoon's clerk brought Mr. Seneviratne to our house Bank Hill. I do not know Mr. Weerakoon's clerk's name. We call him Liyanamahatmaya. The clerk was not present when I handed the deeds and this book P1 to Mr. Seneviratne. The clerk pointed out the house to Mr. Seneviratne and went away.

Q. He was anxious not to be there when this Last Will was going to be discovered ?

A. I do not know about that. He showed the house to Mr. Seneviratne and went away.

Q. For what purpose were you going to a Proctor; what was the object of your wanting a Proctor?

A. That is to hand over the deeds.

Q. Why should you hand over deeds to a Proctor?

A. The other party came to get the deeds from me; through fear I handed these deeds to the Proctor.

By the "other party" I mean the others who are opposing me in this case. They had sent Girigoris the driver to get these deeds from me.

Q. Did you think that you had any rights to the deeds and to the property?

A. Yes. I thought so.

Q. On what basis?

A. Because he was my husband I thought I was entitled to some of his property.

No. 25
1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

Q. You knew that he was not your husband?

A. I thought that although I was not married to him I was under the impression that I was his wife and I thought that I would get a share of his property. I thought that even as his mistress I would get a share.

I did not consult any Proctor about that. I did not ask Mr. Weerakoon's clerk about that.

This Last Will was not put in an envelope and sealed.

It was kept with other deeds in the almirah. In this case the Last Will was written in a book. It is the easiest thing in the world to open the book and have it read.

Q. And you knew that there was a last will written in the book?

A. I did not know what was written. I did not know the details of the last will, but I knew that a last will had been written.

Q. That is why you would have been anxious to know what was written?

A. No.

I asked Mr. Weerakoon's clerk to find me a Proctor, because the other side were trying to get the deeds from me. Those who came and asked me for the deeds must have come before Mr. Seneviratne. Mr. Seneviratne came there on the 7th of June. Those people from Dehiowita must have come there before the 7th of June. The people who came from Dehiowita were my brother Herath and Girigoris the driver. Girigoris is a trusted and trustworthy man. I said so at the last trial. He was in the employ of Mr. Ratnayake for about thirty years. Long before I came to know Mr. Ratnayake Girigoris used to be sent to the bank to cash cheques for thousands of rupees. My brother Herath could read English. He kept accounts at Dehiowita. I do not know if he kept accounts in English. I do not know if he signed a contract with Caltex in English. Herath was on friendly terms with me at the time. He is now the guardian *ad litem* over the 1st and 2nd Respondents, my children.

Q. Why should you get frightened when your own brother and the trusted Girigoris came there to get the deeds?

A. I was not willing to hand over the deeds to them.

Q. Not even to your brother?

A. No. They asked me for the deeds.

Q. Why did you not show your brother Herath this Will and ask him to inform you what your position was in the Will?

A. I did not want to show the Will to him. I did not wish to show him anything; deeds or anything;

Q. Your own brother who could read English came there on the 4th?

A. He must have come on the 5th or 6th.

Q. I put it to you that when Herath came there, that is on the 4th or 5th, there was no Last Will to show him and that was the reason why you did not show him the Last Will?

A. All the documents were there.

Q. Then why did you not show this Last Will to Herath?

A. I was not willing to show these to them.

Q. Why did you not show it to Herath. What was your reason?

A. It was useless showing the Last Will to Herath. It was not necessary for me to read it.

Q. Why to know what you were going to get?

A. I did not want to know what I was going to get.

Q. You could have held on to the book and asked Herath to read what was written there?

10 A. I told them that there were certain documents belonging to my husband and that I wanted to hand them over to a Proctor.

A. Any Proctor?

A. Yes.

Q. Whether you knew him or not?

A. Yes.

Q. Did you when you handed over these documents to the Proctor take a receipt from him?

20 A. Yes. I have that receipt at home. I have still got that receipt with me. That receipt is at Talangama. I can produce it at any time.

That receipt is now in my house.

Q. Dated the 7th of June?

A. Yes. It is dated.

I have kept the receipt in my drawer. Mr. Weerakoon's clerk pointed out the house to Mr. Seneviratne and went away. He came up to the gate. Mr. Weerakoon's clerk had no opportunity of telling me that Mr. Seneviratne was a Proctor, because he went away from the gate. Mr. Seneviratne came into the bungalow alone. He introduced himself as Proctor Seneviratne. He asked me why I had sent for him. I told him. I told him that
30 I had a case to entrust to him. I told him that it was a Testamentary Case. I went inside the house and brought out all the documents which I had and handed over them to him. I handed the book P1 also amongst other documents to Mr. Seneviratne.

Q. Did you tell him that the Last Will was in that book?

A. No. I handed over all these documents and went inside to find out whether there were any other papers.

In the meantime he had found out this Last Will and he was reading it. I did not tell him that the thing called the Last Will was in that book. I went inside to bring the other documents. I did not tell him that the Last
40 Will signed by five witnesses was in that book. I knew that the Last Will was there in that book. I saw it being signed.

Q. Did you not tell him that what they call a "Last Will" is in this book?

A. I could not. I did not get the opportunity of telling him because I was going back into the house to get the other papers.

No. 25
1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

- Q. The other papers were of no use to you?
 A. I wanted to collect all the documents, deeds and everything that was available and hand them to Mr. Seneviratne and then tell him about the Last Will.
 Q. Why this reticence again? Why did you not tell Mr. Seneviratne the one thing that would safeguard the position of yourself and your children?
 A. I was under the impression that the Will left everything to me and my children. I was under the impression that everything would have been left to me and my children. 10

(To Court.

- Q. By that Last Will?
 A. No. I did not know what had been included there, but I thought that I would be entitled to whatever my husband left.)

Cross-Examination Continued.

- Q. You were hoping to get everything?
 A. Yes.
 Q. You did not positively know whether you were getting anything?
 A. I thought that I would be getting everything because there was nobody else and nobody else ever came to see him. 20
 Q. You knew that Mr. Ratnayake had a nephew and three nieces?
 A. Yes. They were his sister's children.
 Q. Why then this reticence on your part to show this book to Mr. Seneviratne or to your brother Herath or to Mr. Weerakoon's clerk?
 A. It did not strike me. It was not necessary.
 Q. You must have been waiting longingly to know your definite position?
 A. No. I was not so anxious.
 Q. I put it to you that Mr. Weerakoon's clerk was one of the fellows 30 on whose advice this Will was forged?
 A. No. I deny that.
 Q. And that this Will was signed at the Co-operative Stores of Paulis Perera on the 6th of June?
 A. No. I deny that. It was not signed on the 6th of June.
 Q. Although a warrant was taken out against Paulis Perera, no steps were taken to arrest the man?
 A. A warrant was obtained but he is not to be seen.
 Q. That is not correct; no warrant has been taken out from Court?
 A. The man is not available. Because the man is not available, 40 we have not taken out the warrant.

Paulis Perera is still the Manager of that Co-operative Store. Although he is there on the dates of trial he is not to be found.

Q. I put it to you that you spoke to Paulis Perera and tried to get him to come and support your story that this Will was signed in your bungalow on the 23rd of May?

A. No. I did not.

Q. That in fact he told you—" No, I cannot come and give you that evidence? "

(Mr. Samarakone objects to this question unless the witness Paulis Perera is called.)

I disallow the question as Paulis Perera is not available as a witness.)

10 Q. You know very well that Paulis Perera will not support your story?

A. I do not know that.

I signed the proxy first and after that Mr. Wijesinghe signed later.

Q. Did you say yesterday that Mr. Felix Wijesinghe signed the proxy on a different date?

A. I signed first and he signed later.

Q. Do you deny that yesterday you said that he signed on a different date?

20 A. I cannot remember if I said that yesterday, but I signed first and he signed after me. It must have been on the same day that we signed.

Q. Would you now say that it was later on the same day?

A. Yes, it must have been so.

I saw Mr. Wijesinghe signing the proxy. He signed a little while later. It was on the same day that he signed the proxy.

Mr. Wijesinghe signed the proxy about ten minutes later, about ten minutes after I signed. He must have signed with the same pen as I used.

(Shown Proxy P11). The ink in which Mr. Wijesinghe's signature is written is much darker than the ink in which my signature is written. The colour of the ink appears to be different.

30 (Witness looks at the document P11). There is a difference in the colour. This Proxy was signed in Mr. Seneviratne's office.

Q. But according to this proxy it was signed in Talangama.

A. I handed the deeds at Talangama, but the proxy was signed in Hulftsdorp. All of us came to the office. I have signed many things in the office. I think I signed this proxy in Hulftsdorp, but it was written in Talangama.

Q. On the 7th of June when Mr. Seneviratne came to your bungalow, and you handed over the books and deeds to him, then he got you to sign this proxy?

40 A. I did not sign them. The proxy was written out there.

Yes, this proxy was written in this house Bank Hill and it was signed in Hulftsdorp. I do not know whether a date was put down at Talangama on the proxy.

(The date in the proxy is shown to witness.)

No. 25
1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

Q. Was the date filled in there?

A. I cannot say. I did not see it.

No, this proxy was filled up in the office of Mr. Seneviratne. I cannot say where this proxy was filled up but it was signed at Hulftsdorp. Yes this was signed in the office of the Proctor at Hulftsdorp.

Q. On what date do you say you signed this proxy at his office?

A. I think on the 16th of June.

Q. How is it that you remember that date?

A. I remember that date as we came to Colombo on that day.

Q. You did not keep a note of the date?

10

A. I can remember that the deeds and other documents were handed over to the Proctor on the 7th of June, and about eight or nine days later I signed this proxy in the office of the Proctor at Hulftsdorp.

I am quite certain of that.

On the 4th of June, I saw Mr. Wijesinghe at the funeral.

On the 3rd of June, he came to Talangama and removed the corpse. I saw him again on the 4th at the funeral.

Q. Thereafter you did not see him till the 17th of June?

A. Not till the 16th. I cannot be definite; it may be on the 16th or 20 17th.

Q. Do you say you both signed the proxy on that day at Hulftsdorp?

A. Yes. I say so.

Q. Not at Talangama?

A. No, not at Talangama.

Q. Not on the 7th of June, that is, the day you gave the deeds?

A. No. I did not sign on that day.

Q. The document says it was signed on the 7th at Talangama. Are you saying what is false or has the Proctor filled it giving wrong details? (Shown Proxy P11).

30

A. I accept the date given on P11 as correct.

Q. Your evidence given yesterday was correct; that is, when you said that Mr. Wijesinghe signed the proxy on a different date, that was correct?

A. On the day I came with Mr. Wijesinghe the proxy was signed.

Q. What you said yesterday that Mr. Wijesinghe signed on a different date is correct?

A. It may be so.

It may be that Proctors when they get a client first get them to sign a proxy. Yes, I signed this proxy on the 7th of June at Talangama. Mr. 40 Wijesinghe signed the proxy when he came to the Proctor's office later. Mr. Wijesinghe read the proxy for about ten minutes and he may have signed it on a later date. I was questioned about all these matters at the last trial also.

In the earlier proceedings I have said that Mr. Wijesinghe signed the proxy along with me in the Proctor's Office. I said so in those earlier proceedings. (Counsel refers to previous proceedings.)

Q. You were asked the question "Do you remember Mr. Wijesinghe signing a certain document and giving it to the Proctor or did you both sign it?"

A. Yes.

Q. Your answer there was "I signed first, he signed later?"
(Counsel refers to previous evidence)

10 A. I may have said so.
Adjourned for lunch.

Signed N. SINNETHAMBY,

A. D. J.
12-12-47.

After Lunch.

H. A. Dona Adliet Ratnayake.—Affirmed.

Cross-Examination Continued.

I said that when James Alwis came, Mr. Ratnayake asked me to tell Dissanayake to bring two other reliable witnesses. I don't remember if I mentioned "reliable" witnesses at the last trial. If I did, it is correct.

20 Q. Did you state thus: "The deceased told James Alwis that he wanted a certain thing and that he wanted him to bring Loku Dissanayake and two others to him?"

A. Yes.

Q. And that "he did not tell James Alwis why he wanted them nor did James Alwis ask the deceased why he wanted them"?

A. Yes.

Q. Deceased wanted him to bring Loku Dissanayake and two others?

A. Yes.

30 Q. He did not mention the names, he only wanted "two others" brought to him?

A. Yes.

Q. James Alwis did not ask what sort of people he wanted?

A. Yes.

Q. Then you were asked how was Dissanayake to know what sort of people he was to bring and your answer was "I do not know"?

A. If I have said so, it must be correct. I do not remember now.

Q. "Loku Dissanayake brought two trusted people to the deceased; he had been asked to bring two persons whom he could trust?"

40 A. If I stated so it must be correct. It may be that Dissanayake was told to bring two reliable persons.

I do not know whether Mr. Weerakoon used to visit the estate at Talawatugoda every week end and I cannot say on which day of the week

he went there. I do not know whether there are several proctors living at Cotta; there may be. My husband conducted a big business. He may have filed cases in the Avissawella Courts, and may be that Mr. Jacolyn Seneviratne was his Proctor there. It may also be that Mr. De Saram was his Proctor at Colombo. Deceased had a number of deeds in his favour. He may have retained a Proctor to attend to those deeds. The deeds are with the Public Trustee now. I gave the deeds to the Proctor and he handed them over to the Public Trustee. They were kept in the almirah of which I had the key.

Q. Did you not suggest to your husband to have a Notarial Will? 10

A. I did not; I did not understand the implications.

I know that when I buy a property I have to go to a Notary. I am not aware that generally Wills are attested by Notaries. I know deceased had a sister who died. I did not know who was helping her. He may have helped. I do not know whether I have admitted it. Deceased has not visited his relatives with me.

Q. Did you add this: "When he was helping her, I cannot say whether he was visiting her"?

A. I might have said that.

Q. And "He did not take me to her house during his life-time"? 20

A. Yes, I have not been there. 4th, 5th, and 6th Respondents are the children of the dead sister.

(Shown P4a). Mr. Ratnayake has signed both these cheques in the same way. I have seen him placing two signatures on the same document. He put his signature on cheques. I have seen him writing two signatures at Talangama. I do not know where this cheque has been written. Mr. Ratnayake did not leave Talangama after he came there on the 10th May. I cannot say where this cheque could have been written. I do not know why he wrote this cheque.

Q. Are you aware that he did a large business in taking coolly pay 30 to estates and charging 1% commission?

A. I do not know.

In the counterfoil I see the initials P.G.P. and V.C.D. P.G.P. stands for P. Girigoris Perera and V.C.D. for V. C. Direcksze. Direcksze may have been employed at Dehiowita. I see in the 1st cheque the writing "bring estate pay." I do not know whether they were written when Mr. Ratnayake was ill.

(Shown P4b with the magnifying glass) I see the monogram is shaky.

There is something else written below the underscore.

(Shown cheques marked R14, R15, R16 and R17). There is only 40 one signature on each of these in the same style as P4a and P4b. The last of them is dated 5th May, 1943. I may have produced at the previous trial signatures of Mr. Ratnayake on other documents. I do not know whether there any document of his or not after 14th May, 1943.

(Shown P1). The last entry here is on the 14th May, 1943. I cannot read or understand anything which is written here. I see a blur in the last entry here. (Counsel points out to Court that there is an erasure at the spot

where the word " ahead' ' occurs). I know nothing about any pages in this being missing.

(Shown R2). There is Mr. Ratnayake's signature here. House Rent receipts were signed by him differently from cheques.

(Shown R3). This too has his signature. Page 1 has 3 signatures of Mr. Ratnayake in the same style; on page 2 there are 4 signatures of Mr. Ratnayake; on page 5 there are three; on page 6 three, page 7, two; page 8 four; page 9 four; page 10 two; the third signature is not his.

(Shown R4). On page 1 of this there are 4 signatures of Mr. Ratnayake, on page two 4; page 3 four; page 4 also four; page 5 four; page 6 four; page 7 four; page 9 four; page 10 three; page 11 four; page 12 two.

(Shown R5). On page 1 there is one signature of Mr. Ratnayake, page 2 three; page 4 four; page 5 three; page 6 four; page 7 three; page 8 four; page 9 three; page 10 three; page 11 four; page 12 three. The signatures on page 13 may be Mr. Ratnayake's, but there is a slight difference in the first signature. The second signature appears to be genuine.

(Shown R9). Page 1 has four signatures; page 2 three; page 4 three. I cannot say exactly what Mr. Ratnayake's writing is.

(Shown the Last Will). I cannot say whose writing this is. The next page also I cannot say who wrote. I saw both these signatures being placed by Mr. Ratnayake and also the 5 witnesses. I saw nothing else being written. Beyond placing his signature I did not observe Mr. Ratnayake writing anything else. Assuming that the will was signed in this witness box, I was standing 7 or 8 feet away. (Witness points to the second seat at the Bar table on the left.) There is no glass shutter in the window near which I was standing, nor bars, but only the wooden shutters which were open. I went inside because these people had come there. I did not go inside to be entirely unseen by them. Usually when anyone came it was my habit to go inside, but not particularly in order to allow Mr. Ratnayake to have any conversation he liked in privacy.

If there was any urgent work to be done, such as plucking cocoanuts, Mr. Ratnayake used to get it done on Sundays also. I say he did get work done on Sundays also. He used to write accounts on Sundays.

Q. I put it to you there is not one single entry on a Sunday?

A. I do not know about that.

Girigoris was a trusted servant of his; he used to stay in the garage. He came inside the house for meals and whenever he was called to get anything done, when he was commissioned to buy vegetables, etc. He was called towards the kitchen and instructions were given. He took his meals in the bungalow kitchen. He used to drive the car for Mr. Ratnayake. Only when Mr. Ratnayake went about in the car Girigoris too went with him.

Mr. Ratnayake was ill for the last three years of his life and he was taking treatment; he was suffering from piles; he had his usual meals; the physician asked him to take anything he liked. He drank cow milk and took meat even when he took treatment. He used to take medicines which agreed with his diet. I do not know whether " vederalas " advise against hearty foods for those who suffer from piles. He used to have porridge made of Kohila

No. 25
1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

in the mornings. He did not take Madu or wild boar flesh. He ate ham and bacon. Whatever stuff he wanted me to prepare for him, I gave him. I do not know of what complaint he died. During the latter part of his life he could not eat. He could walk; he was never unable to walk. Girigoris never carried him to the lavatory. Only about two days prior to his death he was unable to walk about; till then he did not require anyone's assistance. Girigoris never assisted him. I myself used to support him and also my eldest child who walked behind him. Girigoris was never summoned for this purpose.

Mr. Ratnayake may have written the details of his income in these 10 books. I saw him writing but I do not know what and what he wrote. I cannot say anything about entries not being there after the 14th May. I cannot say why there is no entry about the coconuts plucked when Girigoris was sent to Hendala on the day the Will was signed. Girigoris was not specially sent out that day; he was sent out in the ordinary course when the nuts were due to be plucked. It is not correct that the nuts were plucked the previous week. Sometimes he used to come back without plucking owing to rain. I do not know whether there is any entry in the books to show that Girigoris was sent on this day to pluck nuts. At the previous trial I stated that I had seen Mr. Ratnayake writing books of accounts on the 20 estate at Talangama. I may have also said that "he was able to do this till six days before his death." I cannot remember how I stated on the last occasion. (Counsel refers to the evidence at the previous trial). The account books were not kept in the almirah, they were left on the table in the hall. I do not know how it is that nothing has been written by him after the 14th May other than the Will.

I remember the day I went in connection with the affidavit. When my brother and I went the other witnesses were there in the office. Even if they came in the same bus, being men they could have come earlier than we. I cannot remember what I did on that day. I remember the five witnesses 30 signed an affidavit on that day. Martin and I came together. I do not know how the other witnesses travelled. Three got into the tram at Borella. When we got into Mr. Seneviratne's office the other witnesses were already there. Still I do not know whether those witnesses came in the same bus because I did not see them. When we got into the bus and they got in at the rear of the bus we would not have seen them. We did not direct our attention to the others, the two of us simply came on our own. Loku Dissanayake is a big made man. The others were known to him. We did not arrange to come together nor did I see them in the bus. From Talangame to Borella we came by bus, 40 a distance of 3 or 4 miles. From Borella to San Sebastian, the distance may be about 2 miles. Martin and I walked from there to Mr. Seneviratne's office and on our way we did not direct our attention towards the others. We were going to have the affidavit signed. The others had been told earlier that they should come for this purpose. I only know that having earlier asked the others to come, the two of us came together on this day. If other witnesses have said that we were there when they came I cannot say anything about it. We all went to Mr. Weerakoon's together. I cannot remember if I signed a separate affidavit that day.

Felix Wijesinghe sent Girigoris and Herath to me, asking for the deeds to enable him to administer the estate. I did not say on that occasion that 50

No. 25
1st Petitioner's
Evidence
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

the deceased had left a Last Will. I told them to ask Mr. Wijesinghe to come with a Proctor. Thereafter a Proctor, one Mr. Burhan did come. By that time I had already given the documents to Mr. Seneviratne. Mr. Wijesinghe came again with Mr. Burhan and we all went to Proctor Seneviratne's office. There Mr. Wijesinghe did not say that the Will was a suspicious documents or that I would get into trouble if I produced it. He examined the Will and said: "Uncle has done things well." Then he blessed his memory and his grave and said: "let us tear this document and share the estate." He never said it was a suspicious document. I never said "if you wish, tear it up." I said: "Let my Proctor do anything he likes. I am not agreeable to tearing up the will." I do not remember having said that if the Proctor wished to tear it up, I would agree. In the office I saw Mr. Felix Wijesinghe examining the will. I may have said at the last trial that Mr. Wijesinghe examined the document written by the deceased. I was asked what Mr. Wijesiheng said.

10

Q. You said his answer was "let us destroy this document and then divide"?

20

A. He said this has been nicely written; uncle's handwriting is correct. I cannot remember what I said at the last trial. If it is so recorded, I admit it. I may have said: "Do what you like, but I do not agree to your tearing up the document." Mr. Wijesinghe never told me that if I took this document to Court, I would get into trouble, therefore, let the Will be torn. (Counsel refers to the evidence at the previous trial). I can read Sinhalese. (Shown deceased's account book).

30

On January, 30th, Hendrick is down here as Murakaraya. Herath was at Dehiowita. Martin is also here. There was a woman called Alice who looked after the children. The "Alice" here does not refer to me. I do not know tapping. Alice may have been employed in December, 1929. Kalo Nona is my mother's name; she used to supervise the female labourers. My mother is H. A. Kalo Nona. I do not know whether she was also known as Kalo Hamy. I was not known as Alice. If my name appeared in the summons in the Magistrate's Court as Alice it must be a mistake.

Signed N. SINNETHAMBY,
A. D. J

NO. 26

PETITION OF 2nd PETITIONER AND 4th,
5th AND 6th RESPONDENTS

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama.....deceased

40

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama.
 2. FELIX WIJESINGHE of Dehiowita.....Petitioners.
- and

No. 26
Petition of 2nd
Petitioner and 4th,
5th and 6th
Respondents
2-12-47

No. 26
Petition of 2nd
Petitioner and 4th,
5th and 6th
Respondents
2-12-47
—Continued.

1. PERCY ARNOLD RATNAYAKE.
 2. PEARL BANDARA MENIKA RATNAYAKE, both of Bank Hill Estate, Talangama.
 3. HETTIARATCHIGE DON HERATH of Piliyandara.
 4. ELLEN WIJESINGHE.
 5. GERTIE WIJESINGHE, both of Riverston, Matale Road, Kandy.
 6. MURIEL AMARASEKERA *nee* WIJESINGHE of Deal Place, Colombo Respondents.
-
1. FELIX WIJESINGHE of Dehiowita.....2nd Petitioner-Applicant.
 2. ELLEN WIJESINGHE of Riverston, Matale Road, Kandy.....4th 10
Respondent-Applicant.
 3. GERTIE WIJESINGHE of Riverton, Matale Road, Kandy.....5th
Respondent-Applicant.
 4. MURIEL AMARASEKERA of Deal Place, Colpetty, Colombo....6th
Respondent-Applicant.
 - Applicants.

Vs.

1. DONA ADLIET RATNAYAKE of Talangama,
1st Petitioner-Respondent.
2. HETTIARATCHIGE DON HERATH OF Peliyandarda, Guardian-ad- 20
litem of the 1st and 2nd Respondent, Percy Arnold Ratnayake and
Pearl Bandar Menika Ratnayake (minors).....3rd Respondent.
..... Respondent.
3. The Public Trustee of Ceylon, Administrator- pendente-lite Respondent.
..... Respondents.

On this 2nd day of December, 1947.

The Petition of the Applicants abovenamed appearing by S. R. Amerasekera, their Proctor, state as follows:—

1. In the above Testamentary proceedings the Public Trustee of Ceylon, the 3rd Respondent abovenamed was appointed Ad- 30
ministrator pendent-lite to take charge of the estate until the decision in this case.
2. Among the assets the Public Trustees also took charge of the business of the firm of “J. A. Ratnayake & Co.” including the Cafe at Dehiowita.
3. On application made by the Public Trustee the Court allowed the 1st Applicant to conduct the abovementioned business of “J. A. Ratnayake & Co.” including the Cafe on an indemnity Bond in a sum of Rs. 7,500 being executed by the said 1st to 4th Applicants. 40
4. By its order dated 3rd November, 1945, the Court allowed the the Applicant’s application that they may be paid one-fourth of the moneys belonging to the estate in deposit in the National Bank and Hongkong and Shanghai Bank, but ordered that a sum of Rs. 7,500 be not paid out on the ground that the said sum should be available to the Public Trustee should occasion arise to enforce the Indemnity Bond.

5. The 1st Applicant abovenamed has been and is continuing to carry on the abovementioned business of " J. A. Ratnayake & Co." including the Cafe.
6. Under the Will, the 1st Applicant abovenamed is entitled to among other property to the abovementioned business together with everything belonging to it assets and liabilities from the date of the death of the deceased abovenamed.
7. If the Will is not admitted to Probate and succession to the estate is on an intestacy, then the said 1st to 4th Applicants are alone entitled to the full estate as the intestate heirs.
8. The said 2nd to 4th Applicants are willing to surrender and hereby surrender all their rights to the said business in whatever event to the 1st applicant.

No. 26
 Petition of 2nd
 Petitioner and 4th,
 5th and 6th
 Respondents
 2-12-47
 —Continued.

10

Wherefore the Applicants pray:—

- (a) That the Indemnity Bond be cancelled.
- (b) That the sum of Rs. 7,500 be paid out to the Applicants.
- (c) For costs.
- (d) For such other and further relief as to this Court shall seem meet.

20

Sgd. S. R. AMARASEKERA,
Proctor for Applicants.

NO. 27

**AFFIDAVIT OF 2nd PETITIONER AND 4th,
 5th AND 6th RESPONDENTS**

No. 27
 Affidavit of 2nd
 Petitioner and 4th,
 5th and 6th
 Respondents
 2-12-47

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama.....*deceased.*

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama
- 30 2. FELIX WIJESINGHE of Dehiowita *Petitioners.*
 and
 1. PERCY ARNOLD RATNAYAKE.
 2. PEARL BANDARA MENIKE RATNAYAKE, both of Bank Hill Estate, Talangama.
 3. HETTIARATCHIGE DON HERATH of Piliyandara.
 4. ELLEN WIJESINGHE.
 5. GERTIE WIJESINGHE, both of Riverston, Matale Road, Kandy.
 6. MURIEL AMARASEKERA *nee* WIJESINGHE of Deal Place, Colombo..... *Respondents.*
- 40 1. FELIX WIJESINGHE of Dehiowita.....*2nd Petitioner-Applicant.*
 2. ELLEN WIJESINGHE of Riverston, Matale Road, Kandy.....
4th Respondent-Applicant,

No. 27
Affidavit of 2nd
Petitioner and 4th,
5th and 6th
Respondents
2-12-47
—Continued.

- 3. GERTIE WIJESINGHE of Riverston, Matale Road, Kandy.....
5th Respondent-Applicant.
- 4. MURIEL AMARASEKERA of Deal Place, Colpetty, Colombo.....
6th Respondent-Applicant..... Applicants.

Vs.

- 1. DONA ADLIET RATNAYAKE of Talangama, *1st Petitioner-Respondent.*
- 2. HETTIARATCHIGE DON HERAT of Piliyandara, guardian-ad-litem of the 1st and 2nd Respondents, PERCY ARNOLD RATNAYAKE and PEARL BANDARA MENIKE RATNAYAKE (minors). *3rd 10 Respondent-Respondent.*
- 3. THE PUBLIC TRUSTEE, Ceylon, Administrator pendente-lite, *Respondent.. Respondents.*

We, Felix Wijesinghe of Dehiowita, Ellen Wijesinghe and Gertie Wijesinghe both of Matale Road, Kandy and Muriel Ameresekera *nee* Wijesinghe of Deal Place, Colpetty, Colombo make oath and say as follows:—

- 1. We are the applicants abovenamed.
- 2. In the above Testamentary proceedings the Public Trustee of Ceylon the 3rd Respondent abovenamed was appointed Administrator pendete-lite to take charge of the estate until the de- 20
cision in this case.
- 3. Among the assets the Public Trustee also took charge of the business of the firm of “J. A. Ratnayake & Co.” including the Cafe at Dehiowita.
- 4. On application made by the Public Trustee the Court allowed me the 1st Applicant to conduct the abovementioned business of “J. A. Ratnayake & Co.,” including the Cafe on an Indemnity Bond in a sum of Rs. 7,500 being executed by us the said 1st to 4th Applicants.
- 5. By its order dated 3rd November, 1945, the Court allowed our 30
application (1st to 4th Applicants abovenamed) that we may be paid one-fourth of the moneys belonging to the estate in deposit in the National Bank and Hongkong and Shanghai Banks but ordered that a sum of Rs. 7,500 be not paid out on the ground that the said sum should be available to the Public Trustee should occasion arise to enforce the Indemnity Bond.
- 6. I, the 1st Applicant abovenamed have been and is continuing to carry on the abovementioned business of “J. A. Ratnayake & Co.” including the Cafe.
- 7. Under the Will, I, the said 1st Applicant abovenamed am entitled 40
to among other property to the abovementioned business together with everything belonging to it assets and liabilities from the date of the death of the deceased abovenamed.
- 8. If the Will is not admitted to Probate and succession to the estate is on Intestacy then we the said 1st to 4th Applicants are alone entitled to the full estate as the Intestate heirs,

9. We, the said 2nd to 4th Applicants are willing to surrender and hereby surrender all our rights in the said business in whatever event to the 1st Applicant.

Signed and sworn to at Colombo on this 2nd day of December, 1947.

Before me,
Sgd. R. C. PERERA,
C. O.

Sgd. F. A. L. WIJESINGHE.
Sgd. H. WIJESINGHE.
Sgd. G. M. WIJESINGHE.
Sgd. AMERESEKERA.

No. 27
Affidavit of 2nd
Petitioner and 4th,
5th and 6th
Respondents
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—Continued.

10

NO. 28

No. 28
Objections of the
1st Petitioner
19-12-47

OBJECTIONS OF THE 1st PETITIONER

IN THE DISTRICT COURT OF COLOMBO

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama.....deceased.

HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama..... 1st Petitioner.

and

1. PERCY ARNOLD RATNAYAKE, and others.....Respondents.

On this 19th day of December, 1947.

20 The Statement of Objections of the 1st Petitioner-Respondent appearing by her Proctor, Paulus Cornelis Seneviratne states as follows:—

1. This case was tried by the District Judge, on 3 issues from 27th March, 1944 to 7th March, 1945, and he by his judgment of the 2nd August, 1945, held that the Petitioner had not proved the Will and answered the 3 issues against the Petitioner, and her minor children and also ordered them to pay the Objector's Costs.

30 2. After the said Judgment, the 2nd Petitioner and 4th to 6th Respondents applied to the District Judge to draw a 1/4th share of the money left by the deceased in National Bank and Hongkong and Shanghai Banks Ltd.

3. The Court after due inquiry on the 5th November, 1945, permitted the present applicant to draw from the money in the Bank, which forms part of the deceased's estate a sum of Rs. 15,031/- less a sum of Rs. 7,500 which was given by way of an indemnity Bond to the Public Trustee for carrying on the business which is an asset of this estate.

40 4. Under the said order the money now in security is not money brought to Court by the present Applicant, but a part of the estate of the deceased.

5. The 1st Petitioner appealed from the Judgment of the District Court of 2nd August, 1945 to the Supreme Court and Their Lordships Court by their Judgment of 6th March, 1947 held *inter alia* that " no suspicion with regard to the genuineness of the Will can be said to have arisen " and " it was not necessary

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Objections of the
1st Petitioner
19-12-47
—Continued.

- to expect an especially high degree of proof for removal of suspicions” which actually had not arisen.
6. Now the case has come back to be tried in this Court and the trial is being concluded on the one and the only issue whether the document P1 was duly executed and attested by the deceased.
 7. The said application is premature as allowing it would tantamount to a prejudging of this case.
 8. The 1st Petitioner and her minor children if successful would be entitled to costs and this is a part of the money available for the costs of the Petitioner and her children; as already the present applicants have drawn out of Court a sum of Rs. 7,531/- from the money left by the deceased. The allowing of this application will cause prejudice to the minor children Respondents. 10
 9. The trial is at the concluding stages and this is not an application for money for maintenance of the heirs of the deceased or for their education.
 10. No special reason is adduced by the present applicants for the payment out of this money in Court which forms part of the estate when the Will is again challenged by the present applicants and this matter has yet to be tried. and adjudicated by the Court. 20
 11. As the case is yet pending it is submitted that the Court should not alter, amend or revise its order of the 5th November, 1945 as all matters were fully urged on that day and order was made after due consideration of all matters.
 12. If the applicants were dissatisfied with the order made by Court the remedy was to have appealed against the order of the District Judge dated the 5th day of November, 1945.
 13. This sum has been retained as security for the 2nd Respondent-Applicant’s carrying on a business of the estate of the deceased and until the decision of the case the said sum should be in Court as security for the 2nd Respondent-Applicant’s due management of an asset of the estate of the deceased. 30
 14. As the burden of proving this Will rests on the 1st Petitioner and her minor children who have nothing except what was left by the deceased, money of the estate of the deceased should not at this late stage of the trial be made available to the present applicants to resist the proving of the said Will, at the expense of the estate of the deceased. 40

It would be in the interests of justice to allow the 1st Petitioner-Respondent’s expenses of proving the Will rather than that the present applicants should be provided with money of the estate to negativate the intentions of the deceased.

Wherefore the 1st Petitioner and her minor children, the 2nd and 3rd Respondents by their guardian-ad-litem pray that :

- (a) The said application be dismissed.
- (b) For Costs.
- (c) And for such other and further relief as to this Court shall seem meet. 50

Sgd. P. C. SENEVIRATNE,
Proctor for 1st Petitioner,

INQUIRY AND ORDER RE PETITION
DATED 2-12-47

No. 29
Inquiry and Order
Re Petition dated
2-12-47
13-1-48

13th January, 1948.

Mr. Advocate Navaratnarajah with Mr. Advocate Mahadeva for the 2nd Petitioner.

The present application is by the 2nd Petitioner and the 4th, 5th and 6th Respondents to the original application for letters.

10 Mr. Advocate Kottegoda instructed for the Respondent to the application who is the first Petitioner in the Testamentary Case who is the Applicant for letters.

Mr. Navaratnarajah states that the deceased died leaving several properties, one of which was a business at Dehiowita. That business is called the Estate Supplying and Trading Business. Under the Will this particular business was specially devised to the 2nd Petitioner, one of the present applicants along with certain other properties. If the Will is not admitted to Probate, the position would be that these parties namely, 2nd Petitioner and the 4th, 5th and 6th Respondents will be the sole heir of the deceased. If the Will is proved these properties will go to the 2nd Petitioner solely.

20 Mr. Kottegoda admits that these facts are correct.

Mr. Navaratnarajah says that application for Probate was made by the Petitioner on the 5th of July, 1943. Objections were filed and on the 7th of October, 1943, the Public Trustee was appointed Administrator pendente-lite. He refers to Journal Entry of 23-10-43. Order was made on this application on the 3rd of November, 1943.

Mr. Navaratnarajah concedes that the Indemnity Bond granted to the Public Trustee may have been to indemnify him as Executor of the estate against claims of third parties to whom the business may owe money.

30 Judgment in this case was entered on the 2nd of August, 1945. Thereafter the 2nd Petitioner and the 4th to the 6th Respondents made an application to Court to withdraw a 1/4th share of the cash in deposit in the Bank. He says that under the Will, the four parties namely, 2nd Petitioner and 4th to 6th Respondents were bequeathed 1/4th share of all the monies in the Bank. Those were the terms of the Will. That application was not allowed. That money was wanted in order to prosecute the appeal.

Mr. Kottegoda admits that from 1943 a sum of Rs. 100 per month had been drawn by the 1st Petitioner for the maintenance of the minor children.

40 Mr. Navaratnarajah refers to the proceedings and order dated 5th November, 1945. His present application is to draw this sum of Rs. 7,500 which is referred to in that order of the 5th of November. Mr. Navaratnarajah states that the Public Trustee agreed to release the Rs. 7,500 because in addition to the Rs. 7,500 which was left with him by the Indemnity Bond the shares of the 2nd Petitioner and the 4th, 5th and 6th Respondents to the immovable property and cash of this estate were hypothecated to the Public Trustee. The value placed upon the immovable property by the

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 —Continued.

Petitioner in her application for letters is Rs. 61,000. Under the Will certain properties have been specifically devised to the 2nd Petitioner and 4th to 6th Respondents, and the value of those properties is more than Rs. 7,500. It is admitted that the lands specifically devised to the 2nd Petitioner and the 4th, 5th and 6th Respondents under the Will have been valued by the Petitioner at Rs. 6,500/-.

Mr. Navaratnarajah marks the Indemnity Bond given to the Public Trustee X1 namely, Bond No. 3573 of 11-4-45. The Public Trustee is adequately protected by the Bond. He refers to the objections.

Mr. Kottegoda replies: He refers to the Petition. There is no reason given in the petition as to why this money is required. He refers to the order of the 5th of November, 1945 which allowed only Rs. 7,500 to be drawn. The balance is to be kept back with the Public Trustee to indemnify him. Mr. Kottegoda does not say that the order of the 5th of November, 1945 is *res judicata*, but he says that unless there are altered circumstances the Court would not make an order which will have the effect of varying that earlier order. There is nothing in the Petition to show why this money should be paid to the present Petitioner. He submits that there is not the slightest reason given for this money being drawn and the proper time for this application is after the Court makes order on the application for letters. 10 20

ORDER

This is an application by the 2nd Petitioner and the 4th, 5th and 6th Respondents to draw a sum of Rs. 7,500 which has been hypothecated to the Public Trustee by an Indemnity Bond No. 3573 of the 11th of April, 1945. In this case the first Petitioner seeks to prove the Will alleged to have been made by the deceased and it is at the moment opposed by the 2nd Petitioner, and the 4th, 5th and 6th Respondents to the original application for letters who are the present applicants. It is admitted that in the event of the Will not being admitted to Probate the sole heirs will be the 2nd Petitioner and the 4th, 5th and 6th Respondents, but if the Will is admitted to Probate, then certain properties which are specifically bequeathed and devised in the Will will go to the present applicants. One of these properties is the business which is being carried on at Dehiowita. Pending final decision of the dispute with regard to the application for letters the Public Trustee was appointed Administrator and he permitted the 2nd Petitioner to carry on this business at Dehiowita. In order to safeguard himself against any possible loss he obtained the Indemnity Bond in question. The bond itself states that it was obtained "against any losses and liabilities that may be incurred in the conduct of the business of the said firm of J. A. Ratnayake & Co. after 7th, October, 1943." The amount of the indemnity Bond is Rs. 7,500. The property hypothecated consists of certain immovable properties which under the Will were bequeathed to the present applicants namely 2nd Petitioner and the 4th, 5th and 6th Respondents under the Will. The value of these properties is admitted to be Rs. 6,500. It will thus be seen that even if these properties realised their full value it will not be sufficient to cover the full amount of the indemnity. It was perhaps for this reason that a further sum of Rs. 7,500 out of the monies which would go to the present applicants was retained by the public Trustee. In an earlier application made to this Court the Court permitted the 2nd Petitioner and the 4th, 5th and 6th Respondents to draw a sum of Rs. 7,500 which would have represented their share of the 30 40 50

monies left by the deceased less the sum of Rs. 7,500 which was hypothecated by the Indemnity Bond. At that time order was also made permitting the first Petitioner a sum of Rs. 100 per month out of the monies in Court for the maintenance of the two minor children and it is stated by learned Counsel for the present applicant that about Rs. 6,000 has so far been drawn on this account. This is not denied by learned Counsel who appeared for the first Petitioner. If the Will is not held proved, then of Course the first Petitioner would get nothing nor would the illegitimate children get the maintenance of Rs. 100 that was allowed.

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- 10 The Public Trustee who was noticed of this application had no objection to the entire money being drawn provided the present applicant absolved him from all responsibility. He made this statement presumably because he thought that if the Will was admitted to Probate, they would be entitled to the business and if the will was not admitted to probate, they will be entitled not only to the business but to the other assets of the deceased. It seems to me, however, that in the event of the 2nd Petitioner incurring debts which exceed Rs. 7,500 the Public Trustee or Executor might still become liable to pay that. However as he had thought that the sum of Rs. 7,500 would be sufficient security,
- 20 I do not propose to interfere with regard to the amount of the indemnity. At the present moment I am only concerned with whether the security so given is sufficient. Landed property valued at Rs. 6,500 would only, following the normal rule, be sufficient to secure half that sum namely, about Rs. 3,750. For the balance there should be some other security. This obviously can only be met from the cash hypothecated. The cash is Rs. 7,500. I think that if a sum of Rs. 5,000 is reserved for the purpose there would be sufficient security still left to fully indemnify the Public Trustee against any losses. On this basis it would be reasonable to permit the present applicant to draw a sum of Rs. 2,500. The Respondents oppose the application, stating
- 30 that the money is wanted by the 2nd Petitioner and the 4th, 5th and 6th Respondents to contest the Case as against them. This was frankly admitted to be so by learned Counsel who appeared for them. The question that this Court has to consider is whether payment of this sum will prejudice the estate in the event of the Court admitting the Will to Probate. It seems to me that it will not, provided there is sufficient property or cash to secure the payment of the amount stipulated in the Indemnity Bond. Learned Counsel for the first Petitioner did concede that the order of the 5th of November was not *res judicata* and was made on the facts then available to Court and did not mention that it cannot be varied. I should certainly have hesitated to vary
- 40 that order, but apparently that order with regard to the Rs. 7,500 was made by consent. I see that learned Counsel who then appeared for the 2nd Petitioner stated that he was prepared to leave that Rs. 7,500 with the Public Trustee.

In this application I have to consider whether the security given is sufficient to secure the sum of Rs. 7,500. It seems to me that the immovable property is not sufficient and in all the circumstances I will not be justified in permitting the 2nd Petitioner and the 4th, 5th and 6th Respondents to draw the entire sum of Rs. 7,500. In order that the security offered may be effective it is my view that Rs. 5,000 should still remain bound by the Indemnity Bond. I therefore release from the bond a sum of Rs. 2,500 only, and

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13-1-48
—Continued.

direct that that sum be paid to the 2nd Petitioner. The 4th, 5th and 6th Respondents have consented to this application.

No further application for the release of any further sums bound by the Indemnity Bond is to be made to this Court.

I do not propose to allow any costs of this inquiry to either side.

Signed N. SINNETHAMBY,
A. D. J.

No. 30
1st Petitioner's
Evidence (Contd.)
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

NO. 30

1st PETITIONER'S EVIDENCE (Contd.)

27-1-48

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Appearances as before.

Dona Adliet Ratnayake.—Affirmed.

Cross-Examination Continued.

I cannot say since when my mother, Kalo Nona was working on the estate. She did not work right up to the death of Mr. Ratnayake. I cannot say exactly when she stopped work or how long before Mr. Ratnayake's death she stopped work. I cannot say how long she worked on the estate altogether, whether 15 or 20 years. I do not know what her wages were. I did not enquire about those matters; whether she was paid or not I do not know. She supervised the work of the women labourers. Sometimes 3 or 4 women worked on the estate; I did not care to go into those things. I lived with my mother for some time on the estate, I cannot remember how long; I cannot remember how old I was when I went to Mr. Ratnayake's bungalow, but I was grown up then. At that time my mother was working on the estate. All I know is that she was supervising work on the estate; I do not know whether she was doing any other work besides that. Labourers were engaged according to the work available on the estate. During the manuring season 15 to 20 persons used to work on the estate. There were two lots of rubber land, sometimes two persons did the tapping, sometimes one, both male and female. Martin was a watcher on the estate. My mother used to call Mr. Ratnayake "Mahatmaya"; she used to treat Mr. Ratnayake with respect as the proprietor of the estate. I do not know how Mr. Ratnayake treated her. After I went to the bungalow she treated her as an equal; prior to that I am not able to say how he treated her. I have never worked on that estate at any time; I only worked at home. There was a woman called Alice on the estate; there were tapper women on the estate, but I do not know whether Alice herself did that work; she used to do weeding and weave cadjans; I came to know that Alice before I went to Mr. Ratnayake, when I was with my mother; she is a woman from Matara; she was a married woman without children residing on the estate with her husband whose name I do not know. That Alice lived near my mother's house and she used to come to our place; I do not know her "vasagama." There was another Alice in Mr. Ratnayake's bungalow who was looking after my children; she came after the youngest child was born; I cannot say how long after that child was born the second Alice came to the bungalow nor what the

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child's age was then. The child was walking; may be 8 or 9 months after it was born. At that time this second Alice was about 45 years old and she came with a son of hers who also stayed in the bungalow.

No. 30
1st Petitioner's
Evidence (Contd.)
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

It was suggested to me at the last hearing that my name was Alice and that I was a tapper on the estate. I denied it. I was asked whether there was another Alice on the estate. I said there was. (Counsel refers to previous proceedings).

Q. Did you say: "I do not know anyone called Alice?"

10 A. I cannot remember that; if it is so recorded I accept it as correct. So far as I remember, I said there was one Alice working on the estate.

Q. Did you say: "I cannot say whether there was anyone called Alice?"

A. I cannot remember if I said that; I may have said that forgetfully.

In my presence no one has called me Alice. I am not aware that people have referred to me as Alice. I know Loku Dissanayake for about 10 years. It is not surprising to me if he has referred to me as Alice but he has never done that in my presence. The women of the area did not call me Alice; no one called me Alice in my presence. I do not know if Loku Dissanayake
20 is speaking the truth or not, but before me no one calls me Alice.

I said there was a servant woman called Alice in the bungalow. She was about 2 years in the bungalow; she had a boy also in the employ of Mr. Ratnayake as long as his mother was there. After I went to Mr. Ratnayake's bungalow I always had the assistance of servants; sometimes I had one, sometimes two or three, sometimes even five to six. After the eldest child was born we had 5 or 6 servants, David, James, Simon, a cook woman named Kaluhamy, Alice, Asilin. Asilin came there before the child was born and remained for about one year. Alice came there after the youngest child was born. About the time of Mr. Ratnayake's death there was a family, father,
30 mother and daughter who were staying in the bungalow. The name of the man is Baby Aiya, and the daughter was Maggy. I do not know the name of the woman; they were a family working on the estate; they came to the bungalow about 2 months before Mr. Ratnayake's death and about 15 days after the death they went back to their village Mawattara, how far from Talangama, I do not know; the woman and daughter did the kitchen work, the man used to milk the cows, fetch water, sweep the house, &c.. I also did work in the house. I do not know what their wages were but all were fed in the bungalow; Mr. Ratnayake did not tell me what their wages were.

Mr. Ratnayake was not very ill before his death; he was ill only 3 days
40 before he died. These three servants in the bungalow when the Will was signed but they were attending to their own business towards the kitchen and did not come where Mr. Ratnayake was on this day. I did not ask them whether they saw the Will being signed. I did not tell my Proctor that there were three servants in the house on the day the Will was signed. On the 23rd May Mr. Ratnayake asked me to send for Martin; Martin used to take his meals in the bungalow but lived in a separate house on the estate; it was not necessary to send anyone to fetch Martin because he could be seen from the bungalow. I do not know how Martin was called to the bungalow on this occasion. He was in the bungalow frequently and I cannot remember whether

No. 30
1st Petitioner's
Evidence (Contd.)
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

I sent anyone to fetch Martin. Martin was within a shout's call. If Martin was in his house a servant would call for him; on this occasion I cannot remember whether it was a servant who fetched Martin. I am quite sure that when Mr. Ratnayake asked me to call Martin the servants were in the kitchen side. I cannot say whether any of them had seen Mr. Ratnayake signing the Will; I did not see them nearby. I cannot say whether they saw the witnesses coming to the bungalow at that time. My Proctor did not enquire from me whether there were servants in the house at the time the Will was signed, nor whether I had the assistance of servants to run the house. At the last inquiry I was questioned about servants. Even after that my Proctor did not question me about it; it did not strike me that it would be good to have the evidence of a servant who was in the house at that time. 10

I was questioned about the Police Court Case against Welikadage Cornelis Perera. In that case the summons gave my name as Alice; when the name was rectified on the summons I attended Court. A Proctor appeared for the prosecution in that case, I do not know who he is. According to the circumstances of that case at that time my Proctor advised me to deny that Martin was a brother of mine. I did not know who Cornelis Perera was till I saw him in Court. My Proctor did not advise me that if I admitted that Martin was my brother it might be accepted that Cornelis was keeping me—Martin being the watcher. I do not know whether any such suggestion was made in that case. Martin was the complainant. Because action was filed against Cornelis Perera for plucking cocoanuts on the estate, Mr. Ratnayake and I were summoned to humiliate us. Mr. Ratnayake did not tell me that any such suggestion was made; he never talked any such things with me. He always treated me as an equal. I do not know whether he was or was not happy that Cornelis Perera was acquitted in that case. He spent for that case, I do not know how much. 20

Money was kept in the almirah, sometimes he himself took money when he wanted and sometimes he asked me to give him money. He used to keep his money in an envelope and sometimes he asked me to get money for him from the envelope. Whenever I took money I only told him I took so much and not the purpose for which I took. Mr. Ratnayake used to bring rice from Dehiowita in his car. Rice for the bungalow was not bought. Vegetables were bought sometimes by me, sometimes by him through Girigoris. When I got vegetables through Girigoris I kept a note of it. Mr. Ratnayake wrote his accounts from such notes. He used to account for every cent that was spent whether by him or by me. I do not know whether he was a miserly man, but he was careful to account for everything he spent. He was interested in the education of the children. I do not know whether he spent for the education of Girigoris' children. I do not know Marshall; I know Girigoris, I heard he had children but did not see them. 30 40

My eldest child was studying in the Kotte C.M.S. School; now he is attending Lorensz College; he also attended St. Thomas' Roman Catholic College for some time; first he attended St. Thomas', then the C.M.S. School in January, 1942. My daughter was not attending school during Mr. Ratnayake's lifetime because she was too young. My son attended Miriswatte school also for some time when he was 3 years old; after that a teacher was brought home to teach him; he was also sent to the Battaramulla school for a short period. My son's surname is Ratnayake according to his Brith 50

Certificate. I do not know in which name he was admitted to the C.M.S. School, he told me he would like to give the child's name as Ratnayake Suriyagoda, the latter being the name of the village. I do not know whether he was known as Suriyagoda at school. It was Mr. Ratnayake who gave the name for purpose of the Birth Certificate.

No. 30
1st Petitioner's
Evidence (Contd.)
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

I do not know when the accounts in P1 commence.

Mr. Ratnayake used to keep that book with him and after he executed the Last Will he gave it to me. I have always referred to Mr. Ratnayake as Mahatmaya before others; in his presence I did not address him as Mahatmaya. I went to Mr. Ratnayake's bungalow about the year 1928. I cannot remember when I first saw this book; he used to take it to Dehiowita also, and at home he kept it on the table in the office room. There are 3 rooms in the house, a verandah, and covered all round with glass shutters. Part of the covered verandah is separated into an office room in which was this table. Whenever Mr. Ratnayake was at Bank Hill Estate, this book was on the table. There were 2 almirahs in the house, the keys of which were in my possession. I do not know what entries are made in this book P1. I had a separate book in which I kept accounts in Sinhalese and which also I used to keep on the same table. I do not know whether Mr. Ratnayake copied my accounts into this book P1, but I have seen him writings accounts in P1 with my book opened before him; he never told me that. Sometimes I used to pay the labourers and he used to call me and ask me how much I have paid. Sometimes when he left for Dehiowita he used to give the money to me to be paid to them. I wrote out the accounts when Mr. Ratnayake was at Dehiowita; when he returned he may have copied those accounts into his book. When I incurred any expenditure I told him and he straightaway entered them.

(Counsel refers to the item on 17th January, 1943— $1\frac{1}{4}$ measure of rice 39 cents). Formerly rice was brought from Dehiowita; after rationing was introduced, rice was bought from the boutique on coupons and he entered such purchases in the book.

The last entry in this book is on 14th May, 1943; after that date expenses were incurred for running the house and the estate. I do not know why the entries after that date have not been entered in this book. Even after 14th May, I had seen Mr. Ratnayake writing out books in the office but whether it was this book or any other, I cannot say. There were roughly 5 or 6 books on his table. I have given all the books to my Proctor, keeping with me the books in which I wrote accounts in Sinhalese. Mr. Ratnayake was seriously ill only 3 days before his death; I do not know whether he has written any accounts between 14th May and 3rd June in the books I have given to my Proctor.

(Counsel Mr. Samarakone hands over Check Roll from 14th to 31st May and marks it X3.)

I remember the last occasion Mr. Ratnayake returned from Dehiowita about 10th May when he brought this book from Dehiowita and kept it on his table; thereafter I did not see him writing accounts in that book; this book was sometimes kept in his suit case, sometimes in the almirah, and sometimes on the table. After he returned from Dehiowita, I cannot exactly say where this book was kept. The keys of the almirah were with me; if the book was in the almirah I would have opened it and given the book to him if he

No. 30
1st Petitioner's
Evidence (Contd.)
H. D. Adliet
Ratnayake
Cross-Examination
—Continued.

wanted it. I cannot say whether this book was taken out of the almirah after the 10th May; I cannot say whether it was written after the 10th May. On the 23rd May he gave me the book and I kept it in the almirah. After he signed the Last Will he did not ask me for the book. He did write accounts after the 23rd May in which books I cannot say. In my presence he used to open the almirah and take the books. The bunch of keys was kept in a room and when I was not there he used to take the bunch and open the almirah.

In 1943 Mr. Ratnayake took treatment from Dr. Fonseka. In April, 1943, I do not know whether Mr. Ratnayake had a case at Avissawella. After 10 the 14th May he was not so very ill.

Mr. Ratnayake told me in his lifetime that he would not leave me destitute, that is shortly after I went to the bungalow and when I asked him what would happen to me when I came to live with him. I knew he had nephews and nieces. I asked the driver to inform them of his illness. Mr. Ratnayake did not allow anyone to send telegrams to his relatives; he always said he did not want any of his relatives; when he was seriously ill I informed the driver. I do not know whether the driver sent the telegram only after he died. I did not know where the nieces were. The driver told me after he died that he sent a telegram. Mr. Ratnayake had a big business at Dehiowita. 20 That was his biggest source of income. I knew Mr. Wijesinghe was in the Dehiowita shop. My brother was also there. Both of them were looking after the business there in Mr. Ratnayake's absence. I went once to Dehiowita before the children were born and contracted fever there. At Dehiowita Mr. Ratnayake had a bungalow which he used. I do not know whether his relatives visited him there. In 1935 he was seriously ill at Dehiowita, I do not know which doctor treated him there.

I thought of handing the documents to my Proctor because Mr. Ratnayake had signed a document. When Herat and the driver came to take away the documents Martin told me that he and four others signed a document, that the papers should not be given to any other person except a Proctor. 30 At that time Martin did not express a desire to know what the document was. I do not know whether he was aware what was contained in the document; he did not tell me. Thereafter I met Proctor Seneviratne on the 7th June in my house; the next time I met him was in his office on the 5th July. Between 7th June and 5th July I cannot remember how many times I went to see him in his office. The first time I went to Mr. Seneviratne's office with Mr. Burhan and Mr. Wijesinghe. On that day Mr. Wijesinghe signed a proxy.

(Mr. Samarakone objects to the witness being questioned on what Mr. Seneviratne is alleged to have stated to Mr. Wijesinghe. Mr. Nava- 40 ratnarajah submits that it is admissible because Mr. Seneviratne acted as agent of the Petitioner. I allow the question.)

On that day I did not go to Mr. Seneviratne's office by appointment. Mr. Wijesinghe brought Proctor Burhan and invited me to go and see Mr. Seneviratne because I told them the books were with him. At that time I told them both that there was a document signed by Mr. Ratnayake. I did not use the words "Last Will." I went in the car in which they came, I do not remember Mr. Seneviratne asking Mr. Wijesinghe whether that was his name, nor do I recollect having introduced him to Mr. Seneviratne. On that

day I cannot remember whether a typed copy of the Will was handed over to Mr. Wijesinghe. Mr. Wijesinghe signed a Proxy that day. I cannot remember whether Mr. Seneviratne said that it was he who discovered the Will and that everything was all right. I did not see Mr. Seneviratne speaking to them both outside his office after the Proxy was signed. I am unable to say at what time I went to Mr. Seneviratne's office or how long I stayed there. Immediately we left the office we went to a hotel for our meal. I cannot remember whether Mr. Seneviratne asked me to come on a particular day on leaving; thereafter I cannot remember when I went to Mr. Seneviratne's office; I remember the occasion. On that occasion I spoke to Mr. Seneviratne, he did not tell me that Mr. Wijesinghe thought the Will was a forgery. On the day I signed the affidavit I thought Mr. Wijesinghe accepted the Will. I did not know that Mr. Wijesinghe's sister had seen Mr. Seneviratne in connection with this Will, nor do I remember Mr. Seneviratne telling me that. For the first time I came to know that the Will would be contested on the first day of hearing in this Court. I cannot remember Mr. Seneviratne asking me to bring Mr. Wijesinghe for the purpose of signing an affidavit.

I cannot remember when Martin left Talangama; from there he went to Matara and he used to write to me from Matara as to how he was getting on. I trusted him as a truthful man. I cannot say whether he would act against my interest; I never suspected him of it. Mr. Seneviratne did not warn me of such a thing. Martin sent me a telegram from Matara. My brother Herath happened to be present when I received it and he read it for me: the telegram stated that Mr. Ameresekera and Mr. Wijesinghe had arrived there and he wanted someone to come. That is what I remember. I did not understand the telegram in any particular way. Herath then went to Matara. I met Martin later, how long after I received the telegram I cannot say. I showed the telegram to Mr. Seneviratne, the day after I received it, I think. I did that because I thought it might have something to do with this case. It was only after Martin had told him what had transpired that he took steps in the matter; it was Mr. Seneviratne who first thought of getting the affidavit. That was not done because Martin might go against me. Martin told me that he was instructed to state that the Will was a forgery, promising him a reward of Rs. 2,000.

I remember the registration of the birth of my first child; the form was filled in at Bank Hill Estate by Mr. Ratnayake; James Alwis and Girigoris may have signed it as witnesses. I saw Mr. Ratnayake writing it, affixing a stamp, of what value I do not remember. I do not know from where he took the stamp; I did not see him taking the stamp out of another document, he would not do such a thing. I cannot remember when James Alwis left the estate; he must have attended Mr. Ratnayake's funeral; he came to Bank Hill Estate both before and on the day of the death, not after that. I cannot remember whether the other witnesses to the Will came on the date of death. They did not discuss with me the question of this Will.

Mr. Kulasekera was the teacher who taught my son. It may be that I produced a letter written by him in November, 1942, I do not know to whom that letter was written; it was found with Mr. Ratnayake's documents; he used to keep all correspondence in a suit case. I do not know whether this gentleman was a teacher or not at C.M.S. College on that date.

No. 30
1st Petitioner's
Evidence (Contd.)
H. D. Adliet
Ratnayake
Re-Examination

RE-EXAMINED

Mr. Kulasekera gave evidence on the last date. The two certificates of birth P2 and P3 were filled in by my husband in the bungalow. (Counsel refers to Section 2 (7) of the Registration of Births Ordinance.)

It was suggested that Mr. Ratnayake had given the son's name to the school as Suriyagoda. Suriyagoda is the name of Mr. Ratnayake's village. I point to P3 the Birth Certificate in which the daughter's name appears as Pearl Bandara Menike Ratnayake Suriyagoda. In both certificates the father's name appears as James Albert Ratnayake.

In the affidavit to Court I sought Probate as Executor, not as wife of 10 the deceased, along with the other Executor Felix Wijesinghe.

Herath and Girigoris were the only persons who visited me before I handed the documents to the Proctor. When Mr. Burhan and Mr. Wijesinghe came to see me I had already handed the documents to Mr. Seneviratne

I was questioned as to the signature on the Last Will. All I can say is that I know Mr. Ratnayake's signature very well; that is why I say that the signature on the Will is Mr. Ratnayake's.

Regarding the entries in the book after 14th May, I produced the Check Roll marked X3 which was kept at Bank Hill Estate. I point to the 20 page in which the accounts for May appear, totalled up for the entire month.

I cannot remember how I was questioned regarding Alice at the last trial.

It was suggested that Martin swore the affidavit P5 because of my fear that he might not support the Will. I am aware that he had signed an affidavit on the 5th July, long before that, supporting the Will.

Mr. Ratnayake's relatives were not in visiting terms when he was at Talangama. During his earlier illness too they did not come to see Mr. Ratnayake at Talangama.

I have signed a proxy in this case. I swore an affidavit in this case. 30

Q. The proxy bears the date 7th June?

A. The proxy was signed and the documents were given on the same date. I have a receipt for the documents which gives the date 7th June. I produce the receipt marked X4. The proxy has been signed by me and Mr. Wijesinghe at Talangama.

Signed N. SINNETHAMBY,
A. D. J.

E. B. Weerakoon
Examination

E. B. Weerakoon.—Sworn.

I am a Proctor of the Supreme Court and J.P. My office is in the Magistrate's Court, Colombo. I am in practice since 1906. As J.P. I have 40 to sign affidavits. I knew the late Mr. Ratnayake of Talangama for a fairly long time. I have an estate at Talawatugoda and to reach it I have to pass Mr. Ratnayake's property. I pass that way once a week or once a fortnight. His estate is Bank Hill. Mr. Ratnayake was a client of mine. I had seen the Petitioner in the house of Mr. Ratnayake for some time. On 2 or 3 occasions I had seen them travelling together in a car. I thought they were husband and wife.

Sometime after Mr. Ratnayake's death Mr. Seneviratne and some parties came to me to sign an affidavit. (Shown X1). This is the one they signed. It was sworn to before me and signed by five persons. I knew two of them by name, James Alwis Dissanayake and James de Alwis, the others by appearance. I explained the document to the witness before the attestation. The same witnesses on the same day also signed the Last Will P1 for purposes of identification; all the five who signed the affidavit also identified the Will P1 and signed it. Mr. Seneviratne was present at the time.

No. 30
1st Petitioner's
Evidence (Contd.)
E. B. Weerakoon
Examination
—Continued.

10 Later the 1st Petitioner; came and saw me. As far as I remember she told me that the Will was being contested; probably she also asked me whether I was not aware that she and Mr. Ratnayake were living together as husband and wife. And I think as far as I remember it was then that I knew for the first time they were not legally married. I always thought they were legally married.

I have a clerk by name Albert. He has been with me for about 15 to 20 years. He is an honest man. I am now aware that the Will is being challenged as a forgery. I am really surprised at the suggestion that Albert was one of the parties to the alleged forgery. That is not at all likely.

20 Mr. Seneviratne was occupying the same office with me. Petitioner sought my advice first because her husband was a client of mine. As I did not do civil work I referred her to Mr. Seneviratne. That is how Mr. Seneviratne came into this case.

Signed N. SINNETHAMBY,
A. D.J.

Adjourned for lunch.

After lunch.

E. B. Weerakoon, recalled.—Sworn.

CROSS-EXAMINED

E. B. Weerakoon
Cross-Examination

30 I have been in practice in this Court for the last forty years. At a time I had a fairly large and extensive practice in the Magistrate's Court. I had about eight or ten cases daily in the Magistrate's Court. On an average I had about ten cases a day. It will be difficult for me to recall the facts of every case in which I appeared and the parties for whom I appeared. My recollection of those cases and those parties must necessarily be hazy.

40 I had known Mr. Ratnayake for quite a number of years. I cannot even approximately say for how many years. I have a residing house at Talawatugoda. I built that house about 1920 or so. Since 1920 I have been going to that house fairly frequently; now I go there every week. It is difficult for me to say whether I knew Mr. Ratnayake at or about the time I built the house. I came to know him as a client. I was not on visiting terms with him. I never called at his house, nor did he call at my house. If I wanted to see him he would have seen me in my office. It is very difficult for me to say when I first appeared for him. I did not know if Mr. Ratnayake was married before. I don't know or remember the name of the accused, but I have a recollection of a case of theft of coconuts filed by Mr. Ratnayake. That case was filed in the Magistrate's Court, Colombo. I cannot remember if

No. 30
1st Petitioner's
Evidence (Contd.)
E. B. Weerakoon
Cross-Examination
—Continued.

the accused in that case was acquitted. I might have appeared in that case. I don't remember if Mr. Ratnayake gave evidence in that case. I do not remember if Mr. Ratnayake said in the course of that case that the Petitioner was not married to him. I gave evidence in this case on the last occasion. (Passage of previous evidence read to witness). If I said so it must be correct.

Q. At that trial you said this " I have just a hazy recollection of a case in which he complained and the police prosecuted a man called Cornelis Perera with the theft of coconuts. I do not quite remember the facts. It does not surprise me to know that he said there that he was keeping the first Petitioner as his mistress? "

A. In answer to that question all I can say is that I do not remember what each witness said. I don't quite remember what Mr. Ratnayake said or what each witness said.

My recollection of that case is very very vague now. At the time I gave evidence my recollection must have been better than what it is now.

To go to my residing house I have to pass Bank Hill Estate. The house on Bank Hill Estate is not by the side of the road; it is about 80 or 100 yards from the road, but quite visible from the road; It is on the top of a hill. There is a parapet wall right round Bank Hill Estate house. That wall is not very high. The ground is very high, but the parapet wall is not very high. The wall must be about six feet high. I go to the estate by car. I have seen the Petitioner and Mr. Ratnayake in that house on those occasions. It is very difficult for me to say how many times I saw them, but I have seen them there very often. One cannot resist the temptation to look at that house, when taking that turn, because it is the biggest house on that side. I always look at Bank Hill Estate house and I have seen them together very often. I have not seen them in the verandah; I do not think it is an open verandah, but I have seen them in the compound or even inside the house when the door is open.

I gave evidence on the last occasion and I said that I had seen this lady going out in a car, once or twice, with Mr. Ratnayake. I cannot remember where I crossed them in the car. I remember Mr. Ratnayake's death. I cannot remember how long before his death I saw Mr. Ratnayake and the Petitioner going in a car. I cannot say whether it was once or twice that I saw them going in the car. There was no reason for me to interest myself in the family affairs of Mr. Ratnayake. I did not care to find out what the status of the Petitioner was. I did not care to find out whether Mr. Ratnayake was a widower or not, or whether Mr. Ratnayake had children or not. I was not interested. I do not know the religion of Mr. Ratnayake. I do not remember. I am a Christian. I am an Anglican—Church of Ceylon. I go to St. Michael's Church, Polwatte. I have never met Mr. Ratnayake in Church. At the time I saw Mr. Ratnayake along with the Petitioner in the car, I cannot remember who was driving the car. Mr. Ratnayake was not driving the car. If Mr. Ratnayake was driving the car I would have remembered it; I would have taken notice of it; I would not have failed to note it.

Q. Why?

A. Because I knew that Mr. Ratnayake was in the car. I met him once or twice, as I said before, but if he was the driver, I would have remembered it. If he himself drove the car I would have remembered it; I might have taken notice of it. I did not associate with him the idea of driving a car. I myself am the owner of a car for several years, but I have never driven a car.

I cannot remember when I last saw Mr. Ratnayake. I do not know that Mr. Ratnayake was ailing for some time before his death. I came to
 10 know of the death of Mr. Ratnayake shortly after his death. Petitioner saw me with this affidavit; after his death. Prior to seeing me with the affidavit she never saw me. That is correct if she says so. After the affidavit was signed before me she asked my advice as to who the Proctor should be.

Q. Did she have a Proctor already when she came to see you?

A. On that point I am not clear. The Proctor was retained by her on my suggestion.

At the time of the signing of the affidavit I do not think she had a Proctor. The first time Petitioner spoke to me was on the day she spoke to me with regard to the affidavit; that is, as far as I remember. My clerk is
 20 always in the office. He may have spoken to her. I hardly go to the office. The clerk is always there and whether Petitioner came with the clerk or not I do not know, but she spoke to me and I referred her to Mr. Seneviratne. I asked my clerk to take her to Mr. Seneviratne. I can only remember this; that she first spoke to me when she came to sign a document. Whether it was an affidavit or not I do not know. It may be that the only document she signed before me was the affidavit, but that cannot be, because as far as I remember Mr. Seneviratne came with her with the documents prepared; so that, from that I infer, I have no independent recollection, that she must have come to me earlier with some document; so that I withdraw what I stated
 30 earlier. If the Petitioner says that she never spoke to me before signing this affidavit it may be correct. My memory with regard to these things is very vague.

My clerk Albert lives at Talawatugoda about a mile or $1\frac{1}{2}$ miles away from Bank Hill Estate. I have not sent my clerk to see Mr. Ratnayake in his house. All professional matters have to be discussed with me, in my office; that has been my rule. My clerk Albert is still with me, but he has been ill for some time. He has been ailing for the last five or six months.

Q. Do you remember the clerk talking to you about a Proctor for the Petitioner in these case?

40 A. I don't quite remember that. I cannot remember.

My clerk knows very well that I do not take up Testamentary cases; so that he would not have asked me to do so.

I cannot remember his asking me to find a Proctor for the Petitioner. This Petitioner saw me for the first time about my giving evidence in this case, when the case came up on the last occasion or sometime before that.

Q. What did she come and tell you?

A. I cannot remember what she told me.

Q. Did she tell you that some evidence was required to prove that Mr. Ratnayake treated her as his wife?

A. She may have told me that.

Q. When she came to you had she any reason to expect that you would be in a position to give that evidence?

A. I do not know if she had any reason to think so.

In fact she could not have known what opinion I had formed about herself and Mr. Ratnayake; she could not have known. As far as I remember I never discussed the relationship between Mr. Ratnayake and the Petitioner with anyone. I do not think I discussed it with anyone. At this distance of time it is very difficult for me to say where the Petitioner met me when she made that request to me. I cannot say if she came alone or with anyone else on that occasion. Our conversation must have been very short; I cannot say how long we discussed the matter. I cannot remember what evidence I told her I would be able to give in this case. I am definite that she may have made a request that my evidence was necessary to prove that Mr. Ratnayake treated her as his wife. I do not remember what I told her. Later the Proctor appearing for her inquired from me the nature of the evidence I could give. At one time Mr. Seneviratne and I were occupying the same office in Colombo. We must have been together for three or four years. I do not quite remember how long. I am still in the same old office. Mr. Seneviratne is elsewhere. I cannot remember when he left my office. It is very difficult to say. At the time the document or affidavit dated 5th of July, 1943 referred to was signed, I do not remember whether Mr. Seneviratne and I had parted company or not. 10

I cannot remember if at that time Mr. Seneviratne had left my office room. We had two separate rooms, but they were in the same building. I have known Mr. Seneviratne for 15 or 20 years, or even more. I am 42 years in practice in these courts.

If a client came to me and asked for a Proctor for a civil case I would certainly have recommended Mr. Seneviratne. I do not know if my clerk recommended Mr. Seneviratne as a good Proctor to the Petitioner. Normally I would have recommended Mr. Seneviratne. Mr. Seneviratne must have discussed this case with me. He must have told me that the evidence that was required was that Mr. Ratnayake treated Petitioner as his wife. I think so. 30

Bank Hill Estate contains a fine house. I was never interested at any time in buying that house. I could not afford it. I had my own estate. I do not know if Mr. Jacolyn Seneviratne was Mr. Ratnayake's Proctor. I do not know if Mr. Ratnayake had a number of cases in Avissawella. I do not know if Messrs. De Saram were his Proctors in civil cases. I was not interested in that. I do not know that I was only interested in the little work that he gave me in the Magistrate's Court. As far as I can remember I think Mr. Ratnayake retained me in two or three cases; that is during the time I knew Mr. Ratnayake. One case was with regard to the theft of coconuts. I cannot give the facts of the second or the third case. In that coconut theft case I cannot remember if the allegation was made that the Petitioner was on terms of intimacy with the accused in that case. In that case the Petitioner's brother Martin may have given evidence. 40

- Q.* Would you have advised the Petitioner to deny that Martin was her brother in the Magistrate's Court?
- A.* I am not at all likely to have advised her to do that. I would never have advised her to say that.

No. 30
1st Petitioner's
Evidence (Contd.)
E. B. Weerakoon
Cross-Examination
—Continued.

RE-EXAMINED

E. B. Weerakoon
Re-Examination

The cases in which I appeared for Mr. Ratnayake were criminal cases. I can only remember this case about the theft of coconuts, but with regard to the other cases, I do not remember that they were cases of theft. I do not remember the case in which Cornelis Perera was the accused. If I 10 said in the earlier proceedings that Cornelis was the accused in that case, then it may have been put to me and I may have said yes. I have all along said that I was referring to a case in which Cornelis was not the accused. All that I said was that there was a case of theft of coconuts. I remember that case, but I do not remember if Cornelis was the accused in that case. It may be that that plaint was filed by the Police. At the end of the earlier evidence which was read to me today, I have also said "I know nothing about the case." The case I referred to there was the case against Cornelis Perera. In the proceedings at the last trial I said quite definitely that I knew nothing about that case.

20 (Mr. Navaratnarajah marks as Y7 the cross-examination of Mr. Weerakoon commencing from "I have just a hazy recollection" and ending "I know nothing about the case.") (Y7 read to witness.)

Q. Having listened to extract Y7 can you say that you appeared in that case?

A. I cannot undertake to say that I appeared in that case judging from that evidence.

(To Mr. Navaratnarajah with permission.)

I cannot say if Mr. Ratnayake retained any other lawyers besides myself.

30 Signed N. SINNETHAMBY,
A. D. J.

Mr. Samarakone closes his case reading in evidence P1 to P5, P11 and X1 to X4.

NO. 31

2nd PETITIONER'S AND 4th, 5th AND 6th RESPONDENTS' EVIDENCE

No. 31
2nd Petitioner's &
4th, 5th & 6th
Respondents'
Evidence
F. A. L. Wijesinghe
Examination

Mr. Navaratnarajah calls.

F. A. L. Wijesinghe.—Sworn.

I am looking after the interests of my uncle; that is the business at 40 Dehiowita which belonged to the deceased. During the lifetime of the deceased that business was a very large one. That was really the source of his income to a great extent. It was a firm supplying estate goods. That firm was a firm of local bankers. We issued cash on cheques to estates; there was

No. 31
2nd Petitioner's and
4th, 5th and 6th
Respondents'
Evidence
F. L. A. Wejesinghe
Examination
—Continued.

a cattle agency, petrol agency, oilmanstores and groceries, all combined. It was called J. A. Ratnayake & Co., I am the only nephew of the deceased. I am the son of his sister. He had one sister and no brothers. The deceased sister had six children. Of them four are living, myself and three sisters. My sisters are the 5th, 6th and 7th Respondents to this case and I am the original 2nd Petitioner in the case. My father died when I was about three years old. My mother died when I was about 14 or 15 years old. At the time of my father's death my uncle was doing very well in business. After my father's death I was living in Kandy together with my sisters. My father was a Merchant. He left a fairly small estate. After my father's death my uncle was assisting me financially. My uncle gave me financial assistance; my uncle really helped us after my mother died, but during my mother's lifetime he used to help us occasionally. He used to send money to us by cheque. I cannot give an average amount, but he used to send Rs. 1,000 to Rs. 2,000 for a year. I was at the time studying at St. Anthony's College, Kandy. The cost of my education was partly met by what my uncle gave my mother. My sisters were also educated. We were living in a house taken on lease. I cannot remember the rental we had to pay on that house. 10

After my mother's death my uncle used to help me monthly. He used to send me something like Rs. 75 per month. After my mother's death I came to Dehiowita. My sisters were all along teachers and they remained in Kandy. They started teaching during the lifetime of my mother. I cannot remember how long after my father's death they started teaching. After I came to Dehiowita my uncle used to send that money Rs. 75 per month to my sisters in Kandy. When I came down to Dehiowita he asked me to look after his interests; that was his business. He had small properties at Dehiowita. That was an estate called Magama Estate. It is still there. I am 30 years old now. In 1934 I came down to Dehiowita. At that time my uncle had a small property and also a business. I first started learning the business and thereafter I looked after the business. My uncle was legally married twice. I did not know his first wife. The first wife died before I was born I think. I remember his second wife. His second wife was very attached to me and my sisters. His second wife died somewhere in 1927. 20 30

(At this stage Mr. Navaratnarajah sends out of Court Mr. Amere-sekera, husband of the 7th Respondent, who was in Court up to now.)

My uncle also came to Dehiowita and looked after the business. During a month he stayed for a fortnight in Dehiowita. The balance fortnight he stayed at Talangama. When he came to Dehiowita he lived in his residing house there. That was a fairly large bungalow and there were servants in that bungalow. The place of business was very close to that bungalow. The second fortnight of the month he spent at Bank Hill Estate. There also there was a residential house. 40

There was a talk in 1934 or so that Petitioner was living in Bank Hill Estate. My uncle never spoke to me about her. I really do not know why he did not speak to me about her. He might have been ashamed of it. I met the Petitioner for the first time when I went on receipt of the telegram to the estate; that is on the death of Mr. Ratnayake. She never came to Dehiowita with Mr. Ratnayake during my time there. When Mr. Ratnayake got cerebral malaria he was living at Dehiowita. Dr. Samarasinghe the D.M.A. of Karawanella was treating Mr. Ratnayake. He was suffering from cerebral 50

malaria for about three months. He got repeated attacks. I got down a sister of mine to look after my uncle. She is Gertrude, the 6th Respondent in this case. The Petitioner never came to Dehiowita. I wrote to my sister and got her down and it was she who looked after my uncle at the time. Petitioner was never informed of Mr. Ratnayake's illness. Mr. Ratnayake never requested me or anyone else to inform her of his illness. In 1934 or 1935 Mr. Ratnayake must have been about 57 or 58 years old. On the 10th of May, 1943 Mr. Ratnayake left for Talangama and thereafter he did not come to Dehiowita. Prior to that date he was ailing for sometime. Actually the disease set in somewhere early in 1942. He was suffering from bleeding piles and then that led to an attack of pernicious anaemia. After the 10th of May Mr. Ratnayake did not come back to Dehiowita. When he left Dehiowita on that day his condition was not so bad as to anticipate anything serious. Nobody wrote to me to say that he was seriously ill. Nobody sent me a wire to say that he was seriously ill. It was on the 3rd of June, 1943 that I got intimation of his death. That was by a telegram sent by driver Girigoris. I got it at about 9 o'clock in the morning on that day. The telegram was to the effect that he had died. When I received the telegram I informed my three sisters. At that time two of my sisters were in Kandy and one was in Colombo. She was my married sister.

Q. Was it because you thought that your sister would not have been informed that you informed them?

A. Normally I always inform my sisters when anything happens at home.

Then I hired a car and went to Bank Hill Estate. I reached the estate somewhere about 4 o'clock. When I went to the house the first Petitioner was there. There was another old woman; I presume it was her mother. That is about all I remember seeing there. There was nobody else.

(To Court.

30 There was no servant. I think I saw James Alwis and some two or three other strangers who were standing out in the verandah.)

Examination Continued.

Before I went there Girigoris had told me that the 1st Petitioner was the mistress of Mr. Ratnayake. I knew that my uncle had a mistress but I did not know who she was. Then I went in and looked at the corpse and went to Raymonds to get them to attend to the funeral. I made all the arrangements for the funeral and I took the body to Dehiowita. I got Raymond's hearse to take the body. The Petitioner did not come to Dehiowita that day. She came to the funeral service to St. Barnabas' Church, Avissawella. I cannot remember if she came alone or with anyone else. The funeral was on the 4th of June, that is the following day. Petitioner came to Avissawella in a car. After the funeral was over the Petitioner spoke to me. She came and asked me to look after her and her children.

Q. What did you understand by that request?

A. What I felt was that she looked up to me to see for her and her children's future.

No. 31
2nd Petitioner's and
4th 5th and 6th
Respondents'
Evidence
F. A. L. Wijesinghe
Examination
—Continued.

After the funeral was over I went to Dehiowita and the Petitioner went back to the estate. The firm paid for the car in which she came. I wanted it to be charged to her brother's account, but he said he was getting a small salary and could not afford it; so I asked them to charge it to the firm. Petitioner's brother was at that time in the firm and he was getting Rs. 25 per month. He was a salesman there and he was in charge of a Caltex Petrol Agency. I have account books of the firm which will show that the salary that was paid to Herath was only Rs. 25. I can produce the account books tomorrow. Food and lodging were given to him by the firm. My salary at the time was Rs. 20 per month with free board and lodging. I used to draw money from the firm whenever I wanted.* I used to draw Rs. 500 or Rs. 1,000 whenever I wanted. Then at the end of the year my uncle used to give me a special X'mas cheque. I am credited with my salary every month. I used to draw my salary when it accumulates. The money is credited to my account and I draw that money when I require money. Beyond the Rs. 20/- I was never paid anything extra but actually my uncle used to send me a cheque as a present. Herath was the Manager and I was my uncle's Assistant. I represented the Proprietor. I did not have his power of Attorney. My uncle did not give a power of attorney to anyone. The capital of the firm was Rs. 10,000. My uncle had his bank account and he used to draw large sums from the banks. During the estate pay time my uncle was at the firm and he handled the cash. He used to be there from the 1st to the 10th of each month; that is at Dehiowita. 10 20

Thereafter I knew that my uncle's estate had to be administered. I sent driver Girigoris and the 1st Petitioner's brother Herath to the estate at Talangama to ask Petitioner for the deeds and documents. Driver Girigoris and Herath did not know the purpose for which the deeds and documents were wanted.

(To Court.

I did not try to find out what my uncle had done with his business at Dehiowita. I was not interested. When Petitioner appealed to me to look after her I agreed. Even then I did not try to find out what had happened to his business. 30

Q. Why did you not try to find out what happened to the business?

A. I did not ask her. I agreed to look after her.

Q. Did it not strike you to ask her what had happened to all his property?

A. No. He had never discussed the question of a Last Will with me I thought the property would go by intestacy.

Q. Why not by testacy? Why did you not ask her? 40

A. I did not ask her because he did not discuss a Will with me.)

Examination Continued.

At that time I had no suspicion that my uncle had executed a Will. I did not question the Petitioner on what my uncle had done with the business or to the property. Girigoris and Herath came back from Talangama but they did not bring the documents.

Q. Why did you want the deeds and documents?

A. For letters of administration?

Up to that time I did not know that he had left a Will or anything. I did not know anything.

Q. If he had left a Will what is the use of asking for letters of administration?

A. But he did not tell me. If he had left a Will he would have told me.

The next thing I did was to talk to Proctor Burhan. Then he went
10 with Mr. Direckze and Girigoris to the Petitioner at Talawatugoda. Proctor
Burhan came and told me that Petitioner had told him that she had already
handed the papers to Proctor Seneviratne. Mr. Burhan never told me that
the Petitioner had told him that my uncle had left a writing with her. Direckze
is a man in the firm who keeps the accounts. He is the clerk. Girigoris is
the driver. Girigoris was paid something like Rs. 30 and food. Girigoris
was living at Dehiowita always. He used to live with Mr. Ratnayake wherever
he was. The driver never told me about the existence of this mistress.

After the 10th of May, 1943, Girigoris was at Bank Hill Estate, until
the date of Mr. Ratnayake's death. If any Will had been executed or any
20 document had been executed Girigoris may or may not have come to know
about it.

Girigoris was a trusted servant of my uncle. My uncle used to give
him cheques for large sums to be cashed by him. He was with my uncle for
about 35 or 40 years. He used to entrust Girigoris with cheques for even
Rs. 10,000 or more to be cashed by him. He used to bring the money to the
shop and from there he used to take the money to the estates as cooly pay.
Mr. Direckze also used to go with Girigoris both to the bank to cash the
cheques and to the estates. As far as I am aware my uncle trusted Girigoris.
Burhan and Girigoris came back to me from Talangama and said that the
30 papers had already been given to Proctor Seneviratne. Thereafter I went
to Bank Hill Estate. That was about a fortnight after the death of my uncle.
From Dehiowita, Proctor Burhan, Direckze, Girigoris, myself and Herath
went to Talangama to Bank Hill Estate. There we met Petitioner and spoke
to her. Even on that day the Petitioner did not tell me that a writing had been
left by the deceased. She did not say that there was a Last Will but she said
that he had left a document. She said that her master had left a certain docu-
ment. I asked her what that document was. She could not explain anything.
She did not use the word "antheema kemaththa." She used the word:
"Liyavillak." From there we went to Proctor Seneviratne's office. I did
40 not know Proctor Seneviratne prior to that day. Herath, first Petitioner and
I went to Proctor Seneviratne's office along with Proctor Burhan. When
we went there nobody introduced me to Mr. Seneviratne. Mr. Seneviratne
came up to me and asked me whether I was Mr. Felix Wijesinghe. I said
I was. He said that my uncle had left a Last Will and asked me whether I
would like to see it. He went in and brought it and showed it to me. I
read through the Will. I glanced at it. He had left the Dehiowita business
to me by the Will. I was quite pleased with it. Mr. Seneviratne said that
he discovered the Will and that the 1st Petitioner did not know anything about
the Will. I signed a proxy at that time. It was Mr. Seneviratne who asked

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2nd Petitioner's and
4th, 5th and 6th
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Examination
—Continued.

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—Continued.

me to sign the proxy. First Petitioner's signature was already on that proxy. It was a blank proxy. I do not think that proxy bore even the words "Testamentary Case." I do not remember seeing it filled up. After I signed the proxy a copy of the Will was given to me. It was a type copy. I did not ask for a copy of the Will from Mr. Seneviratne. Mr. Seneviratne, after giving me the typed copy of the Will, did not ask me to come again. Then we left the place. What I felt was that he was going to act on my behalf in the Courts.

(To Court.

Q. Proving the Will? 10

A. No. Not to that extent.

Q. How then?

A. In any way that I would ask him to; either for the Will or against the Will.

Q. Did you give him any instructions at that time?

A. I did not give him any instructions at that time. He asked me to sign a proxy to file papers in Court.

I did not go to the extent of thinking what it would mean. I did not ask Mr. Seneviratne. When I sign a document in the shop I scrutinize it; but that is different. What I understand from the proxy was that I was authorizing my Proctor to act on my behalf. So I thought that gradually he would speak to me about the Will. I left it entirely at his discretion, either to prove this Will or disprove it. After I came out of Mr. Seneviratne's office, Mr. Burhan spoke to me and he said that it was not professional etiquette for him (Mr. Seneviratne) to have advised me and that I should not have signed the proxy without consulting him (Mr. Burhan). At the time I signed the proxy I did not accept the Will as genuine. I did not think of anything at all. I did not think that it was a fabricated Will. I did not give my mind to the question whether it was a genuine one or a fabricated one. I signed the proxy and walked away with a copy of the Will. 20 30

Q. When Mr. Burhan told you this what did you think?

A. I went home. He said that I have been acting foolishly. He said that I should have taken his advice before signing a proxy. I did not ask him what he meant.

Mr. Burhan said that he had no status in the case. I did not ask him why he said that I was acting foolishly. I took the copy of the Will home and read through that copy. I informed my sisters that there was this Will.

Q. When you read this Will did you suspect as to whether the Will was genuine or not?

A. When I went home and read the Will I suspected that it was not genuine. 40

Q. Why?

A. Because his usual procedure in writing down things was not maintained.

Even in his Income Tax Returns he gives the full names of all his shares overseas; he gives full particulars of his shares; he mentions the names of all

sterling companies. In this Will he merely said "My income from shares" and gave no details. That was one of the reasons why I suspected this Will.

Then in the Will he says "my cash balances in the banks." He does not give the names of the Bank. Whenever he writes these things he gives the full balances in his banks and the names of his banks. I have got a ledger at home which shows all those details. That is another reason why I suspected the Will was not genuine.

(Shown copy of the Will).

Q. What are the other reasons?

10 A. (Witness reads through the Will.) His sister was dead at the time he died, and the names of his sister's children were not mentioned in the Will. I thought that in an important matter like a Will he should have mentioned the names, but my sister's children's names were not mentioned in the Will. He had given each of those children a name at their birth and in the Income Tax returns he used to mention those names.

20 Then in this Will he leaves a certain sum of money to Girigoris. There were two other employees of his who had worked in a more important capacity than Girigoris. There was a man called Marshall who had worked for him for more than 35 years and he was left nothing by the Will. The apostrophes were not inserted in the Will. He was also particular about the commas and colons, etc. In certain places the apostrophes came after the "s" but he was always careful to put it before the "s", because he had only one sister.

Q. Where did he write these particular apostrophes; in which documents?

A. In a document. Those documents were produced at the last trial.

30 Again he has spelt "until" as "untill." He never makes spelling mistakes. I have never seen him make spelling mistakes. Those were the reasons that made me suspect the Will.

As far as I can recollect now these were some of the reasons which made me doubt the genuineness of the Will. With regard to the writing itself I did not suspect the Will. The genuine Will was not seen by me at the time. I notice that the apostrophes were put in the wrong place when I read the original and that was confirmed when I saw the copy. I mentioned that there was this Will to Ameresekera. I think Amarasekera and his wife the 7th Respondent went and saw Mr. Seneviratne.

(Adjourned till tomorrow.)

40

Signed N. SINNETHAMBY,
A. D. J.

Trial resumed.

28th January, 1948.

F. A. L. Wijesinghe.—Recalled—Sworn.

Examination Continued.

Yesterday I was asked and I said that I did mention about this Will to my sister the 7th Respondent and her husband Mr. Amarasekera. My

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sister 7th Respondent and Amarasekera thereafter spoke to me about this Will and they said that they disbelieved the writing of the Will. It was my sister 7th Respondent who said that. She said that the Will was not in the handwriting of my uncle. Thereafter I went and saw Mr. Seneviratne. That was a few days later. I met Mr. Seneviratne in his office. I asked him whether I could revoke the proxy. He did not agree to my revoking his proxy, and he asked me to get it done by power of Court. Thereafter the record shows that I made an application to Court on the 12th of August, 1943 to revoke my proxy granted to Mr. Seneviratne. At this time I was staying at Dehiowita looking after the business. There was a message left to me by Martin. In consequence of this message I may have spoken to Mr. Amarasekera. Thereafter we went to Matara. We went to see Martin. Prior to my going there to see Martin someone else had seen Martin. That was a brother of my brother-in-law. When he saw Martin I do not know how he was dressed. I heard he pretended to be a man from the C.I.D. and saw Martin prior to my going there. When I went there I met Martin. Martin said that he had signed a document which he thought was a Last Will left by Mr. Ratnayake at the instigation of one James Alwis. He said that he had signed the Last Will about three or four days after the death of Mr. Ratnayake at the instigation of James Alwis. Martin asked us to try and save him from trouble by trying to come to some terms or settlement. My brother-in-law told him to come along with him to see Proctor Amarasekera about it. At that time Mr. Amarasekera was acting for the 5th, 6th and 7th Respondents. At that time I had also retained Mr. Amarasekera. I did not ask Martin to give evidence on our behalf in the Testamentary Case. It is not true to say that. Martin was asked to see Mr. Amarasekera. Martin did not see Mr. Amarasekera thereafter. I narrated to Mr. Amarasekera the conversation I had with Martin. It is not true that I offered Martin a sum of Rs. 2,000 or any other sum. Thereafter I returned to Dehiowita. (Shown R8). I can identify this book. This is a copy kept by my uncle regarding the returns that he sends to the Income Tax Department. This book is in the handwriting of my uncle. This book also contains copies of letters sent by him to the Income Tax Commissioner. He has shown at page 7 of this book Felix L. Wijesinghe and Gertrude Mabel Wijesinghe as his dependents. He has not shown that the Petitioner or her two children were dependant on him. At page 7 my name and my sister's name are shown as dependants.

(Shown R2, R3, R4 and R5). These are pass books kept by Mr. Ratnayake. These pass books are in my uncle's handwriting. (Shown R9). This is also a pass book. This is in my uncle's handwriting and includes House Rent Receipts. (Shown R14, R15, R16 and R17). These are cheques and they have been signed by my uncle. These cheques were brought by the Bank and filed in Court on a summons being issued by the Court, at the previous trial.

I have already referred to a man called Marshall who is employed in the business at Dehiowita. There was a man called Ramanayake also who was there in the shop. These two people whom I have mentioned can imitate the handwriting of the deceased. I too could do it. During the last trial proceedings I imitated the signature of the deceased and that was shown to the Petitioner whilst she was in the witness box, and she said that that was the genuine signature of Mr. Ratnayake. I can imitate the signature of Mr. Ratnayake rather cleverly. (R5a and R5b shown to witness.) These are

the two signatures I wrote during the last trial. (Mr. Samarakoon states that these signatures R5a and R5b were not put to his client when she was in the witness box at these proceedings.)

(Shown R10). This is the ledger of the shop at Dehiowita.

(Shown page 618 of R10). The writing on page 618 of this book is Ramanayake's writing. The writing at page 634 of this book is also Ramanayaka's writing.

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CROSS-EXAMINED

F. A. L. Wijesinghe
Cross-Examination

Up to 1934 I was not in bad circumstances. My mother died about
10 a year or two before I came to Mr. Ratnayake. (Mr. Navaratnarajah says
that the signatures on R5a and R5b were put to the 1st Petitioner. The
signatures appear at page 13 of R5.) My uncle and my sister were supporting
me after the death of my mother. After 1934 I was drawing a salary of Rs.
20 per month. I was living with Mr. Ratnayake from the time I entered his
service. Beyond the Rs. 20 I got my board and periodically he used to help
me in different ways. He used to provide my clothing; then when I fell ill he
used to pay my medical and hospital bills. He used to help me in every
way. Apart from my monthly salary I got no other income from him. I
got no extra payment. Those bills that he paid for me were entered in his
20 personal account. Some of those bills that he paid appear in the account
books; some do not appear. He had a small ledger of his personal accounts,
which he used to take away with him together with his jewellery, and bring
back. That book is not here before Court.

(Shown P1a). This book contains certain personal accounts.

Mr. Ratnayake's petrol account appears in P1a. Mr. Ratnayake
had another small ledger; he used to take it to Talangama and bring it back.
The last time he went there he did not come back; nor did that book come back.
He used to enter the monies he used to give us in that book. I do not know
if my uncle's petrol account goes into P1a. His other private accounts did
30 not go into P1a.

(Shown book which is already marked P10). This contains accounts
with regard to the educational expenses incurred by Mr. Ratnayake. This
is a book kept by Mr. Ratnayake. It contains items of educational expenses.
There are no entries in this book with regard to items like my clothing or
medical expenses paid by my uncle. I cannot show those expenses in this
book. This is not the book that I referred to. From the time I entered the
service of Mr. Ratnayake I was entirely dependent on him. (Shown P10).
There are items of expenditure in P10 relating to Herath and Martin. It
shows advances made to Martin and Herath. This is an account book about
40 his servants' salaries, etc. kept at Talangama. This book was not kept at
Dehiowita. This book is for the year 1935. I was in Dehiowita at that
time. My name does not appear in this book. The educational expenses
refer perhaps to the first Petitioner's children.

Herath was at that time in charge of a certain petrol agency at Dehi-
owita. I was not occupying a position subordinate to Herath. I was assis-
tant to Mr. Ratnayake. The Manager had to take orders from me. I was not
assistant to the Manager. Herath was drawing Rs. 30 at the time and I was
drawing Rs. 20, I admit Herath was the Manager. I was above Herath,

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My position in the firm was to represent the Proprietor and to carry out his wishes. I had to represent the proprietor in everything. I was the representative of Mr. Ratnayake. Herath was his Manager. Herath did not represent Mr. Ratnayake at any time.

(Mr. Samarakone moves to mark in evidence agreement signed by Herath on behalf of Mr. Ratnayake. Mr Navaratnarajah objects. Mr. Samarakone withdraws the document).

I am aware that there are instances where Herath has signed on behalf of Mr. Ratnayake. There was another person called D. L. Goonewardene who also signed on behalf of Mr. Ratnayake. There are others also who signed on behalf of Mr. Ratnayake. Herath signed the Petrol Agency agreement on behalf of Mr. Ratnayake. (Shown P7 and P8). These documents were also signed by Herath on behalf of Mr. Ratnayake. There have been many documents which I have signed on behalf of Mr. Ratnayake. I have not produced a single document in this case to show that I have signed on behalf of Mr. Ratnayake. (Shown account book X 5 containing personal accounts of Mr. Ratnayake up to May, 1943). This book shows accounts of Mr. Ratnayake up to May, 1943. This shows some of the income that my uncle got from his estates. This book does not contain his personal accounts. This shows some estate accounts. This does not show any items of expenditure on his personal account or on his children. This book shows the dhoby accounts and vederala's accounts of Mr. Ratnayake. This book was kept at Talangama. Yes this book also contains personal accounts of Mr. Ratnayake. There are also Dehiowita items in this book. There is nothing in this book with regard to any payments made to me or on my behalf. At the time I entered service under Mr. Ratnayake I did not know that Mr. Ratnayake was the father of a child about two years old. I had heard that there was a mistress on the estate; that was just as soon as I came to work under Mr. Ratnayake. I was not aware that Mr. Ratnayake had a child by her. Mr. Ratnayake had no children by his two married wives. I do not know if Mr. Ratnayake was very fond of his child. As a man who had had no children he may have been happy or he may not have been happy when he got his first child. Whilst I was dependant on Mr. Ratnayake he also educated this child when it became time for the child to get to school; that is according to the entries in this book. That knowledge I gather from the books. I am not personally aware of that. I am now aware that in 1940 Mr. Ratnayake had a daughter by the first Petitioner. At that time I was not aware of it.

In 1935 when Mr. Ratnayake was at Dehiowita he fell ill and he was there for about three months. My sister came to see him. At that time my mother was dead. It was my sister Gertrude who came. Mrs. Amarasakera did not come. My other sister did not come. The only party who has filed affidavit supporting this application is my sister, Mrs. Amarasakera the 6th Respondent; but all four of us are contesting this Will. I swore an affidavit for this case. I must see the affidavit. I cannot remember now what I said in the affidavit. 4th and 5th Respondents are not present in Court today. I do not think they ever came to Court. During the time the 1st Petitioner and Mr. Ratnayake were living together at Talangama none of these parties, 4th, 5th and 6th Respondents visited him. They did not visit him at Talangama. During that period 6th Respondent Mrs. Amara-

sekera was in Colombo. She never visited Mr. Ratnayake after my aunt died at Talangama.

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On the 10th of May, 1943, Mr. Ratnayake came to Talangama. He was rather feeble and ill at that time, as a result of his suffering from bleeding piles. Up to the date of his leaving Dehiowita he was at home; he could not attend to his business. He was just sitting in a lounge and staying at home. He told me that I was not to worry him on anything about the business; because he was not in a fit state to concentrate on the business. Ordinarily he goes to Talangama from Dehiowita within a fortnight. Ordinarily he returns to Dehiowita within a fortnight. When Mr. Ratnayake came to Talangama on the 10th of May, 1943, and did not return to Dehiowita within a fortnight, I did not take steps to find out what was wrong with Mr. Ratnayake. That is because some months he takes more than two weeks to come back to Dehiowita. About twice a year he does not come back to Dehiowita within the fortnight. So I thought that this was one of those rare occasions. When that happens he does not inform me at Dehiowita. During that period Girigoris did not inform me of Mr. Ratnayake's illness. I did not take steps to find out about Mr. Ratnayake during that time. I was not anxious to find out about his illness or his health. His health was a matter of concern to me, but I did not take steps because he was not in a serious condition when he left. He had asked me only to worry him mentally with regard to the business but not physically. He was not fit to carry on his business.

Q. Why did you not inquire from him or anybody else about his health?

A. I did not anticipate anything serious, so I did not inquire. Normally when he gets late, I do not inquire.

Q. When he left you in that state of health, did it not strike you then that he would be ill?

30 A. It did not strike me to the extent of inquiry.

I attributed his failure to come back to his illness, but I thought that it was not so serious that I should inquire about his health.

When I got the telegram I went to Talangama. There was no discussion there between 1st Petitioner and myself as to my uncle's property. 1st Petitioner was in distress at the time; I think she was crying at Talangama. She was the only person who was crying there. My sisters did not go to Talangama and they did not attend his funeral. Out of my family I was the only person who attended the funeral.

40 Q. Exactly at what stage on that day, that is on the 4th of June, did 1st Petitioner appeal to you and ask for your assistance?

A. At the graveyard at Avissawella after the funeral.

There were a lot of people present at the time. There were some of the Proctors of Avissawella like Proctor Jacolyn Seneviratne, Proctor E. A. V. de Silva and some other people. There were a number of other people. Don Abilian, Girigoris and others were present. 1st Petitioner may have cried at the funeral. I also may have cried at the time the coffin was lowered into the grave. 1st Petitioner did not cry when she was speaking to me. She may have cried later. After the coffin was lowered and the earth put in, she came to me and asked me for assistance. She did not sob when she was

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speaking to me. She was crying at Talangama. She did not cry when the coffin was being lowered into the grave. She came up to me and spoke to me in the presence of all these Proctors. I do not know if all of them heard her say all this to me. She mumbled the words quietly to me. I do not know if she did not want the others to hear her. I think Girigoris and Abilian were very close to me and they may have heard or may not have heard her speak to me.

Q. Did it not strike you at that time to ask her "Why do you say that; what has happened to all the property?"

A. It did not strike me at that time.

10

Nothing in particular struck me at that time. She appealed to me. Her appeal to me was to look after her and her children. I inferred that she wanted my help to maintain herself and her children.

Q. In what way was the help needed?

A. What I thought was that she must have expected me to be one of the heirs of the estate and she expected me to look after her future as uncle did for her during his lifetime.

I thought that she must have thought that I was one of the heirs and should help her. From the way she appealed I thought that she was getting nothing and out of the property that I was going to get she wanted me to help her.

Q. Did it not strike you that he might have left a Will?

A. If my uncle wrote a Last Will he would have told me that.

Q. Her appeal to you might have meant that everything had been left to her and that she was appealing to you only to help her to carry on this business and look after the properties?

A. Such a thing did not strike me.

When she appealed I said "all right." I did not want to inquire whether my uncle had left a Will. I did not want to inquire at that time. Because she appealed to me, I did not think it necessary to inquire about a Will. Yes when she appealed to me there was a need for me to inquire.

Q. Why did you not inquire? That was the time you should have inquired because she appealed to you?

A. It did not strike me at that time to inquire. I said: "alright," in other words "I will look after you."

From the day 1st Petitioner started living at Talangama I never went to Talangama; so that, I never spoke to her before that. The only time I had a discussion with her was at the grave-yard, never before that. I do not know if she thought that I was opposed to her living with Mr. Ratnayake in that house. I had to look after the business, so there was no way of my going to Talangama, and I do not think my uncle would have liked my going to Talangama. I was busy with the business at Dehiowita from 1934. There was no need for me to have gone to Talangama. It was not necessary for me to go to Talangama when my uncle went to Talangama.

Q. The 1st Petitioner had ample reason to infer that your attitude was hostile to her from the time she began living with Mr. Ratnayake?

A. I do not know that.

I sent Girigoris and Herath about three or four days after the funeral to get the deeds from Talangama. I must have sent them on the 6th of June, if I remember correct. I wanted them to bring the deeds from Talangama that is, the deeds of the properties. There were no deeds at Dehiowita. They came back and told me that the 1st Petitioner wanted a Proctor to come. When my Proctor went she said that she had already given the deeds to her Proctor.

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10 Q. When Herath and Girigoris came and told you that the deeds had been handed over to Mr. Seneviratne, what did you take that act to be on the part of the 1st Petitioner?

A. She intimated to those two who went that uncle had advised her to hand over all the documents to a Proctor before he died.

Even at that stage I had no reason to think that there was a Will. At the graveyard I formed the impression that he died intestate. The impression that I formed at the grave-yard that Mr. Ratnayake had died intestate was still there.

20 I must have gone to see Mr. Seneviratne about the 16th or 17th of June. Before I went to see Mr. Seneviratne my car halted at Bank Hill and the 1st Petitioner got into the car. After she got into the car she said that there was a writing or a document left by the deceased and that we could go and see it. She referred to a writing referring to some properties bequeathed. She said that there was a writing by which the deceased had bequeathed some properties. I did not give it a second thought. I did not think whether it was a Will or a deed. I did not think anything. I was thinking that we would go and see what the writing was. It was my object to see what properties would come to me. I did not think whether I would get anything or not, but I thought I would go and see what this writing was. I was anxious about these properties. The 1st Petitioner told me that there was a writing bequeathing these properties.

30 Q. What crossed your mind at the moment?

A. I thought that he must have done something and left the property to someone. That someone may have been myself or somebody else. All those thoughts crossed my mind at that time.

I did not know to whom he had left this property.

Q. Did it not strike you to ask her further "Well, what is in this writing; or do you know what this writing is or what it contains?"

A. I cannot remember now whether I asked her or not; I think I asked her. And I cannot remember what the answer was. She told me that the properties were bequeathed.

40 Q. Did you ask her to whom?

A. I will have to think and answer, Sir, . . . Yes, she told me that in that writing bequeaths were made to all of us.

I did not think whether it was a deed or a writing. I thought it was a Will. Before I came to Mr. Seneviratne's office I thought that a Will had been left by the deceased leaving all his properties to her and to me and to others.

Q. Did it not strike you to ask her then “ Why did you come and ask me for help at the grave-yard ”?

A. I did not ask her that.

The incident which I referred to at the grave-yard is not false. It occurred. What I thought at the time was that she did not know whether there was a Will. From the conversation in the car I knew that property was left to her. At the cemetery also she may have known that.

Q. So that her request to you may have been to help her look after the property that was left to her?

A. It may have meant that.

10

When I reached Mr. Seneviratne's office in the company of 1st Petitioner and others, Mr. Seneviratne came and asked me whether I was Mr. Felix Wijesinghe and I said I was. He then said that there was a Will. He said that he discovered a Will amongst the papers handed to him by the 1st Petitioner. At that time Mr. Seneviratne had taken charge of all the deeds and papers. Once Mr. Seneviratne told me that, I was not at all surprised because I had already been told about the Will. Then I read the Will. Having read the Will I was satisfied at that time that it was a genuine Will. It was then that I noticed that the apostrophes were not in their correct places. In spite of that I was not suspicious about the Will. I looked at the signature. At that time I thought it may be Mr. Ratnayake's signature. I thought that it might be Mr. Ratnayake's signature. I had no suspicions about the signature. I thought that it definitely was his Will. I had no suspicions at all at that time.

20

Q. Having read the Will you found that Mr. Ratnayake had made a very fair distribution of his estate; is that not so?

A. I did not think it was fair.

Q. Why?

A. Because he had not divided equally.

Q. Why do you say equally; he should have given you and whom? 30

A. He should have given all equally, including the 1st Petitioner and her children. I was not satisfied because the distribution was not equal. He gave more to the 1st Petitioner and her children.

The Will provides for the 1st Petitioner, her two children, for myself, and my three sisters. There is also a legacy to Girigoris. Girigoris was Mr. Ratnayake's driver for some 37 years. Mr. Ratnayake was a very good Christian. He attended church regularly. I do not know if 1st Petitioner attended church regularly. By this Will he had made provision to the Church. He gives a sum of Rs. 1,000 to St. Barnabas's Church, Avissawella. It was in that church-yard that he was buried. When he was at Dehiowita he used to attend that Church regularly, within the fortnight he was there. He gave Girigoris Rs. 1,500 for his long service under him. In my opinion he should have given Girigoris something more. My uncle was a very careful man with his money. In my opinion Rs. 1,500 was not a fair sum; he should have got something more, but not equally with the others. I do not say that Girigoris was responsible for the fabrication of this document.

40

1st Petitioner Adliet is referred to in the Will as "my wife." The deceased had some four or five properties at Hendala. They were various blocks, but not continuous. I do not know the value of the properties at Hendala. Some time ago these properties were valued at Rs. 9,000. If those properties are valued at that figure now I would say that that is a fair valuation.

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(Passages from the Will read to witness). Bank Hill Estate and the residing house and furniture are given to the two children by the Will. The "residing bungalow" referred to is the bungalow at Dehiowita. That is also
10 given to the children by the Will. The tenements at Dehiowita were also given to his two children. Out of the estate of Mr. Ratnayake those assets now mentioned are the most valuable. That device is subject to a life interest in favour of their mother Dona Adliet. In the event of 1st Petitioner marrying again she was to forfeit the life interest which would then go to his sister's children. It also contains provision that I should manage the other half share until the children come of age.

Q. Do you still say that this is an unreasonable Will?

A. I must say that this was not a reasonable Will; because the estate was not equally divided.

20 Q. If she forged the Will don't you think she would have left the question of her marriage free? Is she likely to have made these restrictions against herself?

A. I cannot say. It is very difficult to answer.

Q. If she forged the Will, will she put into the Will something that will operate against her?

A. I do not think so; it is not likely.

30 My sisters and I get lands and premises at Magamma and two rooms at Dehiowita. I am aware of that from the Will. That property is about four acres in extent and the two rooms are just two little shanties. I think my uncle bought the Magamma property for about Rs. 15,000.. In 1943 it must have been worth about Rs. 2,500. The two rooms must have been worth about Rs. 1,500. Altogether these properties must have been worth about Rs. 4,000 in 1943. The largest asset which formed the estate of Mr. Ratnayake was the cash balance in the bank. Half of that was left to the two children; one-fourth was left to the 1st Petitioner and the balance one-fourth to the four of us, myself and my sisters. There was about Rs. 70,000 in the bank when he died.

40 Mr. Ratnayake also left under this Will the business at Dehiowita to me. At the time of Mr. Ratnayake that was a very successful business many years ago. At the time of his death it was not a very successful business. Now I am carrying on a Cafe in those premises. I am not carrying on the old estate supplies business. Mr. Ratnayake was doing a Forwarding business in 1915. That disappeared about 1930 when the depression set in.

I was quite pleased when I saw the Will at Mr. Seneviratne's office. On my way back to Dehiowita I stopped at Talangama and the 1st Petitioner presented me with a gold watch and a gold chain. I was quite pleased with the present that I received. At that stage I did not utter a word that I was not satisfied with the will. At that stage I had no reason to doubt the Will,

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In spite of the omission of the banks and sterling companies and the misplacing of the apostrophes or where the writing itself was concerned I accepted it as a genuine Will. I cannot remember if first Petitioner and I had lunch together on that day after meeting Mr. Seneviratne.

Mr. Burhan was my legal adviser when I went to see Mr. Seneviratne. He was with me when I read that Will. He saw me reading the Will. I think he looked at the Will himself. He said nothing to me. I do not know if he was also satisfied with the Will. I think he also read the Will. Mr Burhan read the Will. I think he must have peeped over my shoulder and read the Will. It was after that, that I signed the Proxy. When I signed the Proxy it had already been signed by the 1st Petitioner. The signature was there. Before signing the proxy I do not remember reading the proxy. 10

(Shown P11). This is the Proxy that I signed. It was a blank Proxy that I signed. When I signed it was blank and it was filled up subsequently.

Q. What was the object in your signing the Proxy?

A. Asking Mr. Seneviratne to file papers in Court.

Q. In order to prove or disprove the Will?

A. To prove the Will.

At that time I had no doubt about the genuineness of the Will. At that moment I signed the Proxy in order to prove the Will. It was only subsequently that I thought that it might be a false Will. At that time the object of my granting the Proxy was to prove the Will; the Proxy was blank at that time. 20

Q. When was it for the first time that your suspicions were aroused with regard to the genuineness of the Will?

A. Some time after.

Q. How long after? How long after you went back to Dehiowita?

A. I informed my sister that I had signed this Proxy in Colombo and then we all had a discussion about the Proxy. Even then I had no suspicions about the Will. I spoke to Girigoris thereafter. About a week after I went to Dehiowita I had suspicions about the Will. 30

Q. And those suspicions were caused by Girigoris?

A. That was as a result of a conversation I had with Girigoris. That was within a week or about a week after I went to Dehiowita.

After that I had a conference with my sisters. I went to see them and I discussed it with them. I got down my sisters from Kandy also to Colombo and all four of us discussed the matter and then my sister, Mrs. Amarasekera, said that she had been to Proctor Seneviratne's office. Mrs. Amarasekera told me that she had looked at this Will at Proctor Seneviratne's office. As a result of the conversation I had with Girigoris I had my suspicions aroused. (Mr. Navaratnarajah states that as at present advised he does not propose to call Girigoris.) 40

At the time I applied to revoke the Proxy granted to Mr. Seneviratne I thought that the will was a forgery.

At that time I doubted the genuineness of the Will. I filed an affidavit in Court I think. I consulted Proctor Amarasekera and put in that motion which is minuted on the 12th of August. I told Mr. Amarasekera that the Will was a forgery. I think it was my Proctor himself who drafted that motion.

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The only party who filed objections to the application of the Petitioner may be Mrs. Amarasekera; that may be so, but I do not know. I cannot remember if I filed objections. (Shown motion). The only reason I give for the revocation of the Proxy is that I did not like to act as Executor. In this motion I do not say that this Will is a forgery. According to the
10 motion, at that time I did not say that this Will was a forgery. So far I have not filed objections to the present application. I did not personally file an affidavit in this case. I do not know. I have come to know now that I have not filed an affidavit in this case challenging the Will as a forgery. Only my sister, the 6th Respondent has filed objections and has asked for the Decree Nisi to be vacated.

Q. Why did you not give your reason for your unwillingness to act as executor when you made the application to revoke the Proxy?

A. I did not study the law so far.

After revoking the Proxy I went to Matara in search of Martin.
20 My brother-in-law sent his brother in the guise of a C.I.D. man to see Martin. I think my brother-in-law's brother was in charge of an estate. He went to see Martin. Martin had come to see me about three or four days after my uncle died. I was not there at that time. He had left a message through Martin's brother-in-law, who was employed at the shop at that time, saying that he wanted to see me on something important. That was three or four days after the death of Mr. Ratnayake and before I went to Proctor Seneviratne. My sister and brother-in-law sent my brother-in-law's brother to Martin to find out what Martin had to say. I did not ask them to send him. I told them that Martin wanted to see me and then my brother-in-law agreed
30 to send his brother and I agreed to it. I do not know why he went as a C.I.D. man. I do not know whether he went in uniform or as a C.I.D. man. I do not know. My brother-in-law's brother went to see Martin to find out what this important matter was. It was to find out what that important matter was that we sent this gentleman to Matara to see Martin.

Q. What made you feel that the matter was so important that you sent this man to Matara to find out, instead of say writing a letter and finding out?

A. Martin's brother-in-law said that it was something very important to tell me and that if I was unable to meet him at Dehiowita
40 I was to come to Matara and meet him.

I did not know Martin's address at that time, at Matara. I went there with my brother-in-law Mr. Amarasekera in August or September, 1943, I cannot remember the date. I cannot remember whether it was before or after my application to revoke the proxy. My brother-in-law had been an inhabitant of the place so he knew the address of Martin. I did not know at that time as to why I was going to see Martin on that day, except that it was on some important business.

Q. At that time were you or were you not aware that the Will was a forgery?

A. I was aware that it was a forgery.

Yes, I was also aware that Martin was one of the witnesses to the impugned Will. I received the message from Martin about four or five days after the death, but I sent the man some months later, although the message said that the matter was important. Even then I did not go to Matara. I sent someone else there. I went to Matara to see Martin in September. I and my brother-in-law went to Matara in August or September. My brother-in-law's brother must have gone to Matara in June or July. He went to Matara after I saw Mr. Seneviratne. On the 26th of August, 1943 the record shows that Mr. Amarasekera had already filed my Proxy and the Proxy of the 4th and 5th Respondents. Yes, I am aware of that. 10

Q. All that had been done before you went to Matara?

A. It may be so... I cannot remember whether it was before or after.

I said I went to Matara in August or September. At the time I went to Matara the Will was being challenged.

Q. Had you any idea as to why you were going to Matara at that stage to meet Martin?

A. My brother-in-law also had happened to find out that this Will was not a genuine Will and I asked Proctor Amarasekera, whether it was in order to see one of the witnesses to the Will and find out the truth or this document. 20

So that I knew I was going to Matara to meet Martin and question him with regard to this Will. It was not on some unknown business that I went to meet Martin. The first question that I discussed with Martin was the question of this Will. I asked Martin whether he signed this Will and he said that he signed it. I did not ask him whether the Will was a forgery. He said that he was being harassed by a certain man called James Alwis of Bank Hill Estate, Talangama to testify to the fact that it was a genuine Will whilst it was only a document which he had signed. What he meant was this: He signed a document as a witness which he presumed was not the act and deed of the man. He said that he signed in Sinhalese a document which purported to be a Last Will of J. Ratnayake, and he was being harassed by James Alwis to sign that document. He said that he signed a document purporting to be signed by J. Ratnayake because James Alwis pressed him to sign it. He said that there were four signatures on the document already and it was signed by him at Talangama by himself, with nobody else present. The Testator and the other witnesses were not present and that he did so because he was harassed by one James Alwis to do so. He said that he signed this about three or four days after the death of the deceased Ratnayake, and he wanted us to save him from that trouble. He also said that he had left Bank Hill Estate through fear of his life. On this point I gave evidence at the last trial. 30 40

(Last trial proceedings read to witness).

(Counsel reads passage of the evidence given by witness on the last date of the proceedings of the previous hearing commencing "Then I asked him whether he knew about the Last Will..." and ending "a few days after his death"). I said that at the last trial proceedings.

(Counsel also refers and reads passage commencing "Q. Do you want the Court to believe what Martin told you." and ending "three days after my uncle died").

I gave that evidence at the last trial.

Q. How did the "few days," become "three days?"

A. He said three days after the death. Three days is correct. I know James Alwis now. I did not know him before this action. I do not know what interest, if any, James Alwis had in this Last Will.

10 I am now aware that Martin has sworn an affidavit in this case.

Q. In that affidavit he swears that you and Amarasekera went and tried to persuade him to say that this Last Will was a forgery?

A. That is absolutely false.

Q. Are you aware that he has sworn an affidavit that you and Amarasekera went to Matara and tried to persuade him to say that the Last Will was a forgery?

A. The statement is false, and I am not aware of the affidavit.

Q. It further says that you went to Matara on the 23rd of August, 1943?

20 A. The date may be correct.

I said that my visit to Matara was either in August or September. If he says it was in August, I will not deny it. I do not know if my brother-in-law Mr. Amarasekera promised Martin anything, but it was not done in my presence. I do not know if my brother-in-law promised him anything. I did not promise him anything at all.

I spoke to Proctor Amarasekera and asked him whether it was in order to find out any details Martin could give us about this Last Will, and he said that it was quite in order. I told him that I knew the witness very well and so he asked me to go and find out what he had to say.

30 Q. What you got from Martin then was an appeal for protection?

A. That was one thing.

He did not say that he was a party to a forgery. He did not say that it was a forgery, but he said that he signed the Will after the man died. He did not use the word "Forgery."

Adjourned for lunch.

Signed S. SINNETHAMBY,

A. D. J.

28-1-48.

After lunch.

40 F. A. L. Wijesinghe.—Sworn.

Cross-Examination Continued.

My brother-in-law asked Martin to accompany us to Colombo to the office of Mr. Amarasekera. Martin said he would come, but did not, and we told Proctor Amarasekera that Martin did not come. I did not think

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it advisable to take a statement from Martin through the police at Matara. Nor did it strike me that I should record his statement on oath as soon as possible. I thought I must tell Proctor Amarasekera about it and proceed on his instructions. Matters were left there so far as Martin's statement to me at Matara was concerned. I did not consult Mr. Amarasekera as to whether an affidavit was necessary. May be it was on the 4th October, 1943 that Martin swore an affidavit and tendered to Court. I took no steps till then. I am aware that that affidavit contains allegations against me and my brother-in-law Amarasekera. I did not suggest to Mr. Amarasekera that he should take steps to procure an affidavit from Martin.

10

I refer to R10 which is partly handwritten by Marshall and Ramanayake, at page 24 and at pages 156 and 142, 141. All that is similar to deceased's handwriting. All the writing from page 116 to page 160 is Ramanayake's. Page 206 is in Marshall's handwriting; again pages 618 and 634 are Ramanayake's; and pages 791 to 796 are Marshall's handwriting.

P1 is the Will. The writing in P1 is similar to page 792 of R10. The formation of the letter K is the same in P1 and in Ramanayake's writing in R10. Then again I point to the letter "d" on page 725 of R10, which is Ramanayake's, which is similar to the "d" in the names Dona Adliet in the impugned Will, underlined.

(On being pointed out by Court that the two "d's" in P1 and P10 referred to by witness are widely different, witness now states "I think the d's are different.")

I now come to the letter "b" (witness underlines "b" in the impugned document and "b" at page 725 and states it looks similar in both.

On the Court again pointing out that the two b's are different, witness states "I now admit that the b's are different. But generally I see a similarity").

Marshall is in Dehiowita. He left Mr. Ratnayake's service somewhere in 1937, carried on separate business in a hamlet in Dehiowita and joined the firm again last year. Ramanayake left Mr. Ratnayake's employ before I joined in 1934; he never came back. I do not suggest that Ramanayake and Marshall wrote out the Will. I only say it is possible for one to forge the other's writing.

(Shown P13). This is the house rent account; it contains Mr. Ratnayake's signature. (Shown signature on page 1 of P13). This signature and the signature on P1 look similar, but I would not say they are by the same person.

(Shown P4a, P4b). These are not genuine signatures of Mr. Ratnayake; he never as a rule left blank cheques signed. The signatures on P4a and P4b look similar to the second signature on P1b.

(Witness is referred to the evidence at Marginal pages 108 commencing "shown P4b, Is that your uncle's signature" and ending with the answer at page 109 to the effect 'I have no reason'). I said that on the last occasion. What I meant when I said that was that the signatures looked like my uncle's, but whether he signed it or not I could not say.

After seeing Mr. Seneviratne and signing a Proxy on receipt of a letter from him I replied on the 18th June, 1943 by letter P12. I was asked to send certain details. At that stage I had no suspicion about the Will.

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Re-Examination

RE-EXAMINED

I was questioned about P4a, P4b the last time I gave evidence. Then I said as a rule deceased never kept blank cheques like P4a, P4b. About the time of his death there was nearly Rs. 76,000 in the Bank. Deceased was a very careful person. He had written letters to me and I handed some of them to my Proctor during the lunch interval.

10 (Mr. Navaratnarajah proposes to produce a letter from the deceased to the witness dated 1st February, 1943. Mr. Samarakone objects on the ground that it does not arise from cross-examination. Mr. Navaratnarajah contends that the witness was cross-examined with regard to the relations between him and the deceased and it was suggested that he was not on very good terms with the deceased. The letter was written shortly before the deceased died and it shows that he and the witness were on very friendly terms. I allow the document to be produced and if Mr. Samarakone so desires I shall give him an opportunity of cross-examining the witness on it.)

This letter was written to me by the deceased. (Witness reads it).
20 The " nice things " prepared for the deceased mentioned here were Chicken Puddings, Sweetmeats, etc. He had sent instructions that certain things should be sent to him through Girigoris. He has addressed whis letter to me in very affectionate terms. It has been initialled J.A.R. He always did that. I have got other letters written to me in 1941. My relations with my uncle were extremely friendly. I was asked why my sisters did not attend the funeral. At that time one sister Mrs. Amarasekera was in Colombo, the others in Kandy. There was some interruption in the telegraph line and the telegram sent that morning had reached only the following day. There were others too like European planters who received their telegrams on
30 the following day. I stated that I asked Mr. Seneviratne to revoke my Proxy. Then I saw Mr. Amarasekera, Proctor and told him why I wanted the Proxy revoked ; I told him I doubted the genuineness of the Will. The motion filed on the 23rd August, 1943 was drafted by Proctor Amarasekera. I did not suggest to him the terms of that motion. The order made on that motion was " Notice Mr. Seneviratne for the 16th September."

On the 26th August, Mr. Seneviratne consented by revoking his Proxy. Thereafter Mr. Amarasekera filed proxy. By that date the 6th Respondent had filed her objections in the form of an affidavit. No one suggested to me that I should file objections to the granting of Probate. Thereafter I made an
40 application to Court that the deceased's estate should be administered by the Public Trustee. Then I filed petition and affidavit also drawn up by the Proctor. The affidavit was signed by me on the 6th September, 1943.

In paragraph 1 of the affidavit I state " the Last Will was purported to have been signed by Mr. Ratnayake." I invite attention of Court to my affidavit of the 6th September. In the case Mr. Wickremanayake appeared for me and for the 4th, 5th and 6th Respondents. There is an index on the first page of P1 which states " Bank Hill Estate, page 1; Hendala properties, page 200." That means the respective accounts commence on those pages,

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I referred to a book in which certain personal accounts were kept. P1 is not the book I had in mind but P10. On page 6 of P10 there is an account of the names of H. D. Herath and H. D. Martin who are both brothers of the Petitioner. This account shows that deceased had advanced them both a sum of Rs. 183. There is also an item in respect of their mother. This amount appears to have been deducted from amounts payable to Herath and Martin.

(To Mr. Samarakone with permission: The things referred to in Y8 were paid for by Mr. Ratnayake. The chicken, sweets, etc. were paid for by me and sent to him as a gift. The entries on the opposite page refer to Millers' account. In this document I point to the manner in which the deceased addresses me as "My darling Sunny.") 10

Signed N. SINNETHAMBY,
A. D. J.

Further hearing on 4th, 5th, 6th and 11th May.

4-5-48.

Appearances as before.

Mr. Navaratnarajah states that Mr. Lawrie Muttukrishna is ill in hospital and he will be applying for a date on that ground after he has called the other evidence which is available to him today. 20

J. D. J. Seneviratne
Examination

J. D. Jacolyn Seneviratne, Sworn, J.P., Proctor and Notary, Avissawella.

I have been a Proctor for 27 years. I knew the deceased Mr. Ratnayake. I had been his lawyer from about 1922. I attended his funeral at Avissawella. I know his nephew Felix Wijesinghe and met him at the funeral. I did not know Mr. Ratnayake's mistress before; at the funeral I was a lady who I understood was his mistress (Petitioner is called and shown to the witness; he says 'I am not quite sure now whether this was the person'). The person who was said to be his mistress told Mr. Wijesinghe "Look after us in the future" and Wijesinghe said "All right." 30

Deceased Ratnayake was a careful person. He usually came to me whenever he received a letter of demand. When he came to see me in connection with the drawing up of some deeds I advised him once to write his Last Will.

Q. What was the deceased's reply?

(Mr. Samarakone objects to this question on the ground that a statement made by a deceased person can only come under Section 32 and that this question is not covered by the provisions of that section. Mr. Navaratnarajah submits that it is admissible under Section 14 as showing the state of mind, such as intention, of the deceased. I allow the question as in my view it appears to be admissible under Section 14.) 40

A. I cannot remember the exact words he used but he was not disposed to write a Will.

Q. How long before his death was it suggested to him to write a Will?

A. About 6 months before his death.

He did not tell me at any time that he wrote a Will. I used to meet him whenever he had work with me. I saw him about a month before his death at Dehiowita where I went to see him as he was ill; it was a social call. I knew Mr. Ratnayake very well. He was a religious person, went to Service on Sundays and never liked to work on Sundays. I cannot say whether he allowed his servants to do any work on the estate on Sundays.

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10 CROSS-EXAMINED

J. D. J. Seneviratne
Cross-Examination

I first came to know Mr. Ratnayake in 1922. He used to consult me and also my cousin Mr. Jacolyn Seneviratne, (Snr.); I was doing more of his work. I do not know whether he consulted any other Proctors, not that I know of; nor do I know whether he had lawyers in Colombo. I must have attested about 10 or 15 deeds of Mr. Ratnayake's since 1922. I do not remember if he told me at any time that Messrs. F. J. & G. de Saram were his Proctors in Colombo. It was I who suggested to Mr. Ratnayake to write his Will, six months prior to his death; those days he was frequently falling ill. I used to make that suggestion to my other standing clients. I
20 asked Mr. Ratnayake—for no particular reason—whether he had written a Will, and he said he had not. I do ask that from my rich clients. Mr. Ratnayake must have been about 60 years old then. Till then I had not asked him about a Will. He did not take exception to that suggestion; the conversation took place in my bungalow when he saw me in connection with some monies he had lent at Deraniyagala which he was not able to recover—the bonds were getting prescribed. I cannot give any particular reason why I suggested this to him. He was not inclined to write a will when I suggested it to him.

30 Q. So you know that for sentimental reasons Proctors are reluctant to suggest Last Wills to their clients?

A. Mr. Ratnayake was in indifferent health for some time.

I know that Mr. Ratnayake had a mistress at that time, but I did not know whether he had children. I did not discuss that matter with him at any time.

Whether Mr. Ratnayake had reason to change his mind and write a Will subsequently I do not know.

Q. Do you admit that the fact that he had a wife and children would influence his mind in making a Will?

A. I cannot say what he would have done.

40 I cannot remember when I last attested a deed of his; must have been four or five years ago.

(Shown X4 list of deeds of the deceased). I remember some of the the deeds I attested; he had lent out monies and I examined the title deeds of the properties mortgaged; he did not purchase any properties; there were 4 mortgage bonds and leases, not transfers.

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Mr. Ratnayake was well known in his area. We members of the Bar were present at his funeral; Mr. Jacolyn Seneviratne, (Snr.) was there.

Q. Were there any other Proctors with you there?

A. I remember there were European planters, not Proctors.

When the Petitioner spoke to Mr. Wijesinghe at the funeral there were several others present nearby whom I cannot remember; the planters were Mr. Stent and three or four others; they must have heard this conversation.

At the time I heard this appeal I knew the woman; she was weeping there and I ascertained then that she was the mistress. This appeal was made after the burial. There was another woman weeping, said to be the mother of the mistress. Petitioner may have been in tears, I cannot say; she was looking sad. I did not see her bowing to Felix Wijesinghe, but she addressed him as Hamu Mahatmaya. I remember that. 10

Q. Are you aware that Hamumahatmaya's case is he had never seen her before that?

A. Mr. Wijesinghe said "all right"; he appeared to know her.

Wijesinghe did not ask her "who are you." This is all the conversation that I heard; after that we moved away.

I was written to by Mr. Amarasekera that I was required to give evidence in this case. He saw me when I was in the Supreme Court yesterday and reminded me. I did not receive summons. Wijesinghe saw me some months ago in connection with this case—must have been about a year ago. 20

Mr. Ratnayake had a Forwarding Agency and Estate Supplies Depot at Dehiowita; he also undertook the cashing of cheques. I have been to Dehiowita recently and I do not see this establishment being carried on in the way it used to be carried on in Mr. Ratnayake's time.

J. D. J. Seneviratne
Re-Examination

RE-EXAMINED

I have suggested to so many of my clients to write Wills. I do that in the case of standing clients. I said I have attested four mortgage bonds for the deceased. The deceased had litigation—not more than 4 or 5 cases—and I appeared for him with my cousin. My cousin appears in civil cases and I in criminal cases. My cousin is not a Notary and I do all his Notarial work. Deceased was charged once with storing petrol without a permit. It was in connection with this Notarial work that I did for Mr. Ratnayake that I happened to suggest to him about a Will. My cousin and I were a firm from 1927-1932. At the time in question we were not a firm. I cannot say when the petrol case was. 30

Signed N. SINNETHAMBY,

A. D. J.

Mr. Navaratnarajah proposes to call Mr. Karunaratne, Headmaster of the Kotte Christian College, to produce the Admission Register of the School. He states he has summoned the Principal to produce the Register and give evidence and the Principal has sent the Headmaster. 40

Mr. Samarakone states he has no objection to the witness only producing a document, but objects to his giving evidence in regard to the contents of that documents

I indicate to Mr. Navaratnarajah that if it is only to produce the document, I shall allow the witness to be called; but if he is going to speak to the contents of the document his name should have been listed.

P. S. D. L. Karunaratne.—Sworn, Headmaster, Kotte Christian College. I have brought the College Admission Register.

(Mr. Navaratnarajah marks it Y9,. He states it is only page 46 of the Register that he requires. I allow the witness to remove the Register on a certified copy of that page being submitted.)

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Cross-examined.

Nil.

Signed N. SINNETHAMBY,
A. D. J.

10 Mr. Navaratnarajah now applies for a date on the ground that Mr. Muttukrishna is suffering from cardiac failure and not physically fit to attend Court till the 1st June. He states he proposes, if the medical advice is that the witness' evidence should be recorded in the hospital, to ask for a commission, but I indicate to him that he may make that application with notice to the other side; in the meantime I shall fix the case for further hearing subject to what Mr. Samarakone has to say.

Mr. Samarakone objects to this application on the ground that the case has been fixed for trial for 4 days. He wants the cost prepaid.

20 Mr. Navaratnarajah states his present intention is to call only the handwriting expert and make an application to call the Principal who was absent today. He states he has no objection to the Petitioner recovering the costs by drawing from the money deposited in this case the amount taxed as costs out of the share that would eventually go to the 2nd Petitioner and 4th, 5th and 6th Respondents provided the Public Trustee has no objection.

I allow the application for a postponement in view of the Medical Certificate. The certificate is dated 1st April, but Mr. Navaratnarajah states he was hoping that the witness would have recovered sufficiently to be able to attend Court and that is why he did not inform the other side. His clients, viz. 2nd Petitioner and 4th, 5th and 6th Respondents will pay the 1st Petitioner the costs of today and the other three days for which this case has been specially fixed.

I adjourn further hearing for 6th, 7th and 8th July, 1948.

Signed N. SINNETHAMBY,
A. D. J.

6-7-48.

Appearances as before.

40 Mr. Navaratnarajah applies for a date on the ground that Mr. Lawrie Muttukrishna who gave evidence in the earlier proceedings is sufferings from heart disease and will not be fit to give evidence for another three months. He submits a Medical Certificate. He hoped Mr. Muttukrishna would recover and be able to give evidence today; in fact he did recover and gave evidence in a Supreme Court inquiry a few days ago, but has had a relapse. Mr. Navaratnarajah states he saw Mr. Muttukrishna yesterday he was in bed.

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Mr. Samarakone objects. On the last date too he states the case was postponed on the same grounds. The Supreme Court in sending this case back observed that the Court might take as given in these proceedings the evidence already given in the earlier proceedings subject to the witnesses being recalled and submitted for further cross-examination. Mr. Samarakone however does not agree to this being done. He submits that the Medical Certificate renders it possible that the witness may not be able to give evidence for a very long time, and it is up to the 2nd Petitioner and Respondents, should they feel they must call expert evidence, to make their own arrangements and not hold up this inquiry. Mr. Navaratnarajah states that he became aware 10 only yesterday that Mr. Muttukrishna would not be giving evidence; till a week ago he hoped he would be able to come.

At this stage of consent inquiry is postponed for 11th, 12th, 18th and 22nd October. It is agreed that 2nd Petitioner and 4th, 5th and 6th Respondents do pay the 1st Petitioner 50 guineas as costs of today and the next two days for which this trial has been specially fixed. It is further agreed that 20 guineas out of this sum shall be paid on or before 1st October, 1948. If it is not so paid it is agreed that the Petitioner's application for Probate shall be granted with costs. If the 20 guineas is prepaid before 1st October, the inquiry will proceed. It is also agreed that the Petitioner will not take 20 out writ for the balance 30 guineas until after the 22nd October, 1948.

The 2nd Petitioner and 4th, 5th and 6th Respondents further agree not to apply for any further date on the ground that Mr. Muttukrishna is ill. They will either lead the evidence of another expert or make an application under Section 33.

Inquiry for 11th, 12th, 18th and 22nd October.

Signed N. SINNETHAMBY,
A. D. J.

11th October, 1948.

Appearances as before. 30

Mr. R. L. Pereira submits a motion with a Medical Certificate from a Medical Officer asking that Mr. Muttukrishna's evidence be taken at his residence. Mr. Pereira states that though the Medical Certificate recommends there should be as little mental or physical strain caused, Mr. Muttukrishna is quite willing to give evidence.

Mr. Samarakone objects stating that on the last date they agreed not to apply for further dates on the ground of Mr. Muttukrishna's illness. He states that the Respondents will either have to call another expert or read the evidence of Mr. Muttukrishna under Section 33 of the Evidence Ordinance.

Mr. Pereira states that he is not applying for a date on the ground of 40 Mr. Muttukrishna's illness but he is only asking that the evidence of Mr. Muttukrishna be recorded at his residence.

Mr. Samarakone objects to evidence being recorded at the residence of Mr. Muttukrishna, but consents to his evidence being read under Section 33 of the Evidence Ordinance.

There is some doubt as to whether this Court can sit anywhere other than in a proclaimed building—vide Section 52 of the Courts Ordinance.

Mr. Samarakone submits this Court has no jurisdiction to hold Court elsewhere.

Mr. Pereira states that he will go on with the case and if necessary, renew the application on fresh material.

Interval.

Signed N. SINNETHAMBY,
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Karunaratne
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—Continued.

After lunch.

11-10-48.

10 Mr. Pereira calls.

John Henry Amarasekera.—Sworn.

J. H. Amarasekera
Examination

I am the husband of the 6th Respondent Ada Muriel Wijesinghe. I was originally married to a Miss Abeyratne, a close relative of the deceased. Her sister was married to Mrs. Ratnayake's brother. Mr. Ratnayake married twice. Mr. Ratnayake and his first wife attended the Church when I married Miss Abeyratne. I am a postmaster in Class I, now stationed at Akuressa. After my marriage to Miss Abeyratne we were invited by Mr. and Mrs. Ratnayake to Dehiowita and we stayed with them in their bungalow "Bertlyn" for about a week. I married my first wife in 1926. My first
20 wife died and thereafter I married the 6th Respondent Ada Muriel Wijesinghe. The deceased Mr. Ratnayake arranged this marriage. I have six children. From the time I married Miss Abeyratne I had been visiting Mr. Ratnayake frequently. He was doing a large business at Dehiowita. In the course of the discussions in connection with the proposal to marry my present wife Mr. Ratnayake told me that his nieces and hephew would be the heirs to whatever he had.

(Mr. Samarakone objects to this evidence. Mr. Pereira seeks to bring it under Section 14. In my opinion Section 14 applies and I allow it.)

Mr. Ratnayake had been working with my wife's father Mr. Wijesinghe who ran a big business of a similar nature at Yatiyantota and later
30 both of them joined and did business together; the capital was supplied by Mr. and Mrs. Wijesinghe. After my marriage to my present wife I continued to visit Mr. Ratnayake about once in three months. I corresponded with him and had cordial relations with him. My last visit to him was about 3 months before his death at Dehiowita. Before I was transferred to Akuressa I was stationed at Colombo and living in Deal Place and Mr. Ratnayake also visited me there. The first intimation I had of his death was when my wife heard it on the radio and sent a message to me in the office; that was the day of the funeral, 4th June; till then I had no intimation whatever of his having
40 been seriously ill. According to the radio the funeral was to be at St. Thomas' Church, Avissawella. I was very surprised to get this information, I took leave and went home to take my wife to Dehiowita. My wife was dressed up to go; I tried to get a car, we had no car of our own. Owing to petrol control difficulties we were unable to get a hiring car. We had to abandon our trip that day and the following morning we went by the first bus to Dehiowita and reached there about 8 a.m. There were only two servants in the house, Felix Wijesinghe my brother-in-law was not there. We waited about half an hour and left leaving a message for Felix asking him to meet me in Colombo

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immediately he returned. I went again to Dehiowita alone by myself about 3 or 4 days later, met Felix that time, discussed the situation arising out of the death and brought him to my place in Colombo. There we discussed matters along with my wife with a view to filing papers for administration. As a result of the discussion Felix promised to get all the particulars and file papers. I met Felix thereafter and he said he had filed Proxy in favour of Mr. Seneviratne and that Proctor Seneviratne had discovered a Will at Talangama. He had filed proxy for Mr. Seneviratne to draw some money, that was lying idle in the bank. Felix gave us Mr. Seneviratne's office address and asked us to go and see him ourselves. He also showed us a typewritten copy of the Will said to have been given to Mr. Seneviratne. Accordingly we went and saw Proctor Seneviratne in his office. We introduced ourselves to him and he said he was very pleased to meet us. Then he opened something and showed us the Will in a book. When we saw it both of us said at the same time "This is not uncle's handwriting nor his signature." It did not look at all his, it was not his writing and the signature was different. I told him I was well acquainted with his writing. My wife concurred. Mr. Seneviratne said "How can you say it is not your uncle's handwriting or signature when he has even made a remark on another page to show that there was a document like this." He turned on to that page and showed me. I looked and there were the words "see page 61." What he showed me appeared at page 47 of P1. Then he again turned to page 61 and showed me the Will there. In regard to the entry "see page 61" I said the writing immediately above the entry was uncle's and there was a vast difference between the entry itself and that writing. Proctor Seneviratne said "How can you . . ."

(Mr. Samarakone objects to this evidence on the ground that it is not evidence with regard to what Mr. Seneviratne is alleged to have said within the scope of his authority as agent for the Petitioner and that it is intended to attack Mr. Seneviratne personally.

Mr. Pereira states he did not intend to attack Mr. Seneviratne and that he is leading evidence of statements made by Mr. Seneviratne as agent of his client.

I am unable to state that these are not statements made by Mr. Seneviratne as agent of his client. In the circumstances I allow the question.)

Mr. Seneviratne said it was he who discovered the Will and the lady did not know anything about there being a Will in the book. He also said he had consulted all the handwriting experts in Ceylon and they had pronounced it was not a forgery.

At the time Mr. Seneviratne showed me page 47 all that there was in it was "see page 61" What appears now at page 47 is "see page 223 ahead for my will." Now the 61 is erased. Originally where the "ah" of ahead stands now stood the figure 61. Before we left his office Mr. Seneviratne wanted my wife to sign a Proxy in his favour saying that her brother also had signed one, there was a lot of money in the bank lying idle, that money could be obtained immediately if a proxy was signed by my wife too. She did not agree to this suggestion. Then as we were about to leave the office a dark short man came rushing into the office. This man happens to be Mr. Weera-koon's clerk. I have seen him in the course of this trial. He is not here today. Then he went away. Almost the following day we consulted Proctor Amarasekera who is not a relative of mine, although he bears the same name. Later

I learned that the Will had been filed in Court. I inspected the Will again and found it was not the same Will which we had seen earlier on page 61; we informed Mr. Amarasekera immediately about it and also our Counsel Mr. Wickremanayake. Mr. Amarasekera made a complaint to the Secretary of the Court and got him to make an entry in the book. At page 60 on the 24th September, 1943 there is an entry initialled by the Secretary of the District Court. Thereupon we arranged with our Proctor for experts to examine the Will.

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Q. Did Mr. Seneviratne ever show you this Will at page 223?

10 A. The first time I saw it was in the Record Room. When I saw this book at Mr. Seneviratne's there was some writing in pages 61 and 62 when Mr. Seneviratne claimed this was the genuine Will. I pointed out that from page 48 to page 223 with the exception of a few pages from page 200 to 217 the rest of the book is blank. Mr. Muttukrishna was one of the experts who was consulted and Mr. Mac Intyre was another..

Q. Did you draw Mr. Muttukrishna's attention to the fact that what is now at page 47 was not there when you first saw it?

A. Yes.

20 Mr. Mac Intyre was subsequently put into the Petitioner's list of witnesses and we did not call him.

I did not give evidence at the last trial. I am giving evidence for the first time today.

(To Court.

Q. Why?

A. I insisted on Mr. Wickremanayake leading my evidence, but after the other side had closed he decided not to call me and gave me reasons for it.)

Q. Did Felix Wijesinghe tell you he had had a message from Martin?

30 A. Yes, a message from Martin asking him to see Martin urgently and Felix Wijesinghe wanted me to accompany him.

At that time I was working in the C.T.O. as a Supervising Officer. I have a brother, a planter in the South and I wrote to him to contact Martin. Subsequently Felix and I went down to Matara. I cannot remember the date. We saw the man. He told us that one James Alwis who was a dismissed watcher of Bank Hill Estate had forced him to sign as a witness to a Will 3 days after Mr. Ratnayake died. He also said that he was threatened by his people to sign further documents but he bolted from the place.

40 Q. Is it true that either you or Mr. Wijesinghe offered him Rs. 2,000 to give false evidence in this case?

A. It is an absolute falsehood.

We made a request to him to come and see Mr. Amarasekera our Proctor and tell him what he had to say about the matter; we did not ask him to sign any documents; we were asked by Mr. Amarasekera not to frighten him. He received us cordially, he had lunch prepared for us. But he did not turn up at our Proctor's place. We did not try to contact him thereafter.

I have been 29 years in Government Service, I am in Class I of the Postal Service.

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My salary is Rs. 300 without the allowances. I was present in Court right through the proceedings up to the time Felix Wijesinghe gave evidence in this trial. I heard the evidence of Adliette Ratnayake, of Martin and the other witnesses for the Petitioner.

Q. Am I right in saying it was not expected that you were going to give evidence at the time you were last in Court?

A. Even from the last trial I was insisting that I should be called but my lawyers did not decide to call me.

At this trial my lawyers decided to call me. I am the husband of the 10th Respondent.

To Court.

Q. Why did you remain in Court when witnesses were asked to go out?

A. Mr. Navaratnarajah said I had to give instructions because I was looking after my wife's interests. I remained in Court up to the time my brother-in-law started giving evidence. My name is in the first list of witnesses of the last trial.

I got married in 1931. I had a child by my first wife.

Q. Do you know in 1932 Mr. Ratnayake became father to the child 20 Percy?

A. We did not know there was a child to Mr. Ratnayake because everybody in the family knew that Mr. Ratnayake would never get children.

Q. How did you discover that?

A. He had an attack of small-pox and as a result it was generally admitted that he was not to get children. As a result of that disease the impression that all had was he was incapacitated. We were on visiting terms at that time.

Q. Did you visit Mr. Ratnayake at Talangama? 30

A. I did not visit him at Talangama because Mr. Ratnayake's residence was at Dehiowita. Talangama was his estate, he only had an estate bungalow there.

Q. Are you aware that half the month Mr. Ratnayake was at Dehiowita and the other half at Talangama?

A. I am not aware that exactly half the month he stayed in Talangama.

To Court.

Q. Half the month does not mean to the very hour and to the very minute?

A. Yes. I admit he was there about two weeks a month. During 40 this time I was at Deal Place, Colpetty.

Q. You never cared to visit Mr. Ratnayake at Talangama on any occasion?

A. No, because we always met him at Dehiowita, and we knew Dehiowita was his permanent residence,

Talangama is 5 or 6 miles from Colpetty and much closer to us than Dehiowita which is 35 miles away.

Q. Are you aware that in 1940 Mr. Ratnayake got a daughter?

A. I am not aware of that.

Q. Do you seriously say that you did not know from about the year 1928 Mr. Ratnayake was living with Adliette Ratnayake?

A. I did not know anything about it.

Q. Can you explain your not going to Talangama all those years?

A. My explanation is that we always expected him to be in his bungalow; he always told us in Dehiowita was his bungalow.

10

Q. Do you know that he used to attend church at Colombo in his car?

A. He is not a man who would have attended church with a person like the Petitioner.

Q. My question was simply: Do you know he used to attend church in his car at Colombo?

A. I did not know that.

Q. How did he travel about in Colombo?

A. He always had his driver Girigoris, and he also visited us, from Dehiowita.

20

Q. He never visited you from Talangama?

A. We never heard him saying he came from Talangama. I always heard him say he came from Dehiowita; that is the impression he created on us.

Q. Is it not the fact Mr. Amarasekera that you did not visit Talangama because you were well aware that Mr. Ratnayake was living with the Petitioner?

A. Certainly not.

Q. Do you seriously say that?

A. Yes. I did not have any knowledge of it.

30 (To Court.

Q. Even though it was more convenient to see him at Talangama, knowing he was there two weeks of the month?

A. We always thought he was mainly at Dehiowita, so we went there.

Q. But you said he was two weeks at Talangama?

A. We knew he had an estate in Talangama. I was not aware he used to spend two weeks there in the month; only after this case I became aware of it; before the case I never inquired from him about it when he came to see me or when we went to see him.

40

Q. Why do you want to leave Talangama in a closed box, as it were?

A. We treated Talangama as a business place where he had an estate; therefore there were no questions to ask the deceased on that point. Social calls were made always in his bungalow. But if he had informed us that he would be in some other place we would have seen him there, but only on business.)

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Mr. Ratnayake was doing successful business at the time of his death. He was running an estate supplies agency, supplying money to estates etc. He used to assist my mother-in-law financially before her death; he was also assisting 7th Respondent's two sisters who were in Kandy. Felix was assisting him in his business and living with him. Before he went there he was at school and I understood Mr. Ratnayake helped in his schooling; by the time I got married Felix was in Dehiowita.

Q. Do you know that Herath was managing the business at Dehiowita?

A. There was one Herath in charge of the Caltex Agency and he was also a general salesman.

Q. Are you aware that he took money to estates, labourers pay &c.?

A. I am not aware of that. I knew he was at Dehiowita when I got married.

Q. Do you know Herath was a brother of the Petitioner?

A. I do not know.

Q. Do you know he was drawing a higher salary than Felix himself?

A. Felix in fact was not drawing a salary; he was looked after by the uncle and an allowance was given to him for his petty expenses.

20

My present wife I married on the proposal of Mr. Ratnayake and he promised the dowry.

Q. Did you get a dowry?

A. Not at that time.

(To Court.

Q. Did you get it thereafter?

A. No sir.

Q. If this case is decided in your favour only you will get it?

A. Yes.

Q. You call this dowry?

30

A. May not be in the proper sense of it.)

I was a father at that time. My wife was an educated person, she was a teacher. I did not expect a dowry, but Mr. Ratnayake volunteered that information at Dehiowita at "Bertlyn" somewhere in 1930. Mr. Ratnayake died in 1943. In the course of conversation he told me whatever he had would go to his sister's children, he did not mention "dowry." I did not attach any importance to that, it was a mere suggestion.

Q. If he had a mistress who was loyal to him and two children, would you be surprised if he provided something for them?

A. I did not expect him to have a mistress.

40

(To Court.

Q. Now that he had a mistress and children, would it surprise you if he had made provision for them?

A. I am incapable of answering that; it is a matter of opinion; it all depends on what the deceased had in mind.

If he had such a mistress he would have given something for services rendered; to the children also he may have given something, cash or in kind. He would not have given everything to them because he had an obligation to his sister's children.)

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Q. You admit that in this Will which you impugn provision is made for all? You see the dispositions are fair?

A. I don't see that they are fair; it is not fair at all, because I am positive it is a forgery.

10 Q. If he had made that Will, or was inclined to make one, would that be a fair way of disposing of his estate?

A. I do not think that the dispositions are fair, because his obligations to his sister's children were greater. He should have provided more for them. He has given too much to the children, about 3/4th.

Q. You say Percy and Pearl are not Mr. Ratnayake's children?

A. No.

Q. You know two birth certificates are produced in this case?

A. The first is a forgery again, the second is not a forgery, but he was forced to sign it.

20 Q. The first is a forgery in what sense?

A. That the deceased never signed it. I thought he was impotent because he had small-pox when he was a child.

Q. If the second birth certificate is not a forgery its particulars are correct?

30 A. No, he was forced under certain circumstances to make that declaration by James Alwis the third witness in this case in 1932 when he was a watcher at that time. I got this information from Talangama from the Headman and others. I discovered it in the course of my inquiries. James Alwis had threatened to bring Mr. Ratnayake into Court on a maintenance charge, the old gentleman did not want to face Court on such a charge.

Q. Could you produce the man who told you that? Have you given instructions to your lawyers?

A. James Alwis is supposed to be a murderous sort of man and all the people are afraid of him; therefore this man said he could not give evidence.

(Mr. Samarakone invites attention to P2 and P3, translations P2a and P3a.)

40 Q. So that your grievance is, these two children not being Mr. Ratnayake's the dispositions in the will are unfair?

A. It is not a grievance; it is my opinion.

Q. Does Felix Wijesinghe know about these certificates?

A. I am not quite sure whether he knows. I told him the certificates were of this type, that the 1932 one was a forgery and the 1940 one was obtained by James Alwis by force.

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- Q. According to your evidence the last visit of yours to Mr. Ratnayake was 3 months before his death. What was his condition then?
- A. At that time he was cheerful but weak; he was walking about, but he had some trouble after an illness, he was a victim of piles.
- Q. For some months he had not been in the best of health?
- A. When we went he was in good health, but he was weak.
- Q. Did you see him in May, 1943?
- A. No. I cannot be exact about the month, but about 3 months 10 before his death we visited him.
- Q. Did you visit Dehiowita any day in May, 1943?
- A. After that visit 3 months before the death, the next time we heard of him was on the radio. I cannot say what his health was like in May, 1943.
- Q. Are you aware that before his death he was living in Talangama, after about the 10th May, 1943?
- A. No, nor did I know that he was ill.
- Q. Did you receive a telegram from Felix Wijesinghe?
- A. I received one after he returned. 20
- Q. When was it exactly that your wife told you that Mr. Ratnayake died?
- A. On the day he died, after the 1 p.m. radio announcement.
- Q. Your sisters-in-law also did not attend the funeral, and Mr. Wijesinghe was the only member of the family present?
- A. Yes.
- Q. Then you went and saw Felix Wijesinghe, at that date, did you know about this Will?
- A. No, the first time when I went and saw him he said he was going to get all the particulars and I brought him down to Deal Place 30 and had a discussion, he, my wife and myself. The first time I saw him must be less than a week after the death.
- Q. How long after the death did Wijesinghe see you at Dehiowita for the first time?
- A. May be 4 or 5 days after the death at the most.
- Q. Then you came to Deal Place with Felix Wijesinghe?
- A. Yes, and then Felix said he would get the necessary particulars for administering the estate. Then he went to Dehiowita where he showed us the typed copy of the Will and told us he had signed a Proxy in Mr. Seneviratne's office. At 40 that time when he showed me the typed copy of the Will he did not say he was pleased with the Will; he said he suspected it to be a forgery.
- Q. Would you be surprised to hear that Mr. Wijesinghe states he told Mr. Seneviratne that he was quite satisfied with the Will?
- A. I would be very surprised. He could not have said that.

Q. Mr. Wijesinghe was aware of the forgery at the time you saw him at Dehiowita and saw the typed copy of the Will?

A. Yes.

Q. At that date you had not seen the original?

A. No.

Q. All he showed you was the typed copy given by Mr. Seneviratne?

A. Yes.

Q. Did you examine the typed copy?

10

A. Not in the sense of examining it, but I noted the particulars. I read it.

Q. When you looked at the typed copy, having this information from Wijesinghe about his suspicion, what did you say?

A. I said we must see the Will ourselves.

Q. At that time you had not made up your mind?

A. No.

Q. If what Mr. Wijesinghe says is correct that he was satisfied with the Will at that stage, then no one suspected the Will then?

A. Yes, up to that point.

20

Q. Did Mr. Wijesinghe come to Colombo along with you?

A. Not on that date.

Q. Accompanied with your wife you went to Mr. Seneviratne's office?

A. Yes.

Q. And all that you saw and did at Mr. Seneviratne's office you communicated to Wijesinghe?

A. Yes.

Q. You for instance told him that you were shown a document at page 61 with which you were not satisfied?

A. Yes.

30

Q. You told him that at page 47 there was an entry " See page 61 " ?

A. Yes.

Q. So that according to you there was no erasure on page 47 at that stage?

A. Yes, the erasure must have been done after I saw the book.

Q. You later came and inspected the book in Court?

A. Yes.

40

Q. Then you found pages 61 and 62 missing, the original entry at page 47 " see page 61 " erased and a fresh entry appeared "see page 223 ahead for my Will." Your suggestion is this erasure and substitution at page 47 and the disappearance of pages 61 and 62 took place after you saw the document in Mr. Seneviratne's office?

A. Yes.

Q. Did you give this information to Mr. Wijesinghe?

A. Yes, he knows all this.

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Q. Are you surprised to hear that Mr. Wijesinghe says not a word about this?

A. He was very frightened.

(To Court.

Q. What was he afraid of?

A. On the way from Talangama to Proctor Seneviratne's office, Adliette and Herath had been seated next to him and they had been relating all kinds of murderous stories about James Alwis, and he had got afraid. James Alwis had asked him not to contest the Will for fear of our lives. He is looked upon 10 as a bully.

Q. But so far he has not lived up to his reputation?

A. No.)

Q. Would you tell the Court why you say the document P1 is not the act and deed of Mr. Ratnayake?

A. Because I am aware of the writing of the deceased and his signature, and the writing and signature on P1 are not his.

Q. How can you support that statement. First take the two signatures, can you draw a distinction between the two?

A. They are not the signatures as generally put by Mr. Ratnayake, 20 pictorially not so; I mean at a glance.

Q. But what is the distinction, is there any difference?

A. There are differences at sight. I have not examined critically.

Q. Then why did you undertake to say this is not his signature?

A. I have a mental feeling that these signatures are not Mr. Ratnayake's.

Q. Can you give any other reason?

A. No.

Q. Now take the writing. Why do you say this is not the deceased's?

A. Firstly, we had seen it on a different page which is now missing. 30 That is one reason.

(To Court.

Q. What made you note page 61 particularly? Do you remember it?

A. We saw P1 in the District Court only a few days after we had seen it at Mr. Seneviratne's; then I remembered this reference at page 61 and brought it to Mr. Muttukrishna's notice. Mr. Seneviratne pointed out page 61 to us. He turned to the page referred to at page 47.

Q. Did he draw your attention pointedly to the number of the page? 40

A. Not pointedly.)

What I say is he has got it written at page 223 and destroyed page 61. In my opinion what appears at page 223 is more of a forgery than what appeared at page 61. What appeared at page 61 had been written by a person with a steady hand, like a schoolboy's,

Q. At page 47 the entry " see page 223 for my Will " is initialled by the District Judge and dated 8th July, 1943?

A. I am not sure whether it is by the District Judge. (Mr. Samarakone says application was made on the 5th July and as there was a reference to the Last Will on that page this item was initialled by the Judge at Mr. Seneviratne's request.)

Q. With regard to the Secretary's endorsement at page 60; it was Mr. Muttukrishna who pointed out to the Secretary that page 61 was missing?

10 A. No, Mr. Amarasekera.

Q. What is the date of that entry?

A. 24th September, 1943.

Q. That is the date on which Mr. Muttukrishna wanted to examine the document?

A. We came to see the Will along with Mr. Amarasekera a few days after it was filed in Court.

Q. But that entry is dated 24th September?

A. We saw earlier that it was missing and brought it to Mr. Amarasekera's notice.

20 (To Court.

Q. When did you discover it?

A. 3 or 4 days after it was filed in Court; that was the first time I discovered that the Will at page 61 was missing.

Q. The entry is dated 24th September. Why all this delay?

A. We did not discover the missing page 4 or 5 days after the case was instituted. The first time I noticed the absence of page 61 was on the 24th September when I got Mr. Amarasekera immediately to bring it to the notice of the Secretary and have it initialled. If I saw it earlier I would have done the same thing earlier.

30

Q. You had this number 61 impressed on your brain when you came subsequently to look at this book, and you turned at once to page 61?

A. We were looking for the Will and we got the Will; we did not look for the page. We had no idea of the page at all. I had forgotten the page 61 at that stage.

Q. When you saw the Will at page 223 you did not think there was anything wrong?

40

A. We felt there was a difference in the writing of the Will that we saw earlier and the writing in this. We had that idea and came home. We did not try to see page 47 or 61 on that date because we had forgotten the pages at that time.

Q. When did it come back to your mind?

A. We were thinking of all this and then we remembered this reference to page 61. We were discussing at home as to what made us think this was not the same thing that we saw at Mr. Seneviratne's,

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- Q. Then this page 61 suddenly flashed into your mind?
A. Yes.
- Q. And you then came rushing back to your Proctor?
A. Yes.
- Q. That was on the 24th September?
A. No, a day or two before 24th September. And we told Mr. Muttukrishna that we had this suspicion that the Will appeared on another page. Then we discovered that page 61 was missing. That was the only page that was missing.)
- Q. So that you did not give your mind to the page on which this 10
Last Will appeared on the day you saw it in Mr. Seneviratne's office?
A. Yes. We forgot it and later on our memory revived. A few days before the 24th September we informed Mr. Amarasekera and Mr. Muttukrishna and even Mr. Wickramanayake.
- Q. Did you make a note of the page when you saw it in Mr. Seneviratne's office?
A. No.
- Q. He showed you the will only?
A. The reference was shown to us. 20
- Mr. Seneviratne said he had consulted experts and had satisfied himself that this was Mr. Ratnayake's Will. My wife said it was not her uncle's writing and I also said that. He then said how can you say that, we have consulted handwriting experts.
- Q. Did he anticipate a contest?
A. I don't know whether he anticipated or not but he said this. It might be a false statement. It was an unnecessary statement.
- Q. If he did not anticipate what you were going to say what reason had he to make that statement?
A. He wanted to impress on us that it was a genuine Will and wanted 30
a Proxy signed by us.
- Q. It was to induce you to sign a Proxy?
A. Yes.
- Q. Your wife is one of the Respondents to this application?
A. Yes.
- Q. At the time of your visit to Mr. Seneviratne he had already taken a Proxy from Felix Wijesinghe?
A. Yes.
- Q. Was it before or after Mr. Wijesinghe signed that that you went to Mr. Seneviratne's office?
A. After he signed it. 40
- Q. Then at the time you went to Seneviratne's both Petitioners had signed proxies?
A. Yes.
- Q. Your suggestion is that knowing your wife was a Respondent Mr. Seneviratne wanted to get a Proxy from her also?
A. Yes.

Q. That is in order to draw expeditiously the money that was in the bank?

A. That is what he said.

Q. There are two minor-Respondents in this case?

A. Yes.

Q. You know at the time you went to Mr. Seneviratne's there was an application to appoint a guardian over them?

A. The first time I knew that was when the case was taken up.

10 Q. Do you know that as there were minors the Proctor for the Petitioner could not draw any money?

A. I do not know that.

Signed N. SINNETHAMBY,
A. D. J.

12th October, 1948.

Appearances as before.

Witness Amarasekera is absent. Issue warrant on him for 5th November, 1948. The Petitioner will be entitled to the costs of today.

Signed N. SINNETHAMBY,
A. D. J.

20 Later.

Counsel mention the case, witness is present and I take the matter up. The previous order is vacated.

Errors in previous day's proceedings are corrected by consent.

J. H. Amarasekera.—Sworn re-called.

Cross-Examination continued.

30 I cannot exactly remember the date on which I visited the Court with Mr. Amarasekera, my Proctor, to inspect the document. Mr. Amarasekera filed Proxy of the 6th Respondent on the 5th August. I remember my brother-in-law Mr. Felix Wijesinghe filing a motion to revoke the Proxy of Mr. Seneviratne. It was after the 6th Respondent's Proxy was filed that Mr. Amarasekera and I went to inspect the Will in this case: that is, it was after the 5th August, 1943. I saw the present document PlA for the first time after the 5th of August. I know Felix Wijesinghe signed the proxy in favour of Mr. Seneviratne about the 16th or 17th of June, 1943. It was after he signed that proxy that I visited Mr. Seneviratne's office. Before I went to his office Felix Wijesinghe had told me that Mr. Seneviratne had discovered a Last Will and that he had handed to him (Felix Wijesinghe) a typed copy of that Will. I am now aware that Mr. Wijesinghe's position is that that typed copy which Mr. Seneviratne handed to him was a copy of the Will at page 223 of
40 the book.

Q. Then there must have been a Will at page 223 when Mr. Wijesinghe went to see Mr. Seneviratne?

A. The typed copy was a copy of the Will that we saw at page 61.

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- Q. Mr. Wijesinghe has nowhere said that the typed copy was a copy of the Will appearing at page 61?
- A. I am not concerned about what he says.
- Q. Mr. Wijesinghe says that the Will P1a appearing at page 223 is not the Will signed by Mr. Ratnayake?
- A. Yes.
- Q. But he has nowhere said that the typed copy which he got from Mr. Seneviratne is not a copy of that Will at page 223—are you aware of that?
- A. I cannot say that. The question of page did not arise in his 10 evidence.
- Q. But Mr. Wijesinghe has examined the Will in the presence of this Court and he has spoken to it?
- A. It is the same as the Will at page 61.

(To Court.

Mr. Wijesinghe has not said that it is the same, but I say so. There is no difference between the Will at page 61 and the Will at page 223: both were identically the same.)

(Counsel refers to document R20).

(Mr. Wijesinghe's evidence put to witness).

20

- Q. Mr. Wijesinghe has said "after I signed the proxy a copy of the Will was given to me. It was a typed copy. I did not ask for a copy of the Will from Mr. Seneviratne. Mr. Seneviratne, after giving me the typed copy of the Will did not ask me to come again." Do you suggest that that statement of Mr. Wijesinghe refers to some other Will than the Will in Court?
- A. I cannot say whether he refers to any Will other than the Will in Court. He did not refer to any page. I do not make any suggestions.

(To Court.

30

(Shown R20). This is the Will I saw in Dehiowita. There is no difference between R20 and the Will which appears at page 223.)

- Q. Do you suggest that the Will that appeared at page 61 is identical with the Will at page 223?
- A. The contents of both were identical.
- Q. Not very much the contents, but the language, the wording?
- A. We were concerned with the contents.
- Q. In every detail the Will which you saw at page 61 was identical with the Will at page 223?
- A. Yes.
- Q. Are you surprised that Mr. Wijesinghe in giving evidence did not say at any time that the typed copy referred to some other Will than this?
- A. Surprised at what.

40

Q. Surprised at Mr. Wijesinghe not saying in his evidence that the typed copy which he produced in this Court was something other than this Will?

A. He had no opportunity to say that because they were identical. He himself admits that they were identical.

Q. What you say is there were two Wills and one was destroyed?

A. Yes.

Q. Why was it destroyed?

10

A. Because my wife and I said it was not in the handwriting of the deceased and there were differences in the writing; the one on page 61 resembled that of a school boy who had just tried to copy something.

(To Court.

The Will at page 61 was obviously a forgery; the one at page 223 was not so obvious; it had a close resemblance to the deceased's handwriting.)

Q. Mr. Seneviratne went out of his way to give Mr. Wijesinghe a typed copy of a Will that was destroyed?

A. That is what Mr. Wijesinghe made us understand.

20

Q. You have already admitted that the typed copy corresponds to the Will in Court?

A. Yes.

Q. So that would it be consistent with the case that it was this identical Will which Mr. Seneviratne showed to Mr. Wijesinghe on the 16th or 17th of June?

A. Yes.

Q. That this identical Will at page 223 was there when he signed the proxy on the 17th June?

A. I cannot pass an opinion on that.

30

Q. You find it difficult for this reason: because Mr. Wijesinghe does not support your case—will you admit that Mr. Wijesinghe does not support your case?

A. It is not that; he advised us not to contest this Will for fear of our lives. He is giving false evidence fearing that he will be murdered if he did otherwise.

Q. Mr. Wijesinghe having a typed copy of another Will withheld that information from his evidence at that stage?

A. He could have said 'I have got a typed copy of a Will that appeared at page 61' I do not know why he has not said so.

40

Q. Could it be that you are giving false evidence and Mr. Wijesinghe is speaking the truth?

A. I deny that I am giving false evidence.

Q. I put it to you that this Will at page 223 was there when Mr. Wijesinghe went on the 17th or 16th June?

A. I cannot deny it because I did not look at page 223 at that time.

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Q. When you came with Mr. Amarasekera to Court to inspect the document that was filed in the record your position was that you had discovered that the will had been destroyed and another had been substituted?

A. That was not my position. I only felt that the one I saw the first time I came with Mr. Amarasekera had a different handwriting to the one I had seen at Mr. Seneviratne's office.

Both Wills were in the same book. But I did not go through the other entries in the book at that time on that day. I have told the Court that I saw a Will at page 61. I came to the District Court later and found that there was another Will at page 223. 10

Q. You told the Court your inference was that Mr. Seneviratne had got the Will at page 61 destroyed and the Will at page 223 substituted?

A. I did not say that Mr. Seneviratne did it. I said that I saw in Mr. Seneviratne's office such and such a thing and it was missing from the book at the Court. Somebody else may have done it or somebody may have burgled it and done it.

On the 25th August, 1943, the 6th Respondent swore to an affidavit by way of objections to the Will. 20

At the date my wife, (6th Respondent) filed objections by way of affidavit it was within my knowledge that the Will which I saw at page 61 had been destroyed. The fact is not referred to in the affidavit. We gave instructions to Mr. Amarasekera and it was he who drafted the affidavit. I cannot explain the absence of such a grave charge in the affidavit. There was such a thing at that stage. The affidavit that was filed was a sworn document, I admit that the omission is a very serious one.

I cannot give the exact date on which I went to Matara to meet Martin. I am not too sure whether it was after I found that a forged document was filed in Court. 30

Q. Before you went to Matara you were aware that there was a forged Will filed in Court?

A. I cannot be sure on that point as to which date I went to Matara.

I cannot say whether it was known to me at that time that a document had been destroyed. Mr. Amarasekera's proxy was filed on the 5th August. Shortly after that we discovered this forgery; it was just after that we went to Matara. The special object of my visit to Matara was to get information in regard to the forgery.

(To Court.

When I went to Matara I knew about the missing page.) 40

I knew that Martin was one of the subscribing witnesses to the Will. I went to Matara as a result of a message left by Martin, not as a result of what I discovered in the Court. I did not know Martin at that time. I only saw his signature.

Q. Why did you wait until you discovered about this forged document to go to Matara?

A. It was when Felix Wijesinghe informed me that Martin had come to see him, he was not there and a message was left that I went to Matara. I went to see Martin in connection with this forged Will. Before that I sent my brother also. I cannot fix the date when I sent him. It was after I found out the the Will Pla.

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There were four other witnesses to this Will. I tried to find out their antecedents from the people at Talangama. I knew where they were because
10 their addresses were given. I did not hit upon Martin to get information; it was my brother who hit upon him.

(Passage in previous proceedings put to witness.)

Q. You and your brother-in-law Felix both knew you were going to see Martin to get information with regard to this forgery?

A. Yes.

Q. If Mr. Wijesinghe says this "I did not know at that time as to why I was going to see Martin on that day except it was on some important business" that is not true?

20 A. He knew that we were going to see about the forgery. His evidence is not true.

Q. Later he says "so that I knew I was going to Matara to meet Martin to question him with regard to this Will?"

A. That is correct.

Q. "The first question that I discussed with Martin was the question of this Will"?

A. That is all correct.

Q. Do you say that Martin gladly confessed to you that at the instigation of James Alwis he signed this document three days after Mr. Ratnayake's death?

30 A. That information was originally conveyed to us by Martin through my brother and he wanted us to come there.

Q. He confessed to you and Felix Wijesinghe that he signed the document at the request of James Alwis three days after the deceased's death?

A. Yes.

Q. And he asked you for protection?

A. Yes.

Q. Why should he have made this confession?

40 A. Because he felt he was in danger of being prosecuted and sent to jail.

Q. He thought he would make his position safer by saying this?

A. He wanted us to save him from trouble. He pleaded that he had children and did not want to go to jail and asked us to protect him.

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Q. As a matter of fact as soon as you went he did not discuss this matter with you?

A. As soon as we went he started shivering; he was appealing to us: he said he sent word to us to tell us all about this Will because James Alwis forced him to sign the Will three days after Mr. Ratnayake's death.

Q. Can you suggest why James Alwis should be the prime mover in this conspiracy?

A. Yes, because he was the father of the first child, the 1st Respondent. This is the information I got from Talangama. 10

Q. Was he the father of the second child also?

A. He may be a partner to it.

Q. Your case is that the 1st and 2nd Respondents, the two minor children, are James Alwis' children?

A. Yes.

The Birth Certificates of these children are there. Firstly they are a forgery and secondly, that is a blackmail.

Q. How do you know of this paternity?

A. I got this information from the Headman of Talangama and several others. 20

I got information after this case: I made inquiries after this case.

Q. When James Alwis was giving evidence you were seated behind your Proctor?

A. Yes.

Q. Can you tell me why he was not questioned about this paternity?

A. He was questioned.

Q. That is, intimacy was suggested: was it at any time put to him about the paternity?

A. From intimacy paternity would have been taken up but it was objected to on certain grounds and no further questions were 30 put to him.

Q. Then you say owing to James Alwis being the father of these two children he had frightened Martin and induced him to sign this document?

A. Yes.

Q. You went to the rest house after that?

A. Yes.

Q. You took Martin to the rest house and took tea together—was he shivering at that time?

A. We assured him that we will not take action against him: we will 40 do our very best to save him.

Q. You thought of reviving him by tea?

A. We went to Matara, we felt that we should have tea and we went to the rest house.

Q. Not only that, you got him to prepare lunch at his house?

A. We bought some things in the market and asked him to prepare lunch. He was quite at ease then and he promised to come along with me to see Mr. Amarasekera. I left after lunch saying that I will come back the next day. I returned the next day to his house and removed my things from there.

Q. Martin says that you and your brother-in-law went and asked him to give false evidence saying that he signed this Will three days after Mr. Ratnayake's death and offered him Rs. 2,000?

10 A. I say that is false.

(P5 put to witness).

Q. This false man swore an affidavit on the 4th October, 1943 and, *inter alia*, said this: "on the 23rd day of August, 1943 one J. H. Amarasekera and Mr. Felix Wijesinghe came to my residence at Matara at 7 a.m. in the morning" that is correct?

A. I am not sure of the date: it must be correct.

Q. "They took me to the rest house and we had tea together?"

A. That is correct.

20 Q. "We returned to my house and whilst the breakfast was being prepared Mr. Amarasekera and Mr. Wijesinghe sat outside and Mr. Wijesinghe then discussed about the Testamentary Case of Mr. Ratnayake?"

A. That is not correct. The correct thing is, immediately he saw us he told us about the Will.

Q. "He suggested that I should state that the Last Will was executed subsequent to the death of Mr. Ratnayake?"

A. That is not correct. Neither of us told him such a thing.

30 Q. "I refused to be a party to such a falsehood. Mr. Amarasekera promised to give Rs. 2,000 after the same was decided if I gave that evidence in his favour?"

A. That is not true.

Q. So that when this affidavit was filed on the 4th October you were aware that Martin was taking steps to protect himself by making specific allegations against both of you?

A. I was not aware of it on that particular day.

Q. On the 5th October, 1943, there was an inquiry to be held in this Court in this very case regarding the appointment of the Public Trustee as administrator?

A. There was an inquiry, I cannot tell you the date.

40 Q. Just a day after this affidavit was sworn to by Martin?

A. I cannot tell you the date.

Q. Martin's evidence is that he came to Colombo in connection with this inquiry and on that occasion he signed an affidavit?

A. Martin was not called on that day. It was the Public Trustee who was called.

On the 5th October, I was in Court when the inquiry was taken up. Martin was not in Colombo at that time; he was in Matara,

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I do not know whether Martin was in Colombo on the 5th October, 1943. I cannot say that he may have been present in Court on the 5th October.

So far I have not taken any criminal proceedings against any of these witnesses. After getting this information from Martin I informed my lawyers. My wife and I represent the Respondents today. My wife is outside Court. Yesterday also she was here.

I am financially pressed at present. My debts amount to about Rs. 15,000. I got indebted as a result of the wiles practised on me by the other side. It will be of great use to me if I get this money. It is on the security of this estate that I borrowed money. We are entitled to a certain portion 10 of this estate.

(To Court.

In the expectation of getting more than that I borrowed money. By 'wiles practised on me,' I mean, I was made to spend a good deal in this case in various ways.)

On the 5th of July last my property at Kirillapone was advertised for sale on a mortgage decree. The amount of the decree was Rs. 4,000. The sale was stopped after I paid the interest. I still owe that money.

My wife drew some money in the course of the proceedings in this case. I have used that money also. All that money was spent for the case. 20 My earnings, salary, everything gone. It is not dangerous for a public servant go get into debt in this way. It will be dangerous if he spends on drinks and things like that and get into debt. No declaration of a debt is necessary unless somebody reports to Government.

(To Court.

I have never been asked to make a declaration in a confidential report. There is no printed form wherein I have to disclose my liability. I cannot remember having signed a confidential report form or in the normal course I would have signed and sent a form. I cannot remember. I cannot remember of any special part in a form to be signed by a public servant in which he has 30 to disclose his debts. I cannot remember having disclosed any debts. I did not disclose my debts—I have not disclosed.) The fact that I have not disclosed my debts is an offence under the Public Service Regulations. There will be an inquiry as to why I did not disclose my debts.

Q. Why have you not disclosed?

A. I don't remember to have signed a document asking me to disclose my debts.

J. H. Amarasekera
Re-Examination

RE-EXAMINATION

I went with Mr. Amarasekera to the record room to examine this Will. Before that date I had not been to the record room. The Secretary's attention 40 to the fact that a page from this book was missing was drawn on the second occasion I visited the Court. On the first occasion I did not examine the book at all. On both occasions I went with Proctor Amarasekera. On the first occasion we saw the Will and we felt that the Will was not in the same handwriting that we saw on a previous day at Mr. Seneviratne's office,

(To Court.

I looked into the book on the first occasion but I did not examine the other pages.)

On the second occasion I discovered that pages had been torn from the book and this was brought to the notice of the Secretary. The discovery was not made by Mr. Muttukrishna. I informed Mr. Amarasekera and he informed Mr. Muttukrishna. The Secretary made a minute and dated it. I do not remember the date of the minute.

(Shown page 60 of the book). The date of the minute is 24th Sept-
 10 ember, 1943. When my wife swore to an affidavit on the 25th August, I did not know anything about these pages being torn. I did not know that a second Will had been there in this book. Therefore it was impossible for my wife to make any statement on that question in her affidavit. She did say in her affidavit that she had reason to believe that the 1st Petitioner was not the wife of the deceased and that the document dated 23rd May, 1943 purporting to be the Last Will of the deceased was a forgery and was never executed by the said deceased. At that time she went to Mr. Seneviratne's office with me, and saw the Will. That was the Will at page 61 of the book. I have already said that the writing there was like a school boy's fist—a very
 20 steady fist. Both my wife and I told Mr. Seneviratne that this was not in the handwriting of the deceased.

Signed N. SINNETHAMBY,
A. D. J.

Girigoris Perera.—Affirmed.

G. Perera
 Examination

I knew the late Mr. J. A. Ratnayake. I worked under him first as a salesman and thereafter as his motor car driver. I have been in his service for about 36 years. As driver I worked under him for 28 years. He married twice. I knew both his wives. He had no children by either. He did a large business as forwarding agent and supplying cash, that is cooly pay to a
 30 number of estates. Sometimes he supplied cash amounting to 30, 40 and 50 thousand rupees a month to estates. He got a commission of one per cent. on this. I used to go to the bank and get the money. There was also another man who used to accompany me to the bank to bring this money. On some months I used to go to the bank once and on some other months twice according to the demand. The money is brought to Dehiowita, bundled up according to the requirement of each estate and forwarded to the various estates. I used to take the money to the various estates and hand them over to the Superintendent and I used to bring a cheque for that amount or a receipt.

40 I came to know the 1st Petitioner at Talangama in Bank Hill Estate. She was a labourer in the estate. She was known as Alice Nona. Her mother was Kalo Nona also known as Kalohamy. Kalohamy was also a worker in the estate. Her husband was also there and his name was Seneweera. From having been a labourer, 1st Petitioner came to the bungalow to work there during the life-time of Mrs. Ratnayake. 1st Petitioner came to assist Mrs. Ratnayake in the cooking and other household work.

Mrs. Ratnayake died in 1927. Thereafter Alice Nona remained in the bungalow and attended to her work, that is cooking.

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Q. Did Mr. Ratnayake at any time give a breakfast party; did he have a sort of wedding feast?

A. I do not know that. No such thing took place.

When I went with Mr. Ratnayake to Dehiowita I used to take my meals in the shop. At Bank Hill Estate I took my meals in the bungalow. The garage was about a hundred yards from the bungalow. The distance from the garage to the road was about 15 or 20 feet. The road was close to the garage. I used to take my meals in the bungalow and sleep in the garage. If there was a special feast in the bungalow I would have come to know about it.

Q. On the day the 1st Petitioner says she was installed as mistress or wife would such a thing have taken place without your coming to hear of it?

A. No.

Q. She says that her mother and her relatives attended the feast but none of Mr. Ratnayake's relatives came there?

A. Such a thing did not take place.

I was a trusted servant of Mr. Ratnayake. I was sent to cash cheques and bring large sums of money. It is said that I am a beneficiary under the Will which is produced in this case.

Mr. Ratnayake used to consult me before he bought property. He used to send me to inspect the property. I go and see the property and send a preliminary report. Thereafter he used to go and satisfy himself.

Luncheon Interval.

Signed N. SINNETAMBY,
A. D. J.

12-10-48.

After Lunch.

Girigoris Perera, Affirmed—recalled.

Examination Continued.

Mr. Ratnayake was a religious man, he regularly went to church at Dehiowita. From Bank Hill Estate also he attended church, but not so often since he fell ill. From Bank Hill he attended St. Peter's Church, Fort.

He did not work on Sundays and asked us also not to work on Sundays. No work was done on the estate on Sundays and the Dehiowita Shop was also closed on Sundays. Mr. Ratnayake came to Bank Hill for the last time on 10th May, 1943, and died there on the night of 2nd June. During that period he did not go to church at all as he was feeble.

I know Loku Dissanayake, Podi Dissanayake, James Alwis, Martin.

Q. Did this group of people and the Manager of the Co-operative Society come to the bungalow on Sunday the 23rd May?

A. No.

Q. If such a group of people came were you bound to know it?

A. Yes.

Q. They are said to have come that day about 2-30 or 3 p. m.

A. No. I did not see them; about that time I was in the garage. I am definite that such a group did not come.

Q. If Mr. Ratnayake decided to make a Will would he have discussed it with you?

A. He would have.

Q. Did he say anything at all to you about making a Last Will?

A. He said nothing.

10

Q. Never apprised you of the fact that he was leaving a large sum to you?

A. No.

Q. This man James Alwis, was he in Mr. Ratnayake's employ long before Mr. Ratnayake's death?

A. Yes. as watcher.

Q. He was succeeded by Martin?

A. Yes.

Q. Did James Alwis ever have occasion to come to the bungalow after he ceased to be watcher?

A. No.

20

Q. Did he do any work on the estate after he ceased to be watcher?

A. No.

Q. Is it true that he worked on some of Mr. Ratnayake's fields after he ceased to be watcher?

A. I cannot remember.

Q. Is it true his father or brother worked in fields for Mr. Ratnayake?

A. No.

Q. Who was the man who was working the field?

A. William at first and after that one Jusey.

Q. You say it is untrue that James Alwis worked?

30

A. I cannot remember.

Latterly I went and had nuts plucked on Mr. Ratnayake's coconut estate. He had coconut lands at Hendala, Talangama and Magamma. The Talangama estate is planted with rubber and coconut, the greater part coconut, the whole estate being about 40 acres. At Hendala he had eight blocks not contiguous but within a radius of one mile and I used to go to get nuts plucked there. At first I went there by bus. Whenever I went by bus I had to stay a night away from Talangama.

Q. On one occasion when you were away was anything stolen from the Garage?

40

A. Yes, a radiator, two headlights and some other parts of Mr. Ratnayake's Wolseley car.

Q. Thereafter did he give you any instructions?

A. Yes, that I should get back to the garage every evening wherever I might go.

Q. And latterly how did you go to these lands?

A. By bicycle. When I went by bicycle I returned the same evening invariably.

Q. Did you ever between the 10th May and 3rd June have nuts picked at Hendala on a Sunday?

A. No. I did not work at all on Sundays; nuts were picked once in two months.

I know Mr. Ratnayake's sister Mrs. Wijesinghe; her husband ran a business at Yatiyantota as Ratnayake & Co. in partnership with Mr. Ratnayake. Mr. Wijesinghe was head clerk to one Mr. Milson who ran a business called Milson Co. Milson sold that business to one Mr. Caloe who then ran it as Caloe Co. Thereafter Mr. Wijesinghe and Mr. Ratnayake joined together and ran the business. Mr. Wijesinghe financed Mr. Ratnayake. After some time they found they were losing and the business was closed. Mr. Ratnayake had a shop at Dehiowita even earlier and he continued to develop that. The other business was at Panawatte, Yatiyantota. His sister lived at Kandy and Mr. Ratnayake used to visit her and also helped her daughters, his nieces; I know their names Helen Hamu, Muriel Hamu, and Gerite Hamu. 10

Q. You remember the time Muriel married Mr. Amarasisekera? 20

A. I know.

Q. Did Muriel and her husband spend some time with Mr. Ratnayake at Dehiowita?

A. They did.

Q. And did they visit him from time to time?

A. Yes.

Q. Did Mr. Ratnayake visit them in Colombo when he came to Talangama?

A. Once or twice he had gone when they were at Colpetty.

Q. Did the other two sisters also visit Mr. Ratnayake at Dehiowita? 30

A. They spent months during the vacation; both of them were school teachers.

Q. Do you remember Muriel, Mrs. Amarasekera, staying at Bank Hill at any time?

A. Yes. About a week she spent there in connection with some examination; that was before she married. During the lifetime of Mr. Ratnayake's wife.

Q. So far as you saw were his nieces and relatives in the most loving terms with Mr. Ratnayake?

A. Yes. 40

CROSS-EXAMINED

I was 36 years under Mr. Ratnayake, I joined as a salesman in his shop and at the time he lost his second wife I was working as his driver. That would be about 1927. At that time 1st Petitioner was on Bank Hill Estate living with her father and mother.

Q. Before she came to live in the bungalow what was she doing on the estate?

A. Working as a labourer, tilling, for pay.

Q. Shortly after the death of his second wife did 1st Petitioner start living with Mr. Ratnayake?

A. Yes. At first whenever Mr. Ratnayake visited the bungalow she used to come and prepare his meals and go away; later on she resided there permanently. She was residing there as his mistres. That was about an year after he lost his second wife.

10

Q. From that time she was receiving from Mr. Ratnayake the treatment that a wife receives from a husband?

A. Yes.

Q. And he took her about in the car?

A. Not always; on such occasions Mr. Ratnayake occupied the front seat with me and she occupied the back seat.

Q. Why, was he shy about it?

A. Yes. He was somewhat shy.

Q. He used to go to church with her?

20

A. Yes. On one or two occasions with the small child.

(To Court:

Q. And how were they in church?

A. There was no service at that time, this was off time, and they went to fulfil some vow or other to the "Galpalliya" (St. Thomas' Church) Mr. Ratnayake came to Bank Hill about the 10th or 12th day of the month after he had made payments at Dehiowita. He regularly used to do that.) On Sundays he used to attend church, and I drove the car. He never took 1st Petitioner for service. While going shopping or so he went once or twice to church with her.

30

Q. After the birth of the first child did Mr. Ratnayaie and the 1st Petitioner go to church with that child?

A. Yes. I remember he went with the first child from the estate. He used to go sometimes with the child alone. There was once a theatre in aid of the church and school adjoining the Talangama Estate which Mr. Ratnayake attended with the 1st Petitioner and child.

Q. (Mr. Samarakone reads from p. 56 of the evidence of the first trial.) Did you say there "he used to go . . ."?

40

A. What I say now is he went occasionally.

(To Court:

Q. How many times?

A. Once in 4 or 5 months; never to a Service. I mean he went once in 4 or 5 months shopping. To church he only went twice with the Petitioner,

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- Q. Then would you describe that action as “ he used to go to church ? ”
A. No.)
Q. The first child was in 1932?
A. Yes.
Q. At that date 1st Petitioner was living as Mr. Ratnayake's mis-
tress?
A. Yes.
Q. James Alwis was not on the estate at that stage?
A. He was employed at that time on the estate.
Q. At that date 1st Petitioner's father and mother were on the estate? 10
A. I cannot remember; they had left at a certain stage.
Q. When 1st Petitioner's father came to the estate James Alwis left?
A. James Alwis was engaged on the estate after her parents left.
Q. Martin came last?
A. Martin succeeded James Alwis.
Q. You know the child's birth was registered?
A. At the time James Alwis was employed, he brought me a form
to sign as a witness; I did so and he took it away.
Q. When the boy came of school going age he was sent to school by
Mr. Ratnayake? 20
A. Yes.

(To Court:

- Q. When that birth certificate was signed by the deceased you were
present?
A. No. When I was in the garage James Alwis brought a form to
the garage and asked me to sign it. I asked what it was, he said
it was a form to be registered and it was to be sent by post. He
said he was also signing it. Since he too was one working on
the estate, I signed it as he asked. There was already on it a
signature like the master's signature. 30
Q. Why do you say “ like his signature? ” Did you know it as his
signature, what was your impression?
A. I thought the master had signed it. I was satisfied that it was
the master's signature.)
Q. Mr. Ratnayake had to sign a declaration and you signed as a
witness to that declaration?
A. Yes.
(Mr. Samarakone refers to the passage at marginal p. 84 top p. 123.)
Q. At the last trial you said this “ The deceased had two children
by the Petitioner, he was very attached to these children, he 40
looked after them as any father would . . . he also attended to
their schooling, he had no other children.” That statement
is entirely correct?
A. Yes.

(To Court:

Q. You have no doubt as to who the father of these two children was?

A. Yes. It was the master.

Q. You were a very intimate servant of your master?

A. Yes.)

Q. And you knew all about his domestic matters?

A. Yes.

10 Q. From the time Mr. Ratnayake started living with the 1st Petitioner as his mistress he did not visit his relatives?

A. No.

Q. Felix Wijesinghe did not come and his sisters did not come?

A. No.

Q. Nor did Mr. Amarasekera?

A. No.

Q. By reason of Mr. Ratnayake's living with the 1st Petitioner, was there a certain amount of unpleasantness among Mr. Ratnayake's relatives?

20 A. Yes, and Mr. Ratnayake too was not willing that anyone should come.

Q. But the fact was that this mistress was known to all his relatives from the start?

A. Most of them knew; the nieces and nephew knew. Also Mr. Amarasekera.

Q. And so far as the 1st Petitioner was concerned she was a devoted wife to Mr. Ratnayake?

A. Yes. He treated her well.

Q. As a matter of fact both of them treated each other as of the same status?

30 A. Not in the way that a married wife and husband behaved, but he treated her well. They did not quarrel.

(Mr. Samarakone reads from marginal page 84 last column): "He was treating her with the same respect as he would treat a wife." Is that correct?

A. Yes.

Q. As a matter of fact there was no need for Mr. Ratnayake to travel about with his wife at the back and he seated in the front?

A. He was ashamed.

(To Court:

Q. In that case he wouldn't take her at all, even in the back?

40 A. But that is how he went.)

Q. Can you definitely undertake to say that Mr. Ratnayake never got his servants to do any work on Sundays?

A. What I say is that the shop was closed and work stopped on the estate on Sundays.

- Q. Why should he not get nuts plucked on Sundays?
 A. He did not do that; pluckers also did not work on Sundays. Hendala people are all Catholics.
 Q. When you went cycling to Hendala you went about 5 a.m. and returned about 5 p.m.?
 A. Yes.
 Q. That was after this theft of certain things from the garage?
 A. Yes.
 Q. Did you say this at the last trial (Marginal p. 84) "Nuts were plucked once in two months?" 10
 A. Yes.
 Q. Coconuts were plucked on the Hendala Estate every other month?
 A. Yes.
 Q. There would have been a plucking in March; 1943?
 A. Yes. I went for the plucking.
 Q. The next plucking was in May?
 A. Yes.
 Q. That took place about the 22nd or 23rd May?
 A. Yes. That was the period when plucking was done.
 Q. You would have been the person who attended to that? 20
 A. Yes.
 Q. Did you also say "I cannot say who would have come to Bank Hill Estate, while I was not there?"
 A. That is correct.
 Q. If you went to pick coconuts on the 23rd May and someone came to Bank Hill in your absence you would not know?
 A. In my absence I would not know.
 Q. In re-examination at the last trial you said "I was asked whether there was plucking of nuts in May, 1943. I cannot remember the exact date of the picking in May, 1943, I have said that Mr. Ratnayake never got any of his servants to work on a Sunday"? 30
 A. Yes.
 Q. Then the calendar came on the scene and it was discovered that May, 23rd was a Sunday?
 A. Yes.

(Mr. Samarakone states that on the last date Counsel for Respondents stated that he was not calling this witness, and in consequence he did not come prepared with the necessary material to cross-examine this witness further. There are certain books which he wishes to put to the witness and he wishes to examine those books before he cross-examines the witness with regard to it. I find that Counsel for Respondents did on a previous occasion say that as at present advised he would not be calling this witness. In these circumstances I grant Mr. Samarakone's application that he be permitted to cross-examine this witness further on a subsequent date.) 40

It is now 3-30 p.m. Witness is warned to attend on the 18-10-48.

Signed N. SINNETAMBY,
A. D. J.

James Francis Ramanayake.—Sworn.

No. 31
2nd Petitioner's and
4th, 5th and 6th
Respondents'
Evidence
J. F. Ramanayake
Examination

I am living at Ganewatte. I worked at one time in the firm of Milson & Co. as Despatch Clerk; that was in 1898. During that time Mr. Ratnayake was living with Mr. Wijesinghe who was Head Clerk of the same firm. I too was living with Mr. Wijesinghe whose wife and children were with him; he is the father of Felix Wijesinghe and his sisters. Mr. Ratnayake learned at St. Thomas' College, Colombo where he passed the Senior Local. Mr. Wijesinghe put Mr. Ratnayake under Mr. K. D. C. Perera, General Merchant, in 1908 and after he received a training Mr. Wijesinghe gave him Rs. 5,000
10 by selling the premises where Mr. Milson ran his business. Mr. Milson sold his business to Mr. Caloe, his Manager and the business was later known as Caloe & Co. After Mr. Milson sold the business I became Head Clerk under Caloe; later Caloe sold it to M. P. Gomez & Co. I left the business in 1916 to do job accounts in the Kelani Valley Tea Estates. I came under Mr. Ratnayake in 1923 and worked under him for 7 years as his Assistant, and was paid Rs. 60 a month and meals. I left Mr. Ratnayake in 1930. Mr. Ratnayake was twice married and had no children. He was a good Christian, he did not do any work on Sundays and business was closed on Sundays.
20 He went to church and said prayers on Sundays. Even in an emergency he never worked on Sundays so far as the business was concerned. So far as the estates were concerned I cannot say. (Shown R10). My writing appears in this book in pages 177-198. Then comes Marshall's writing. Pages 51-59 also contain my writing.

Q. Was there any resemblance between your writing and Mr. Ratnayake's writing?

A. Somewhat similar.

Q. Between Marshall's and Mr. Ratnayake's writing?

A. Also similar.

Marshall's fist was more like Mr. Ratnayake's; he learned work under
30 Mr. Ratnayake and worked under him since his boyhood. My writing again appears in pages 603-618.

CROSS-EXAMINED

J. F. Ramanayake
Cross-Examination

I can only speak to transactions with Mr. Ratnayake up to 1930. As to how business was done and how labourers worked after that, I am not in a position to say. (Shown pages 223 of P1). This is not Mr. Ratnayake's writing. It is not mine and not Marshall's. This is a very poor imitation of Mr. Ratnayake's writing. Mr. Ratnayake turned the pen to a side and wrote using only one point of the nib. I turned to the right side of the nib and wrote with the other half.
40

Signed N. SINNETAMBY,

A. D. J.

With regard to the application to record Mr. Muttukrishna's evidence Mr. Pereira refers to a case in 1 N.L.R. 382; also a case in 3 N.L.R.

I shall hear him on the matter on the next date.

Signed N. SINNETAMBY,

A. D. J.

No. 31
2nd Petitioner's and
4th, 5th and 6th
Respondents'
Evidence
G. Perera
Cross-Examination
—Continued.

18th October, 1948.

Appearances as before.

Errors in previous days' proceedings corrected of consent.

Girigoris Perera recalled.—Affirmed.

Cross-Examination Continued

Mr. Ratnayake the deceased kept a check roll for the labourers on Bank Hill Estate. I say definitely that Mr. Ratnayake did not get his labourers to work on Sundays.

(Shown the Check Roll X3). The Check Roll he had was just like this. 10

(To Court:

I cannot say that this is the Check Roll he kept. I know his handwriting. This is entered in his handwriting. This is the Check Roll that he kept.)

According to the 1st Petitioner Mr. Ratnayake executed a Will in May, 1943. In X3 the entries in May are in Mr. Ratnayake's handwriting. The first Sunday in May is the 2nd of May (Witness is shown a calendar for 1943). According to the calendar the 2nd May is a Sunday. X3 shows that on the 2nd of May Vitanage Baby Perera has turned out three sheets of rubber. If that is so the entry must be correct. Baby Perera has been working on a Sunday. On the following Sunday, that is the 9th May, Baby Perera is stated to have made five sheets of rubber. 20

I cannot remember whether one Mahagamage Peter worked in the Estate.

X3 shows that on Sunday, the 16th May, Baby Perera turned out one sheet of rubber and again on the 23rd May, three sheets of rubber. If the Check Roll shows that, he must have done work on those Sundays. The total number of sheets appears at the end. The total number of sheets between Peter and Baby Nona is also shown in the Check Roll X3.

Q. Do you revise your answer now which was to the effect that Mr. Ratnayake did not get work done on Sundays? 30

A. Now that the book is produced and in view of the entries the rubber tappers must have worked on Sundays.

Q. As a matter of fact the last day on which an entry appears against the labourers as regards the work they did is the 24th of May?

A. Yes.

The total rubber made appear in the end of the column. "S.R." means Smoke Room. According to X3 Mr. Ratnayake has totalled up the entries of work done up to the 24th of May and totalled up for the month. Mr. Ratnayake died in June. There are no entries in June. 40

Q. You are aware that the Will was executed on the 23rd May?

A. Yes.

Q. You will now admit that at that date Mr. Ratnayake was able to keep the Check Roll?

A. Yes.

(To Court:

The Watcher worked every day, Sunday included.)

In April, 1943 the 4th was a Sunday. I cannot remember Panagoda Lewis. There was a woman called Baby Perera. Baby Perera has worked on the 18th April which was a Sunday and has turned out six sheets of rubber,

I admit that in April tappers have worked on Sundays.

(To Court:

Q. Are those figures also entered by Mr. Ratnayake?

A. The figures do not resemble Mr. Ratnayake's writing.

10 I cannot say whose writing they resemble. I know Mr. Ratnayake's figures. If I see one of his figures I can say whether they differ from this.)

(Shown the figures in May.)

Q. What do you say about these figures?

A. They are also not in his handwriting.

Q. So that Mr. Ratnayake only writes the names, the figures are somebody else's?

A. I cannot say.

Q. You cannot say if the figures are his or not?

A. They are not Mr. Ratnayake's figures.

20 *Q.* Do you know who kept the book?

A. I do not know.

I was his confidential servant. I was the man who used to go and bring money from the Bank. I was the one man he trusted. I do not know who kept the Check Roll in the Estate. He himself entered the account. He must have entered the figures also. He had no one else to keep his book for him. I have not seen anyone else making entries in X3 apart from Mr. Ratnayake.

Q. In the morning when the labourers come who takes their names down?

30 *A.* It is all done in the bungalow. I do not know who does it. I was not present.

When Mr. Ratnayake is there he does it. In his absence whether it was done by Alice Nona or somebody else I am unable to say. Alice Nona is the 1st Petitioner.

(To Court:

Q. When the labourers go out in the evening who takes the accounts of the sheets?

A. That is done in the bungalow. Alice Nona takes the accounts. If Mr. Ratnayake is there he takes the account. When Mr. Ratnayake goes to Dehiowita I cannot say who does the writing of the accounts. I go with Mr. Ratnayake.)

40

I do not know whether Alice Nona writes in another book or where she writes.

No. 31
2nd Petitioner's and
4th, 5th and 6th
Respondents'
Evidence
G. Perera
Cross-Examination
—Continued.

Q. Could it be that she gave the dates to Mr. Ratnayake and he entered them in this book during periods when Mr. Ratnayake was not in Talangama?

A. May be.

(Shown X5). 17th January, 1932 was a Sunday according to the calendar. According to X5 on the 17th Mr. Ratnayake shows that he has paid Rs. 33.75 to the manure coolies and that he paid tappers a sum of Rs. 16.

(Shown Entry in X5 under date 17th September, 1933 at page 17). This entry shows on that day besides other payments he paid coconut pluckers Rs. 18 and Re. 1. 10

I remember bringing Mr. Wijesinghe to Mr. Seneviratne's office. On that day Mr. Wijesinghe told me that he had signed a proxy. He also told me that Mr. Seneviratne had shown him a Last Will.

G. Perera
Re-Examination

RE-EXAMINATION.

I said the figures in X3 are different from Mr. Ratnayake's figures. I notice some of the figures in pencil appear to be inked. There is an erasure at one place.

My master was at Dehiowita from the 26th of a month to the 10th of the following month.

Martin whose name appears in X3 is the same Martin who was the brother of the 1st Petitioner. Watchers are expected to go round the boundary every day to prevent thefts. 20

Mr. Ratnayake used to enter up his personal accounts. That is, the daily purchases of foodstuffs and so on at Dehiowita he used to enter up in a book. I do not know how he wrote in balancing his accounts—income and expenditure. Either the watcher or Alice Nona must have kept the accounts of the tappers and so on in the book during Mr. Ratnayake's absence in Dehiowita.

(Interval.)

Signed N. SINNETAMBY, 30
A .D. J.

18-10-48.

After Lunch.

A. Muriel
Amarasekera
Examination

Ada Muriel Amarasekera.—Sworn.

My mother was a sister of Mr. Ratnayake. My father was originally doing business at Dehiowita with Mr. Ratnayake. After my father's death, Mr. Ratnayake helped our family, my mother and 4 sisters, one dead now. Helen and Girtie are living; they are spinsters and teachers. Whenever my mother required money she wrote to Mr. Ratnayake and got help. Mr. Ratnayake spent on the education of the girls, right through their school career. I was a school teacher for nearly 6 years. I taught at the Good Shepherd Convent, Kandy. It was my uncle the deceased who arranged my marriage to Mr. Amarasekera. We got married at St. Anthony's Abbey, Kandy. Both wives of Mr. Ratnayake were dead when I married in 1931. Before my marriage my husband was married to another relative of Mr. Ratnayake, one Miss Abeywardene. Mr. Ratnayake was present at our wedding and he 40

gave me away. I have six children after our marriage we called on Mr. Ratnayake very often and stayed with him, sometimes a week or two, sometimes longer during the children's school vacation. I visited Bank Hill Estate once during the lifetime of my aunt when I had to sit for the Teacher's Examination in 1926. I attended the examination from Bank Hill. Uncle took us to Bank Hill; on that occasion I stayed there about 10 days. I had no occasion to go there thereafter. When we were stationed at Colombo whenever uncle came to Colombo he called on us at Deal Place, Government Bungalow. Mr. Amarasekera was then in the C.T.O. where he worked for 10 15 or 16 years. When we visited him, we saw him at Dehiowita. Dehiowita was his permanent residence and he entertained people there because he went to Bank Hill only on business. There was nothing wrong with the Bank Hill Bungalow. Before my marriage to Mr. Amarasekera, Mr. Ratnayake had told him in the course of conversations that all he had would go to his nephew and nieces.

(Mr. Samarakone objects to this evidence. I have already ruled upon a similar objection earlier. I allow it.)

I last visited Dehiowita about 3 months before his death. Then he was normal but a bit feeble and weak. He looked as if he was suffering from some illness. He was suffering from bleeding piles which made him very weak. I did not know that he was seriously ill at Bank Hill thereafter. I did not get any message from him. The next I heard of him was somewhere on the 4th June, when there was an announcement on the radio that my uncle had died and the funeral was to take place the same day, at 4 p.m., at St. Barnabas' Church, Avissawella. I immediately sent a message to my husband at the C.T.O. and dressed up expecting him to come at any moment. He came, then we wanted to engage a car to go immediately as the bus would take a long time to get there, but we were unable to hire a car owing to petrol difficulties. We had to abandon the trip that day, and by the first bus next 30 morning, the 5th, we set out to Dehiowita and reached there about 8 o'clock in the morning. My brother Felix was not there, only two servants, we waited for about half an hour, had tea there, and came back after leaving a note for my brother asking him to come to Colombo and meet us immediately he got the note. Felix did not come, the next day my husband went alone and met him at Dehiowita. He was not quite well and my husband brought him home. We discussed with him about the death and then about the estate matters and finally he promised to send us all particulars in order that the case might be filed.

At this stage I had not heard about the Last Will, I made no inquiries 40 about it at all. When we discussed with Felix I wanted to file papers asking for Letters of Administration. Thereafter Felix sent a message to us a few days later asking both of us to come there. When we went he told us that a Will had been found at Talangama and it was with one Proctor P. C. Seneviratne, and that he had signed a proxy to enable him to file the Will in Courts and to draw some money. He said he was very suspicious and doubted the genuineness of the Will. I asked him why he signed a proxy, he said under the circumstances he was compelled to do so. He showed us a typewritten copy which he said Proctor Seneviratene had given him. I read through that. Then he gave us the Proctor's address and we decided on seeing the Proctor 50 ourselves that very evening to have a look at the original,

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A. Muriel
Amarasekera
Examination
—Continued.

We came to the Proctor's and introduced ourselves. Mr. Seneviratne said he was glad to meet us and by way of conversation he said your uncle has left a Will, a very fair one, he had left the whole business in charge of your brother.

So saying he went to a cupboard and brought a book in which he showed us the Will. Both of us went through it. As I looked I felt it was not in the handwriting of my uncle. I was familiar with his handwriting because I corresponded with him frequently. I told Mr. Seneviratne this was not his writing. Then he said "It is very strange that you say so because even the handwriting experts say it is Mr. Ratnayake's, it is a very fair Will and I see no reason why there should be any objection." He said it was he who had discovered the Will and even the 1st Petitioner did not know there was a Will till he showed it. Then he turned to another page in which was a reference "see page 61." When I looked at it I saw just above that entry some accounts in uncle's own handwriting, compared with which there was a clear indication that the Will was not in his handwriting. I told Mr. Seneviratne so and that I was going to contest the Will. He showed me the Will on page 61. Then we went to Proctor S. R. Amarasekera; I had not known him before. Proctor Seneviratne wanted me to sign a proxy to enable him to file the Will in Court. but I refused to do so. (Shown P1). I see there is no page 61 now. (Shown page 47). This is not the entry that I saw. What appears on page 46 and top of page 47 closely resembles my uncle's handwriting, but what I see now is not what I saw in Proctor Seneviratne's office; what I saw then was "see page 61."

Q. Have you any reason to doubt the genuineness of this writing?

A. Yes.

Q. Were you ever shown this Will at page 223 by Mr. Seneviratne?

A. No. I was shown one at page 61.

Later I went to Mr. Amarasekera to his office and he informed me that the Will was filed in Court, and my husband and I went with him to look at the Will. For the first time then I saw the Will on page 223.

Q. Did you draw the attention of Mr. Amarasekera to the fact that you had been shown a Will on a different page?

A. Yes.

Q. And in a different handwriting?

A. Yes.

Q. Was any official's attention drawn to that fact?

A. Yes. The attention of the Secretary, District Court; I am not sure whether he made a minute about it.

(Shown P1 and P1b). This is not my uncle's signature.

The word Dehiowita in the Will does not resemble my uncle's handwriting.

Q. Is there any other feature that to you appears different?

A. Uncle writes a more steady fist.

The capital D's are not his at all which I find in DONA ADLIETTE and DEHIOWITA. He never spelt UNTIL with two l's. He won the English Prize at St. Thomas' and was a good English scholar, particularly in pronunciation and spelling. The word SISTERS is not his writing and the formation of the ALL is not his. On the whole there are a number of mistakes and scratches which uncle would never do. Again the word "Executor" is wrong. That is all. I decided to contest the Will particularly after the discovery in the Record Room,

CROSS-EXAMINED

I have passed the English Teacher's Examination, 2nd Class. Mr. Ratnayake's English would be superior to mine.

I was seated in Court till my brother Felix Wijesinghe started to give evidence. I did not read the previous day's proceedings; I have never read any proceedings in this case. I read Mr. Muttukrishna's evidence at the last trial. I did not know that Mr. Muttukrishna too had referred two words like UNTILL in the Will.

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A. Muriel
Amarasekera
Cross-Examination

10 Q. You know that after Mr. Ratnayake's second wife died he used to live at Talangama half of every month?

A. Whenever I visited him at Dehiowita he was there; I went whenever I wished and he happened to be there; he had no fixed period for Dehiowita and for Talangama. I always took my chance and went to Dehiowita; I cannot say in which part of the month I went there. I visited him three months before his death, about March or April, I cannot give the date. I did not know that Mr. Ratnayake went to Talangama monthly, but he used to go there. I never troubled to ask him from where he came, when he came to see us. Dehiowita is 35 or 38 miles from Colombo.

20

Q. Did you try to find out whether he came from Dehiowita?

A. I never asked him, it was not necessary for me to do that, no occasion for it nor did I ask him where he was going after seeing us. When it was late even he could have gone back to Dehiowita because he had his car. Whenever he came he would stay for a meal or a bite and spend an hour or so.

Q. After the death of your second aunt you never visited Mr. Ratnayake at Talangama?

A. No.

30

Q. Why?

A. I always went to Dehiowita because I knew it was his permanent residence; I always met him there; there was no occasion for me to go to Talangama; I preferred to meet him at Dehiowita; it is very difficult for him to entertain at Talangama, there was no furniture there.

(To Court:

Q. But you said in your evidence that there was nothing wrong with the bungalow there? Is it not because you knew he had a mistress?

40

A. No. There was a rumour that he had a mistress, but I did not believe it.

Q. When did you hear that?

A. I cannot tell you that. A year or two before he died, but it was only a rumour.)

I went to Talangama in 1926, after that I did not go.

Mr. Ratnayake's second wife died in 1927. Girigoris is a trusted servant of Mr. Ratnayake,

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2nd Petitioner's and
4th 5th and 6th
Respondents'
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A. Muriel
Amarasekera
Cross-Examination
—Continued.

- Q. If Girigoris says that the close relatives of Mr. Ratnayake knew that Mr. Ratnayake was living with a mistress for a long time is that correct?
- A. I did not know. I do not know what Girigoris said.
- Q. Girigoris says that as a result relations between Mr. Ratnayake and his nieces were strained?
- A. I don't know how he came to know that. I don't know, I cannot tell you.
- Q. I put it to you that you did not visit Mr. Ratnayake at Talangama after the death of your aunt, because he was living with the 10 1st Petitioner who was his mistress?
- A. No.

(To Court:

- Q. How did you visit him at Dehiowita?
A. We went by bus.)

After my mother's death Mr. Ratnayake helped us; whenever we needed money he sent us. He also helped Felix Wijesinghe from the time he was at school.

- Q. Mr. Ratnayake at any time did not invite you to Talangama?
A. No. I don't know whether he was not anxious that we should 20 come to Talangama.
- Q. In this case the only party filing objections to this application is yourself?
A. Yes.

I swore an affidavit. The evidence with regard to my visit to Mr. Seneviratne's, all this was available from me at the last trial. I did not give evidence because I was not called. I am rather angry with my lawyers because of that.

- Q. But your evidence is much more important than that of Felix 30 Wijesinghe?
A. He is a very timid chap. I told my Counsel that I wanted to give evidence, but my Counsel advised against it, in our interests. Counsel said the other side had not proved their case. Nor did my husband give evidence.
- Q. All these instructions were available to the Proctor at the time of the first trial?
A. Yes.

Mr. Ratnayake was looking weaker and feebler when I saw him 3 months before his death; after that I did not visit him. But he was not ill; he was doing business all right; he only looked poorly and ill. He was 40 suffering from piles for a long time. We used to wait for the vacation to see him with the children.

- Q. The first intimation you had of Mr. Ratnayake's death was the announcement on the radio?
A. Yes. It was not possible for us to have gone that day because the funeral had taken place at 4 p.m. the same day; information was received by us at 1-30 or 2 p.m. If we got a car we might have gone. On the next day we went to Dehiowita, could meet Felix and we came back.

Q. When did the idea of administering the estate of Mr. Ratnayake first strike you?

A. When Felix came home and discussed matters with me about 3 or 4 days after the death.

Q. How many days after the death did you go to meet Felix when he told you about his signing a proxy?

A. About a week after, I think.

Q. Mr. Wijesinghe told you that Mr. Ratnayake had left a Will?

A. That Mr. Seneviratne had told him that a Will had been found at Talangama this was told me at Dehiowita, not at Deal Place.

Q. Mr. Wijesinghe does not say that he suspected the Will as a forgery at the time he signed the proxy. Is that correct?

A. It may be so if he has said it. He told me that he doubted it. I read the evidence, read through it all; I mean the evidence of the last trial, not before your honour.

Q. If he was satisfied in Mr. Seneviratne's office, how came he to be suspicious later?

A. He told us he was awfully frightened, he was compelled to sign a proxy, because he was frightened of somebody; he begged of us not to contest the Will, for all our lives would be in danger.

(To Court:

Q. What made him frightened?

A. He was frightened of James Alwis.

Q. Why should James Alwis be angry if Wijesinghe said this was not the Will?

A. 1st Petitioner had told Felix of the murderous acts of James Alwis, that he was a terrible criminal.)

Q. Did Mr. Wijesinghe know of James Alwis at that date?

A. I don't know.

Q. Did you know?

A. No.

(To Court:

Q. Do you know how first Petitioner had come to know of the murderous acts of James Alwis?

A. No.

Q. What were the murderous acts Wijesinghe told you of?

A. Assaulting people, and that he was a thug. 1st Petitioner had told him that if this Will was contested there would be trouble for him, so he got afraid of what the 1st Petitioner had said.)

Q. But if he suspected the Will did he say why he signed the proxy?

A. 1st Petitioner had told this on the way to the Proctor's office, before he signed the proxy.

Q. He showed you a typed copy of the Will as given him by Mr. Seneviratne?

A. Yes.

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Amarasekera
Cross-Examination
—Continued.

- Q. You know that is identical with the Will filed in Court?
 A. When you went to Seneviratne's office you say he took out a book from the almirah and showed you a will at what page?
 A. I did not mark the page; I just went through it.
 Q. Did you say you saw a Will at page 61?
 A. Later I noted the page. Later, on the same day, in his office I saw the Will at page 61. He showed me the entry " See page 61." As I was reading and remarked it was not his writing, Mr. Seneviratne said "It is strange, because he has made a reference"; so saying he showed me this entry " see page 61." 10

Then I noted it in my mind. My husband also saw that entry, he was by my side; his memory must have been as good as mine with regard to this. Later on when Mr. Muttukrishna saw it in Court I remembered that entry. Still the words " see page 61 " were there after the document was filed in Court.

- Q. Above that entry " see page 61 " you were quite definite the writing was that of your uncle?
 A. Yes. I am quite definite.
 Q. Now the whole book is practicably rewritten?
 A. It amounts to that. Page 46 also is somebody else's handwriting. 20
 The entry " see page ahead 223 for my Will " is in the same handwriting as that which appears above on page 47 and what appears on page 46.
 Q. Did you read the Will at page 61 carefully?
 A. Yes. At Proctor Seneviratne's office.
 Q. The Will at page 61 was different from the Will on page 223?
 A. The handwriting, nothing else. What I mean is the handwriting of the Will that now appears at page 223 is different to the handwriting originally at page 61, and both are different to my uncle's handwriting. 30
 Q. You came to Court to inspect this document on the day you filed proxy for Mr. Amarasekera?
 A. A few days later Proctor Amarasekera informed us that the Will had been filed in Court; then I came together with him. That must be about 5 days after I filed proxy in favour of Mr. Amarasekera. That was my first inspection of the document in Court.
 Q. Then according to you this entry " see page 223 ahead for my Last Will " must have been inserted in that book after that inspection by you? 40
 A. Yes.
 Q. Certainly about five days after you signed Mr. Amarasekera's proxy?
 A. Yes.

(To Court:

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2nd Petitioner's and
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—Continued.

Q. On that first inspection in Court you also noticed that the Will that appeared at page 61 was there?

A. I did not turn to page 61. When I looked at the handwriting I told Mr. Amarasekera to verify whether it was on page 61. On that occasion Mr. Amarasekera, my husband and I came to the Record Room, the book was given to the Proctor, who brought it to the table; then I turned to page 47 first and there I saw "see page 61" for myself; then I asked Mr. Amarasekera to verify and see whether the Will was at page 61. Then he said Yes and went away saying he had some other business to attend to. My husband and I came away having seen the Will. Mr. Amarasekera turned over to that page and we read the Will.

10

Q. To what page did he turn over?

A. He turned over to some other page, I am sure he turned to some other page, and then we saw the Will at page 223. I did not note the page on which it appeared but I knew it was not page 61. I don't know whether he returned the book to the clerk before going away.

20

Q. You turned over to see the Will. You asked the Proctor to see whether there was a Will at page 61. And then?

A. I don't know what Proctor Amarasekera did.

Q. When you left the District Court that day, were you satisfied that page 61 was missing?

A. Yes.

Q. How can you know that it was missing?

A. I do not know.

Q. Nobody knew?

30

A. Yes.

Q. It was after that that you swore an affidavit in connection with this application?

A. I cannot say before or after, must have been after.

Q. You swore an affidavit on the 21st August, 1943, 20 days after you signed Mr. Amarasekera's proxy. You filed an affidavit stating your objections to the Petitioner's application, you stated it was a forgery, etc. Now, the Will you referred to in this affidavit is the Will shown to you at the first inspection at page 223?

40

A. The Will I am challenging is the one at page 223.

Q. Did you believe when you swore this affidavit that there was another Will at page 61?

A. I do not know that.

Q. Or was it that you were satisfied that page 62 was destroyed?

A. I thought it had been destroyed.

Q. What were your grounds for thinking that?

A. Because the handwriting was different.

No. 31
2nd Petitioner's and
4th, 5th and 6th
Respondents'
Evidence
A. Muriel
Amarasekera
Cross-Examination
—Continued.

Q. What were your grounds for thinking that the Will at page 61 was destroyed?

A. I felt it was so.

(To Court:

Q. No other grounds at all, just a woman's intuition? Or is there some other reason?

A. Because I saw the Will at page 223 I thought the Will at page 61 was destroyed. I did not know that page 61 was not in the book even. I did not say in the affidavit that there was another will at page 61. 10

Q. Why?

A. Because I was not sure.)

Q. Did you discuss the question of the Will at page 61 with your Proctor before you swore the affidavit?

A. I told him about it. He did not enlighten me.

Q. You know Mr. Muttukrishna gave evidence in this case?

A. Yes.

Q. It was he who for the first time suggested that the alteration at page 47 indicated an erasure and the deletion of 61. Before that nobody has mentioned this page 61 to Court? 20

A. Yes.

Q. You read the whole of the evidence?

A. I read a summary of it.

Q. And you and your husband got the new idea of page 61 after that?

A. No.

Q. I put it to you, your evidence is false?

A. No.

Q. Except both of you, nobody else looked at the Will?

A. It was both of us who went and saw it.

Q. You read Mr. Muttukrishna's evidence? 30

A. Yes.

Q. He makes a point of those words "sisters" "untill" and you also agree with him?

A. Even before he gave evidence when we read the Will we knew they were not spelling mistakes that uncle would have made.

Q. If Mr. Ratnayake was feeble and in poor health at the time he wrote this Will, mistakes would be possible?

A. He would not make a mistake of that nature.

Q. What are you worth?

A. I have no property, no source of income whatever. My husband was compelled to get heavily involved about Rs. 15,000. 40

Q. Was that the result of his contesting this case?

A. Yes. Before that he was never involved. The Kirillapone property was sold. Out of the money in the estate we have taken only Rs. 7,500, the other Rs. 7,500 was held by the Public Trustee as security.

RE-EXAMINED

No. 31
2nd Petitioner's and
4th, 5th and 6th
Respondents'
Evidence
A. Muriel
Amarasekera
Re-Examination

Q. How many visits did you pay to the Record Room?

A. Only one. At that visit Mr. Muttukrishna was not present. I am aware that Muttukrishna came and examined the record, then also I came with him, but I did not see the record at that time, I was seated in the verandah.

Q. Are you aware that on that occasion the Secretary's attention was drawn to the fact that pages 61 and 62 were missing?

10 A. My husband told me so. That was Mr. Muttukrishna's first examination of the Will.

Q. When you went with Mr. Amarasekera for the first time, as far as you recall, page 61 was still there?

A. It was not there.

Q. When you went to Mr. Seneviratne's office he showed you the Will, you said this is not uncle's handwriting, then he showed the earlier page where there was a reference "see page 61." Thereafter did you see that entry "see page 61" in the book at all?

A. No.

20 Q. Before today did you see on page 47 the entry "see page ahead 223 for my Will?"

A. No. I had not seen it.

Q. What you did see on that page was "see page 61?"

A. Yes. My husband told me that when he went with Mr. Muttukrishna he saw the entry in this form.

(To Court:

30 Q. You said in evidence that you went to the Court house to examine the record for the first time with Proctor Amarasekera. You are not sure whether on that occasion you saw the entry "see page 61" appear at page 47?

A. I did not notice it.

Q. Mr. Ratnayake's second wife died at Dhiowita?

A. Yes. I attended her funeral.

Q. You say Felix Wijesinghe tried to persuade you not to contest this Will and he gave you various reasons?

A. Yes.

Q. You were also asked about your husband's debts. Was he indebted before this case started?

A. Never. Debts were incurred after this case.

40

Signed N. SINNETAMBY,
A. D. J.

No. 31
2nd Petitioner's and
4th, 5th and 6th
Respondents'
Evidence
A. Muriel
Amarasekera
Re-Examination
—Continued.

Mr. Pereira moves to read in evidence the evidence given at the previous hearing by Mr. Muttukrishna.

Mr. Samarakone has no objection. I allow him to do so.

Mr. Pereira submits duplicate copies of the photograph of the Will and signatures already produced and marked.

Mr. Samarakone has no objection to their being considered in connection with Mr. Muttukrishna's evidence.

Signed N. SINNETHAMBY,
A. D. J.

Further hearing on 22-10-48.

10

22-10-48.

Appearances as before.

Mr. Pereira reads the evidence of Mr. Muttukrishna.

Mr. Kottegoda reads the cross-examination.

Addresses on the 25th and 26th November, 1948. Further evidence will be read on the 29th October.

Signed N. SINNETHAMBY,
A. D. J.

29-10-48.

Appearances as before.

20

Mr. Kottegoda continues reading the evidence of Mr. Muttukrishna. under cross-examination. Mr. Navaratnarajah closes his case reading R1 to R22 and Y1 to Y9.

Signed N. SINNETHAMBY,
A. D. J.

No. 32
Addresses to Court

NO. 32

ADDRESSES TO COURT

25th November, 1948.

Appearances as before.

Mr. Navaratnarajah Addresses me.

For the moment ignore the evidence tendered by the Respondents. 30
The Petitioner and her witnesses have failed to prove the due execution of the Will. The first blunder which the fabricators of this Will have made is as regards the date. The Will according to them was executed on the 23rd May, 1943, and it is found in the account book P1 which is a very revealing document. P1 reveals what sort of a person the deceased was. It is a book of accounts kept regularly from 1932 to 14th May, 1943. There are entries in regard to various expenses even expenses which amount to a few cents. Why is it that subsequent to the 14th May, 1943 there is no entry in the book P1. The Petitioner was asked quite clearly in regard to expenses incurred

subsequent to the 14th May. See evidence. Why is it that those entries do not appear? The reason is that the testator was ill, so ill, that he could not write his account after 14th May, 1943. This question was addressed to J. De Alwis Dissanayake. See evidence.

It was made clear to the petition very early in the case that one line of attack the Respondents took was this: " You say the Will was signed on the 23rd May, but we ask you to look into the account book and prove that he has kept accounts after the 14th May " and suggested that he was not in a position to keep these accounts. What was the Petitioner's reply to this.
10 See proceedings. She could not give an explanation. There is another fact: the Petitioner says the Testator was well enough until three days before his death.

On the 23rd May, 1943, according to the Petitioner, James Alwis had gone to fetch Loku Dissanayake, Podi Dissanayake and two others and they were present when Will was signed. In cross-examination these witnesses were asked what they thought, why they were wanted. All the witnesses barring one said " we did not think about it." But one witness said " may be we thought he was ill, may be it was because of his illness. The one inference the Court can draw is that the deceased did not keep the
20 accounts because he was ill; no other explanation has been offered.

The next point for consideration is: the Will is not the Will of the Testator. Place that Will side by side with the writing that appears in the account book for the month of May and April. Has the Will been written by the person who wrote the accounts on the 14th May? If one has to look at it in the way in which trade marks are compared one may get the impression there is some resemblance but with the writings places side by side can one say this is the writing of Mr. Ratnayake.

This Will was written on the 23rd May. There is evidence that he was ill. It must have taken some time to be written up. Who is the person who
30 can say when this was written. Why does not the Petitioner say when this was written. She does not want to say that this is the writing of the deceased. She does not want even to go so far and say that this is the writing of the deceased. One can assume that the Petitioner was there looking after the deceased. She must be able to say whether the deceased wrote this in P1.

Loku Dissanayake's evidence. The deceased is said to have told him " I have prepared my last Will and I have sent for you to sign as a witness." See James Appu's evidence " I asked you to come here because I have written my Last Will and I want you to sign as a witness."

40 What is the Petitioner's story about this account book? See proceedings.

See the Will now. It is in evidence that Ratnayake was a well-educated man: he was also good in English as will be seen from the documents produced in this case. They are not merely ordinary accounts, but copies of his returns to the Income Tax Department with all sorts of explanations asking for reduction. See R8.

Here is a man who has lived his life in Dehiowita always. He has written a number of receipts saying Dehiowita. Examine the Will. The man who wrote the Will did not know the way to write out Dehiowita. Looking

at the word Dehiowita through the magnifying glass, it will be found he started it off as Dehiwala or something like that but certainly there is a correction. Also see the word "marriage" He was not able to spell that word. Also the words "untill" "Liabilities" which is a word which often turns up in the income tax return, "foreign," "executors." There are a number of words which obviously had been written wrongly by the writer of the Will and corrected thereafter. This is a test that one will apply in finding out whether the Will is a genuine document, in identifying the writing. See *Osborne on Handwritings* at page 399.

See the attempted alterations in the construction of the various words in the Will. It is open to the other side to show that this is a common habit of the deceased; but nowhere has he made such corrections. Number of corrections have been made but not one word has been erased. But look at page 47 of P1; the writing has been erased and the following written: "see page ahead 223 for my Will." This man who was prepared to leave this Will with corrections, thinks it necessary when he comes to write out that word "ahead" to erase what was there and write out this word. 10

The word "ahead" being used by this man is rather suspicious. Supposing he put "page 223" no one is going to look backwards for that page. The word "ahead" is really an unnatural word to use for a person who is fairly educated. What was there was "61." The bottom part of the "6" forms the "a" and what was left over forms part part of the "h." The words that were written first were "see page 61." Then they were erased and immediately the word "ahead" was put in. Page 61 is also missing from this book. It is strange that a page from an account book is torn. One must have done it deliberately and not accidentally. It is unlikely that the deceased would have done it. What is the purpose. There are other account books produced; can any book be shown in which he has torn off a page. Or is it that page 61 was there, it contained a certain Will, that page was torn and another Will was written out and the word "ahead" was put there to cover up the "61." 20 30

Consider the conduct of the parties after the death of the deceased. Petitioner met Felix Wijesinghe on the date of death. She never mentioned a word to him about this Will. Girigoris was sent by Wijesinghe to the Petitioner to ask for the deeds for the purpose of administration about two or three days after the funeral: not one word was mentioned to Girigoris "why are you asking the deeds for the purpose of administration, the deceased had left a Will." The only reply she gave him was "come with a Proctor." Proctor Burhan goes, but no word was mentioned to him about a Last Will. All these three facts are established not by the Respondents' evidence, but by the evidence of the Petitioner. But she had also to tell that on the date the Will was signed it was referred to as a Last Will. Then she would have to explain "you knew very well that a Last Will has been executed, why is it that you did not mention it to Felix Wijesinghe or Girigoris or Burhan. Her explanations is "I did not know what was meant by a Last Will." She would have it believed that this Will was discovered by Mr. Seneviratne, but in the cross-examination she had to admit that she knew what was meant by a Last Will. The alleged discovery of the Will by Proctor Seneviratne sounds almost like a fairy tale. See proceedings. How the Proctor came into the scene is shown in the proceedings. 40 50

Weerakone's clerk did not even introduce Mr. Seneviratne to the Petitioner. Mr. Seneviratne had to go there and do everything else. He had a bundle of deeds, accounts books, all with him, but straightaway in a minute he discovered this Will at that page.

See proceedings. Also her explanation as to why she did not interest herself in finding out what this Last Will was about. As regards the admission that she knew all about this Will see proceedings. Those pages clearly prove that she knew all about this Will. She was anxious that Mr. Seneviratne should find the Will. Contrast that with
10 the evidence given in examination in chief, there she forgot about the discovery made by Mr. Seneviratne. She took up the definite position that at the time of Mr. Ratnayake's death she knew there was a writing, but did not know what a Last Will was. The reason why she did not know anything about the Last Will was to explain away the evidence of Girigoris, Burhan and Wijesinghe.

There is another incident that happened after this Will. Martin's evidence is on the 23rd August, Amarasekera and Wijesinghe went asked Martin to give false evidence and offered him Rs. 2,000. Their version is different: that a brother of Amarasekera had posed off as C.I.D. Inspector
20 and threatened Martin and that Martin asked them to save him. That is an important factor. Which story is true? Immediately after that there is the telegram sent by Martin to the Petitioner to be careful. If Amarasekera had gone there and asked Martin to give false evidence, why should he send the telegram to the Petitioner asking her to be careful—careful of what—or is it that that Martin at that time believed that the Police were on the tract, well be careful. This happened on the 23rd August. Proctor for the Petitioner gets Martin to swear an affidavit somewhere in October, long after the incident—for what purpose.

The telegram sent by Martin supports the Respondents' story. The
30 Petitioner in regard to that does not want to admit that the telegram sent to her was "be careful" because if that is so she knew that that telegram went very much to support the Respondent's story. In regard to that incident the evidence of Martin is false. Of the witnesses called Martin is her own brother. The other three witnesses are related to one another. All of them knew she was not the wife of the deceased, but she was a mistress. These witnesses were asked and all said they did not discuss this Will. Why is it that they did not discuss the Will. Nothing was mentioned until the discovery made by Proctor Seneviratne.

Who are the witnesses chosen. James de Alwis has been convicted
40 a number of times. See proceedings. About J. R. Dissanayake see evidence. Martin is prepared to give false evidence whenever he is advised to do so. See evidence.

In regard to the incidents of that day there are a number of contradictions. May be this is due to lapse of time or may be it is because the whole story is a falsehood.

Counsel for the Petitioner will argue that this is a natural Will. But the witnesses' failure to explain why they did not speak about the Will and the Petitioner's story in regard to knowledge about the Will, these two facts prove that this is not the act and deed of the deceased. Even in regard to

the fact that this a natural Will there is the evidence that the deceased was never prepared to allow his children the use of his name. Secondly the Petitioner suggested in the last trial that it was the Registrar who came there and obtained the various signatures, but she had to admit that the Registrar never came there. The suggestion made by the respondents is that the signature of the deceased to those documents was not genuine.

In regard to going to church and so on, what the witnesses spoke of it was hearsay. The Petitioner was questioned and she was not even able to identify the church.

Respondents' witnesses speak clearly to three main things:(1) Wijesinghe's evidence that Petitioner never mentioned to him about this Will. (2) Visit to Martin. (3) Evidence of Amarasekera and his wife that they were first shown the Will at page 61. Their evidence on that point is confused. That confusion is due to the fact that it is false evidence or one may say they got confused because they were excited in the witness box. But the question as to what happened to page 61 will have to be examined really by a consideration of what appears at page 47.

Respondents made a point of the fact that Paulis Perera was not called. Learned Counsel for the Petitioner said that summons was issued, but the witness was not present and asked for a warrant, but the warrant was not taken out for execution. The evidence about Paulis Perera given by the Petitioner is rather interesting. He is always there at Talangama, but he does not come. The other witnesses came here without summons. The suggestion made by the Respondents was that he was not prepared to support this story. He does not want to get into the box and say this is the Will nor does he want to say this is not the Will. See proceedings.

Mr. Samarakone replies.

This case is a continuation of the previous trial, as a result of the judgment of Their Lordships Court. All that the Petitioner is called upon to prove in this case at the present stage is that Mr. Ratnayake signed this Will in the presence of five witnesses. Therefore the only burden that lies on the Petitioner is the due execution of the Will.

It is not for a moment conceded that this Last Will is not in the handwriting of Mr. Ratnayake, but it is not part of the Petitioner's case to prove that. The body of the Last Will is in the handwriting of Mr. Ratnayake. If learned Counsel for Respondents relies on those features which he has stressed for the proof of his case that the Last Will is a forgery, then it is for him to prove beyond any manner of doubt that it is a forgery. Beyond criticising certain defects which he has discovered in the Last Will he has not said a word with regard to the two signatures in the Last Will.

(Mr. Navaratnarajah says he did not want to address Court on this matter as the documents were there.)

The law says that the execution of a Will by five witnesses means the signing of the Will by the Testator in the presence of the subscribing witnesses. A Will before five witnesses has got to be signed by the Teatator and attested by the five witnesses. There is no evidence in this case as to who wrote the Will so far as the body of the Will is concerned. Drawing up of the Will

is different from execution. The Petitioner is here to prove the fact that the Will was executed before five witnesses. Beyond relying on the handwriting experts no point has been made that the two signatures appearing at the bottom of the Last Will were not the signatures of the deceased.

10 While on this point, with regard to the burden on the Petitioner see the judgment of the Supreme Court in this very case which lays down the scope within which the Petitioner has to prove her case. 48 N.L.R. 134 (he refers to the Supreme Court judgment and says Wijesinghe did not sign the affidavit.) The question in this Court to decide is whether the Petitioner has discharged her burden. She has to satisfy Court that on the 23rd May, 1943, these five witnesses came to Mr. Ratnayake's bungalow at Bank Hill Estate and signed this Last Will and that Mr. Ratnayake also signed this Will.

Four of these attesting witnesses have been called. They have spoken of the fact that they were sent for and Mr. Ratnayake signed in their presence and that it was his desire and that they attested his signature and they signed in the presence of each other at the same time. The question is whether this Court will accept that evidence.

20 As regards Paulis Perera he was a party to the affidavit that was sworn to when this application was filed for probate X1. X1 is dated the 5th July, 1943. On that day all five witnesses swore to the affidavit and each spoke to the fact that he was a signatory to the Will as a witness. On the same day this very Will was produced before Mr. Weerakone and it is identified by Paulis Perera. Therefore if he does not come to Court the other side is entitled to make an adverse comment : it must be on the proposition that all five witnesses who have subscribed to the Will must be called to prove the Will. Four witnesses have been called and the law is quite clear on that point. See 48 N.L.R. 470.

30 There is the further proposition of law that even when four witnesses are called if the Court is not satisfied with the evidence of all the four, but has reason to accept the evidence of one or two still the Court can accept that evidence and reject the other evidence and say that the Will has been duly proved.

In this case why should these five people join in a conspiracy involving a criminal act and one can only successfully prove such conspiracy by showing that they stood to gain some material advantage. What is the material advantage these witnesses got by taking part in this conspiracy? There is no suggestion of any motive why these five people fabricated this Will and involved Adliet Ratnayake to seek probate of a forged Will.

40 Adliet Ratnayake was called last, because it was felt that the primary duty was to satisfy the Court of the execution of the Will and that can only be done by calling the four witnesses first and the Petitioner later.

The first question the Court is asked with due respect is whether in the manner they have given evidence in the box quite apart from their past history, the Court has any reason to doubt the truth of their evidence and whether the other side has secured by cross-examination any material contradiction with regard to the execution of this Will. The four witnesses were closely cross-examined with regard to the details of the execution of the Last Will. Would a concoction, as it was suggested, provide facilities for

witnesses of this kind to place before Court such emphatic evidence without a flaw, without a contradiction? On the contrary does it not suggest itself that in this case they are speaking the absolute truth? They cannot possibly out of their own minds supply all the details about Mr. Ratnayake being dressed in a white banian, his putting on the spectacles, his using the pen on the table, these are details which cannot be easily make up in a concocted case. There is also strong corroboration in the evidence of the Petitioner herself.

That Mr. Ratnayake had been in indifferent health for some time, there will be no question. But the question is whether there is any justification in saying that he was so ill that he could not write. That suggestion the other side is not entitled in view of the Supreme Court judgment. 10

The only argument urged by the other side so far as that part of the case was concerned was that Mr. Ratnayake who was so studiously careful of details in entering up this book P1 had made no entry between the 14th and the 23rd May, 1943. On an examination of P1, it will be found that P1 was not posted up daily. The entries are not from day to day. For instance in February the entries appear only on the 13th, 21st and 25th. There is nothing to suggest that he has made no entry between the 14th and the 23rd. What is more, Girigoris had to admit when confronted with the Check Roll X3 that Mr. Ratnayake had been making entries in the Check Roll till the end of May. 20

Signed N. SINNETHAMBY,
A. D. J.

Interval.

Mr. Samarakoone continues his address:—

Before I proceed I would like to refer to the cases which I have cited, viz., 48 N.L.R. 134, 48 N.L.R. 470. I also refer you to the same volume page 196. I was making the submission that I have called evidence of four witnesses that the Will was duly executed. There is an important bearing on this question when we consider the evidence of the second Petitioner, who is opposing us. You will note that his visit to Mr. Seneviratne was according to him on 16 or 17-6-43. He went in the company of the 1st Petitioner in the same car. At that date 1st Petitioner had already signed a proxy at Talangama on 7-6 and gave over the document to Mr. Seneviratne obtaining the receipt X4. So that on 7-6 this Last Will was handed to Mr. Seneviratne. When Wijesinghe came there was a writing. He did not know what it was. His evidence was that Mr. Seneviratne said he had found something like a Last Will. On being questioned he said there was something he called a writing disposing of properties according to what he had learnt from Mr. Seneviratne. So that Wijesinghe had that information when he went with the 1st Petitioner to Mr. Seneviratne's office. On 16th or 17th June when he signed the proxy he had ample opportunity of satisfying himself as to the Will. He says he was pleased with the Will. He was pleased that he got a present of a gold watch and he was armed with the typed copy of the Last Will which Mr. Seneviratne had given to him in his office on that day. All are agreed that the typed copy which was produced was identical with the Will in Court. I like to refer to the evidence shortly at this point. I refer to the evidence of Mr. Wijesinghe in the proceedings of 30 40

27-1-48. I am on this point that on 16th or 17th June, this Will was shown by Mr. Seneviratne to the second Petitioner and Mr. Seneviratne volunteered him a typed copy and I have proved that the typed copy in Court is identical with the Last Will.

How in the world can Mr. Amarasekera say that there was another Will unless the theory is that when Mr. Seneviratne gave this typed copy that he had another Will. The whole idea is so absurd that it ought to be mentioned to be rejected. While on this point I would like to give certain dates. This Will was handed according to the receipt X4 to Mr. Seneviratne on the 7-6-43. 10 It was shown to Mr. Wijesinghe on 16th or 17th June. It was produced before Mr. Weerakoon and identified by the witness on 5-7-43. The witnesses have signed on the top of the Will on 5th July. On the same day Mr. Seneviratne files these papers in Court. On 8th July the Court has initialled the Will which is in Court and has initialled the entry at page 47—the impugned entry. So the dates are very clear. Up to 8-7 there are dates to show the evidence of the Will from the day Mr. Seneviratne got it. When was this Will written? Except Mr. & Mrs. Amarasekera who else saw it. Why did they not get into the box and say the Will was destroyed. It is a bold and reckless suggestion and they have been obliged to fabricate this. Their 20 own Counsel at the last trial did not feel called upon to lead the evidence which apparently he was satisfied should not be led before Court. Accordingly Mr. & Mrs. Amarasekera not only fared badly, but despite their education and social status which they claim for themselves committed gross perjury in this case.

Before I proceed to Mr. Amarasekera I mean to emphasize Mr. Wijesinghe's evidence. Here is this gentleman who sends for his sister and brother-in-law later, and says that he has suspicions, and then Mr. & Mrs. Amarasekera were on the scene. All this is after the 16th or 17th June. All this is after the typed copy had been given. Now Mr. Amara- 30 sekera's evidence is that he saw the document P1a for the first time after the 5-8-43. 6th Respondent files a proxy through Mr. Amarasekera on 5-8-43. It is after that date that Mr. Amarasekera came to the District Court to look into this document which Mr. Seneviratne had already filed on the 5th July.

He says he saw the document after 5-8-43. What is more is that according to them they saw a Will at page 61 in Mr. Seneviratne's office after some day after 16th or 17th June, and after 5th August, because they say when they went to Mr. Seneviratne's office after they interviewed Mr. Wijesinghe they saw the Last Will at page 61. That is their case. So that Mr. Seneviratne when he gave a copy of this Will to Mr. Felix Wijesinghe on the 40 16th or 17th filed the same document, the same Will on the 5th July and showed Mr. & Mrs. Amarasekera another Will at page 61 before Mr. & Mrs. Amarasekera came to court on the 5th August, and on 5th August they themselves saw the missing document. In other words the suggestion seems to be although I do not quite follow it that Mr. Seneviratne gave Mr. Wijesinghe a copy of this Will, destroyed it or rather suppressed it, showed Mr. & Mrs. Amarasekera a Will at page 61 later, and thereafter on 5th July he filed the Will again. The Will at page 223 when Mr. Wijesinghe went was shown to him. Mr. & Mrs. Amarasekera went there after that. The present Will was shown to Mr. Wijesinghe. I refer to Mr. Wijesinghe's evidence given in 50 witness box. He said "I got a typed copy of that Will." Then he went to

pull it to pieces. He went on commenting on the Will in Court. He never at any time said that the typed copy which was given to him was of another Will. It is a vital point in the case and that shows that Mr. Amarasekera's evidence is false. He accepts that position. He did enough damage to me in his own way by saying that this Will was a forgery. His sister and brother-in-law say that there is a forgery. I say the whole position is simply confused in a simple case as a result of the perjury by the Amarasekeras. They are presenting a new case now. In the last trial there was no suggestion that it was another will. This is the case built up on a hypothesis for which Mr. Muttukrishna is responsible. Mr. Muttukrishna says the entry at page 41 seems to have been erased and he says his inference is that I was altered into some letter. His inference is that originally it was I, and it has been subsequently altered to the words that are there. Mr. & Mrs. Amarasekera go on that and introduces this case, a case which was not contemplated by anybody until Mr. Amarasekera got into the witness box. He is supported by his worthy consort, a very intelligent woman, but I am sorry to say a very untrustworthy woman. 10

There is a startling statement made by Mr. Amarasekera in this case and it is this. When Mr. Seneviratne showed the Will at page 61, Mr. & Mrs. Amarasekera were taken aback and say this is not my uncle's handwriting it is a forgery. This is page 61. We have consulted all the important experts in the Island and we are satisfied this is not a forgery. In other words that Mr. Seneviratne had anticipated this contest and he had consulted experts with regard to the genuineness of the Will. There was a Will given by the Petitioner and before the Amarasekeras came in why did he go and consult experts unless Mr. Seneviratne was a party to the conspiracy. In this case much discoveries have been made. They have disgraced their benefactor They have questioned the paternity of the children. Mr. Seneviratne was not on trial. I am not going to take seriously charges of this kind they have made desperate charges because they had a desperate case. Such charges should not be made by eminent Counsel. I would not stoop to such conduct. If Mr. Seneviratne knew that they would take this attitude he would not have filed the proxy and we have fought this case. Mr. Seneviratne conspired to fabricate this Will for what purpose. No suggestion that Mr. Seneviratne is a confirmed perverted criminal whose business is to fabricate Wills for the convenience of other people. No suggestion was made that Mr. Seneviratne was going to get any monetary gain as a result of this fabrication. A desperate case can only justify such desperate methods. There is not an iota of evidence in this case to justify such allegations. If Mr. Seneviratne was the conspirator why should they have gone out of his way to give a typed copy, which he was going to drop later to Mr. Wijesinghe and arm him with material to incriminate him. In other words he anticipated Mr. Amarasekera's visit, he anticipated that he would come and see page 61 and in anticipation he prepared the Will at page 223 and the mad man he was he gave a copy of that also to Mr. Amarasekera. Can a more stupid reckless case have been placed before Court. I refer to the evidence of Mr. Amarasekera appearing in the proceedings. That is self contradictory evidence. That is a very bad contradiction, because when a witness gives false evidence and he is confronted he gets confused. The Court can imagine having had the suspicion that the Will at page 223 was not the Will, he did not take the trouble to see page 47 or 61 on that day. 20 30 40 50

That was discovered by Mr. Muttukrishna on the 23rd October. The minute was made long after. So that even when they saw the Will was not alright they did not try to see page 61 and page 41 on that day, why? Because they did not remember the page. Their memory revived later and then they look (counsel continues to read the evidence). When they were not satisfied with the Will at page 223 they did not look at page 61 or 47, then the memory revived and they told Mr. Amarasekera that there was a Will at page 61 and that it was missing.

10 It is on this evidence that you are asked to say that this is a forgery and that a proctor of the standing of Mr. Seneviratne is guilty of misconduct of this nature. If my recollection is right Mr. Amarasekera's evidence is that when he inspected all the documents in Court after the proxy was filed the Will at page 223 was there. They were not satisfied with that Will and she says the entry at page 61 was also there. She contradicts the husband. If that evidence is to be accepted, there must have been an alteration at page 20 47 after it was filed in Court. I do not think I need worry you on this point.

I sympathise with this impecunious aristocrat. He will suffer not only in this case. It does not pay a man in the Public Service to be dishonest and that to misled the Court with evidence which according to my view is 20 unmitigated perjury.

Then there is Martin's evidence affidavit P5. There are conflicting stories as to what transpired at Martin's. Mr. & Mrs. Amarasekera gave one version but they are agreed to some extent and my learned friend accepts the position that Martin is an intelligent witness. If Martin's evidence is true and that evidence is supported by the affidavit that those two gentlemen tried to suborn him by offering a bribe of Rs. 2,000. The fact remains that he was offered a bribe of Rs. 2,000 to give false evidence and Mr. & Mrs. Amarasekera say that Martin was brought in and confessed that on the threats of James Alwis he had affixed his signature to the document three days after 30 the death of Ratnayake—a document which had already been signed by the other witnesses. That is the case they were trying to get Martin to speak to. In that attempt they have failed. The affidavit P5 is dated 4-10-43. The enquiry into the application to have the Public Trustee was on the 5th October. Martin had to come to Court on that day obviously on the advise of his lawyers. Martin's evidence is supported by his affidavit and I would ask you respectfully to accept that evidence in preference to the evidence of the two brothers-in-law.

40 Furthermore my learned friend pointed out that when Mr. Seneviratne filed papers on 5-6-43 he filed papers with the usual motion and it is in these terms (Counsel reads motion). It is marked A1 in the record. The Last Will and the entry in that book are specifically initialled by the judge on 8th July. So that there is nothing. Everything in this case is above board so far as my Proctor is concerned. But if Mr. Seneviratne was on trial, this case would not have taken 5 minutes so far as his conduct is concerned.

There is one point so far. I have indicated that my burden has been discharged. My learned friend alleged forgery it is for him to prove it. My friend has led no evidence except the evidence of the handwriting expert. Certain amateurs tried to give expert evidence in this case. They said Basnayake and somebody else could imitate the writing of Ratnayake. Mr. &

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Addresses to Court
—Continued.

Mrs. Amarasekera tried to say something about it. They may have spared themselves the trouble because we have passed the stage of learning English Composition from them. It does not matter who wrote the Will; what I have to prove is that Mr. Ratnayake signed the Will. The amateurs have failed. Then we have got the professional man. He has not been called. His evidence has been read, it is superfluous for me to emphasise the fact that where the decisions of an issue of this nature rest upon the opinion of a single and exclusive evidence of an opinion witness it is not safe for a Court to base its finding on the evidence.

As regards Basnayake and Ramanayake, it is not suggested they forged it. They are people who can imitate other people's handwriting.

I respectfully ask your honour to reject the evidence of forgery and accept the positive evidence of the four people whom I have called.

Judgment on 25-1-49.

Signed
A. D. J.

No. 33
Judgment of the
District Court
25-1-49

NO. 33

JUDGMENT OF THE DISTRICT COURT

Judgment, January, 1949.

The Petitioner seeks in this case to obtain probate of a Last Will dated the 23rd May, 1943, alleged to have been executed by one James Albert Ratnayake in the presence of five witnesses. The original application was made by the two Petitioners, namely, H. Dona Adliet Ratnayake, the mistress of the deceased, and Felix Wijesinghe, a nephew of the deceased, both of whom are named executors in the Will propounded. The Respondents to the original application were the minor children of the deceased by the 1st Petitioner, namely, the 1st and 2nd Respondents, by their guardian ad litem the 3rd Respondent, and the 4th, 5th and 6th Respondents, who are children of a sister of the deceased. It would appear after papers were filed the 2nd Petitioner, Felix Wijesinghe refused to act as executor and was allowed to revoke the joint proxy granted by him to Mr. P. C. Seneviratne, Proctor, who appeared on behalf of the 1st Petitioner. Thereafter he joined the 4th, 5th and 6th Respondents in opposing the 1st Petitioner's application for probate. In earlier proceedings this Court refused to entertain the 1st Petitioner's application but in appeal the Supreme Court held that the learned trial Judge had misdirected himself on the question of the burden of proof and had misled himself "into thinking that a heavier burden of proof rested on the propounder than the law had in fact imposed upon her." In the course of its judgment the Supreme Court proceeded to state as follows:—

"There can be no doubt on the facts present in this case of the mental competency of the Testator, and if it were proved that he in fact executed the Will, there can be no doubt that he knew and approved of the contents of the Will. The real question to be decided was whether the Will had been executed and attested in due course,"

The case was sent back for re-trial. At the re-trial the only issue framed was with regard to whether the alleged Will had been duly executed and attested.

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Judgment of the
District Court
25-1-49
—Continued.

In support of her application the 1st Petitioner called four of the five witnesses who attested the Will; she herself gave evidence. The Will appears at page 223 of an account book kept by the deceased marked P1. It is the case of the objectors that this is a forgery. The 1st Petitioner and her witnesses on the other hand state that the deceased executed the Will on the day in question in his house in the presence of the five witnesses. The deceased
10 died possessed of a fairly large estate. He had a business in Dehiowita, where he also lived, and an estate in Talangama called Bank Hill Estate. The evidence shows that towards the latter part of his life, he used to spend two weeks in every month at Talangama where he lived with his mistress, the 1st Petitioner, and the other two weeks at Dehiowita. The deceased had married twice earlier and was 65 years of age at the time of his death. After the death of his second wife somewhere in 1927 it would appear that the deceased brought the 1st Petitioner who was an employee on the Estate and kept her in his house at Talangama as his mistress. During the lifetime of his second wife, the 1st Petitioner according to her own evidence, used to assist Ratnayake's
20 second wife in household work. According to the witness Girigoris Perera who was called by the objectors, the 1st Petitioner began to live with the deceased as his mistress, about a year after the death of the second wife and from that time was receiving from Mr. Ratnayake the treatment that a wife receives from a husband. He took her about in his car and used to go to Church with her, though rarely. It was during that period that the two children, Percy and Pearl were born. It is not denied that the deceased was very much attached towards his children to whom he gave what in the circumstances may be considered a liberal education. The 1st Petitioner herself was of a much lower status than the deceased. According to the ob-
30 jectors she was a tapper on the estate. She denied this, but there is no doubt that she was no different to any other labourer who worked on the estate, either in point of education or intelligence. According to her evidence she treated the deceased with great respect and he appeared to be more her master than her husband. In point of fact she says that she never asked him any questions although for many years they lived as man and mistress.

Shortly prior to the 23rd May, 1943, the deceased had begun to suffer from bleeding piles which eventually resulted in pernicious anaemia. While on a visit to his Dehiowita business he fell ill and according to the 2nd Petitioner was not in a fit state to concentrate on his business. In fact the deceased
40 was alleged to have told the 2nd Petitioner not to worry him on anything about the business. He returned to Talangama on the 10th May, 1943 and thereafter contrary to his usual practice did not come back to Dehiowita within a fortnight. The evidence of the 1st Petitioner and her witnesses is that he was not in the best of health though he was able to go about and attend to his normal business. Even the 2nd Petitioner admitted that the illness the deceased was suffering from was not of so serious a nature as to warrant his inquiring about the deceased's health, although the deceased had failed to return to Dehiowita within a fortnight.

While at Talangama on the 23rd May, the deceased apparently decided
50 to execute a Will. The evidence of the first witness James de Alwis Dissa-

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nayake also known as Loku Dissanayake, is that on the day in question James Alwis Weerasinghe came to him and told him that the deceased wanted to see him with two or three other reliable persons. Loku Dissanayake was the Manager of a Buddhist Vernacular School and was Vice-President of the Co-operative Union. He and the other witnesses to the Will are in status much inferior to the deceased but they apparently were people who were in constant touch with him and it is not surprising that he sent for them. James de Alwis Dissanayake had known the deceased since he purchased Bank Hill Estate. When he received the message from James Alwis Weerasinghe he was at the Co-operative Store and the Manager of the Co-operative store W. Paulis Perera offered to go with him on overhearing the message conveyed to him by Alwis Weerasinghe. On the way they met Loku Dissanayake's cousin Podi Dissanayake, who was also asked to accompany them. The four of them went to the house of Mr. Ratnayake, about 2 or 2-30 p.m. At that time according to the witnesses Ratnayake was seated in an easy chair and the 1st Petitioner was seated by him. On seeing them the 1st Petitioner got up and went inside and Ratnayake invited them to sit down and went in himself: while doing so he wanted the "Hewarala" called: Martin the brother of the 1st Petitioner is the "Hewarala" referred to: Ratnayake came back with the book P1, sat at a table which was in the verandah and told them that he had executed a Last Will and wanted them to sign as witnesses. Before this Martin too had come to the verandah. The 1st Petitioner states that it was she who took the book P1 out of the almirah and handed it to Ratnayake. At that time she did not know what was in the book, but the book with other documents, cheque book, etc. are kept in the almirah of which she has the key: when Ratnayake wanted the "Hewarala" called, it was she who shouted for and got Martin to come: when the deceased Ratnayake went to the verandah, she remained inside the room and was able to see what was taking place through an open window: Ratnayake then addressed the five witnesses who were present and told them that he had called them because he wanted to sign a last Will and wanted them to sign it as witnesses: then having opened the book he signed it in two places; thereafter all of them signed the book there.

Subsequently according to Loku Dissanayake he signed an affidavit before Mr. Weerakoon marked X1 dated the 5th July, 1943: he identified P1a as the Will which he and the four other witnesses attested. The signature of the deceased appears at P1b: he identified the two signatures and he says that the body of the Will had been written before Ratnayake brought the book out on to the verandah, where the witnesses were seated: the verandah itself was an enclosed verandah with glass shutters and the inside room where Adliet was, is separated from it by a wall in which is fixed a window: after the document was signed Ratnayake asked the witnesses to keep the matter to themselves and not to tell anyone else: thereafter when the witnesses had all signed the Will, he offered them tea, but they declined it and went away.

James Alwis Dissanayake's evidence is corroborated by the other three witnesses who were called. The only witness to the Will, who was not called, is Paulis Perera. It was suggested that Paulis Perera was not called, because he was not prepared to support the case for the 1st Petitioner. This may be so or it may be that he had some other reasons for not desiring to give evidence. Against the 1st witness James de Alwis Dissanayake there

is nothing much that can be said. He was once a Despatch Clerk in the Colombo Commercial Company and retired on a total gratuity of about Rs. 500. It would appear that he rejoined the firm after his first retirement; on the first occasion he says he got a gratuity of Rs. 100 and on the second occasion Rs. 350. This witness was subjected to a lengthy cross-examination but generally speaking I found him to answer questions convincingly and to my mind truthfully. It was only with regard to one matter that there appears to be some confusion. This does not relate to the execution of the Will but only to the manner in which the five witnesses went to the Proctor's office in order to sign the affidavit X1 before Mr. Weerakoon. At the earlier trial he appears to have said that only three of them went together to the Proctor's office and met the other two there. In the present proceedings his evidence was that all six of them, that is to say, the five witnesses and the 1st Petitioner went together. When confronted with the statement he made earlier he admitted that if he had said so earlier that must be regarded as being correct. The matter itself is not of much significance. The fact is that all five witnesses and Adliet were in the Proctor's office, more or less about the same time and they all went together to Mr. Weerakoon to sign the affidavit. According to Adliet when she went to the Proctor's office with her brother the other witnesses were there. She does not know how they had arrived but the evidence shows that arrangements were made and she had informed them to be there on the day in question, in order to sign the affidavit X1. It must not be forgotten that the earlier trial took place in 1945 and after a lapse of several years it is but natural that witnesses would forget details of events which are not very material to the case. Though these witnesses do not give a consistent story with regard to the company in which they travelled to Proctor Seneviratne's office in order to execute the affidavit X1, they are all agreed that they did travel by bus and tram and that they were all together at Proctor Seneviratne's office and that thereafter they went to Mr. Weerakoon and signed the affidavit in the new Court's Law Chambers near the Magistrate's Court. Loku Dissanayake impressed me as being a truthful witness and I accept his evidence and act upon it with confidence.

James Alwis the other witness called was once employed by the deceased Ratnayake as a watcher. He corroborates the evidence of Loku Dissanayake. The message from the deceased was brought to him by Martin. He, however, says that in the message he was asked to bring Loku Dissanayake and two others; no reference was made to the status and type of persons who were to be called with Loku Dissanayake. In this respect his evidence differs from what Loku Dissanayake says, but it is a minor point and I do not attach much significance to it. Loku Dissanayake's statement on that point is corroborated by Adliet and others. It would appear that James Alwis first went to Loku Dissanayake's house and from there, on information received, to the Co-operative Stores which is stated to be less than a quarter of a mile away from Bank Hill Estate. According to Loku Dissanayake he asked James Alwis what it was all about but James Alwis was not in a position to say. Till they arrived at Ratnayake's house they did not know that their mission had any connection with the Will. Loku Dissanayake is related to him and is the son of an uncle. Even in the earlier proceedings he admitted that they were related, but that they did not observe the relationship because of his marriage to the daughter of one Suwaris, a marriage which was disapproved by his relations. He admits having been fined Rs. 750 for

the illicit sale of arrack. That case was, at the time he gave evidence, under appeal; the result of the appeal is not known. He was questioned with regard to his being charged in a criminal case with one Cornelis Perera. In the proceedings before this Court he denied that he did at the last trial say that he was so charged. The evidence he gave in the earlier case is not quite clear. At first he said:—

“ I know a person known as Cotta. There was no case against me and Cotta at any time. I was not convicted in Case No. 7547. on the 7th August, 1925.. I was not charged in that case with Cotta.”

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Subsequently he says:—

“ I was charged for the commission of an offence along with Cornelis Perera. I was not convicted and bound over. I was warned. That was over 20 years ago, not on the 17th of September, 1941. I said that I know this man Cotta. His name is Cornelis Perera, also known as Cotta, I do not know if he was the man charged with theft of cocoanuts (R1).”

It is difficult to say whether Cornelis Perera with whom he admits he was charged for the commission of an offence is the same Cornelis Perera, who was known as Cotta. Even if he were, I do not think this is a matter of such significance as to entitle this Court to reject his evidence in toto. The alleged offence is said to have been committed about 25 years ago. He admits that he was prosecuted for damaging a bus and had to pay Rs. 200 for the repairs and that he was fined Rs. 6 very long ago for gambling. The fact that he was fined Rs. 750 for sale of arrack or that he was involved in a case of gambling or in a criminal case several years ago, I should think would not be matters which would justify a Court in rejecting altogether the evidence of James Alwis. It seems to me that this evidence was led in order to justify the assertions subsequently made by the objectors that James Alwis was “ a thug ” who by making “ murderous threats ” had frightened Felix Wijesinghe into not speaking the truth.

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His evidence in the main is corroborated by Loku Dissanayake and even a person who has been involved in criminal cases can speak the truth on matters in which he has no immediate or personal interest. The evidence of these two witnesses is also corroborated by Podi Dissanayake and Martin.

With regard to Martin it may be said that he is interested. He is a brother of Aldiet, the 1st Petitioner. Had his evidence stood alone, I certainly would not have been disposed to act upon it. Like Aldiet herself he is a man who, according to him, on the suggestion of his Proctor, was willing to get into the witness box and deny the relationship that existed between him and Aldiet in the criminal case brought by the deceased Ratnayake against one Cornelis for theft of cocoanuts (Vide R1, R7a and R7b).

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Aldiet in the main corroborates the witnesses with regard to the execution of the Last Will. It was suggested to her that the Will was forged in the Co-operative Stores on the 6th June, 1943 by Paulis, but apart from this mere suggestion there is nothing to support it. For the objectors the only evidence led as it is usual in these cases was of a circumstantial nature. I shall deal with this in due course.

Apart from the positive evidence with regard to the execution of the Will there is also the intrinsic evidence available on an examination of the terms of the Will. If Adliet or someone on her behalf intended to forge a Will it is hardly likely that they would have conspired to draw up a document so elaborate in detail and containing provisions which ex facie are directed against the 1st Petitioner herself. The Will makes provision for all the dependants of the Testator. He bequeaths a sum of Rs. 1,000 to St. Barnabas Church where he was eventually buried. He also directs that a payment of Rs. 10 a month should be made to the same church from his
 10 Yatiyantota property. Girigoris his car driver is admittedly an old and trusted servant and to him he has bequeathed a sum of Rs. 1,500. To his children Percy and Pearl he leaves Bank Hill Estate, his residing bungalow with furniture, certain tenements and so on at Dehiowita, subject to the life interest of the mother. He also provides that if his "wife" marries after his death she should forfeit this life interest in favour of his sister's children to the extent of half share until the children attain 21 years. He also provides that the other half share shall be managed by his sister's son, Felix. He gives Felix the entirety of his Estate Supplies and Trading Business at Dehiowita. He also gives him a property at Yatiyantota. To Felix and his sisters he gives
 20 lands and premises in Magamma and the two rooms at Dehiowita bearing Nos. 31 and 32. With regard to cash in the Banks which amounts to approximately Rs. 70,000 he gives half to his children, one-fourth to his wife and the balance one-fourth to his sister's children, namely, Felix and the other Respondents. All the other interests in Ceylon and in foreign countries and all future acquisitions he gives to his sister's children and finally he appoints his wife Adliet and his nephew Felix as his executors.

It is in evidence that the relations of Ratnayake never visited him in Bank Hill Estate. According to Girigoris this was because they disapproved of his conduct in keeping Adliet as his mistress. It appears to be abundantly
 30 clear that this is so despite the denial of Amarasekera that he was aware of the existence of Adliet. Adliet herself had never seen Felix or the others. She had no reason to be grateful to any one of them and if the Will was concocted by her, as admitted by the objectors themselves, it is hardly likely that she would have made provision for them; nor is it likely that she would have provided for the appointment of Felix as co-executor with herself. Is it not more likely that she would have appointed someone with whom she would have been able to have her own way? That the relatives of Ratnayake were not well disposed towards her is established beyond doubt.

A person who forges a Will, even if in order to allay suspicion provides
 40 in the Will for the payment of bequests and legacies to the blood relations, will surely not be as liberal towards them as this Will provides. It is but natural that the deceased should make provision for his two illegitimate children Percy and Pearl and as he appears to have been much attached to Adliet it is equally natural that he would see to it that after his death she is above want. He himself had no legitimate children and the provisions of the Will certainly do appear to be reasonable and to be a sort of Will a person in the position of Ratnayake would have executed. If Adliet forged the Will is it likely that she would have made a provision disentitling her to a life interest in the event of her re-marriage? The contention of the objectors was
 50 that the Will was unreasonable because the division was not equal. It seems to

me however that such a contention is unsustainable. One would not expect a man in the position of Ratnayake to give to his sister's children as much as he would to his own mistress and illegitimate children to whom he was very much attached. It was contended for the objectors that Ratnayake never did any work on a Sunday and he would not have executed a Will on a Sunday. It was also contended that Girigoris, a faithful servant of Ratnayake, would have known about the execution of the Will as he also lived in Bank Hill Estate and Ratnayake would not have done anything without informing him. Furthermore, it was suggested that if the five witnesses came to Bank Hill Estate to execute the Will Girigoris who lived in the garage close by would have been aware of it. It is true that book P1 contains no entries after the 14th of May. It was contended that he was too ill to make any entries after the 14th and that therefore it was highly improbable that he would have been able to execute a Will on the 23rd. It must however be noted that in P1 entries are not made from day to day; they appear to be made once in three or four days, sometimes at longer periods. For instance, the entries in January are made under dates 5, 11 and 17; the entries in February under dates 13, 21 and 25. No dates are entered in April although entries have been made in respect of that month. The mere fact therefore that there are no entries after the 14th is not proof of the fact that the deceased was unable to make entries thereafter. On the contrary the Check Roll X3, which in size is the same as P1, contains entries up to the 23rd of May. 10

With regard to the absence of knowledge on the part of Girigoris, the 1st Petitioner's evidence is that Girigoris was away in Hendala picking nuts from the Hendala properties. Girigoris himself admitted that he used to go to Hendala to pluck nuts and generally stayed away at nights until there occurred a theft of some car parts, after which he generally returned on the same day. He admits that there was plucking of nuts at Hendala in March, 1943 and the next plucking was due to take place on the 22nd or 23rd of May, 1943. Though in his examination in chief he said that no work was done on Sundays, under cross-examination he was compelled to admit that the Check Roll X3 showed that work was being done on Sundays, such work for instance as making rubber, manuring coconuts, etc. In my view Girigoris Perera was not speaking the truth when he denied that there was work on Sundays. According to his own admission he should have been at Hendala plucking nuts and I accept the evidence of Adliet that on the day the Will was executed Girigoris Perera was in fact at Hendala picking nuts. As he himself admits, if this were so he would not have been in a position to know that the Will was executed on that day. It is possible that the deceased chose that day because he did not wish his relatives to know about the execution of the Will. It was known that Girigoris had access to his relatives and may have informed them about it. Girigoris' own evidence is that by reason of Mr. Ratnayake living with the 1st Petitioner there was a certain amount of unpleasantness among his relations and that they consequently did not visit him and that Mr. Ratnayake too was unwilling to allow anyone to come to Bank Hill Estate. In these circumstances it is but natural to expect Mr. Ratnayake, who at that time was failing in health, to make some provision for his mistress and his children. 30 40

The Will was executed, according to the evidence, on the 23rd of May. The deceased died on the 3rd June, 1943. The funeral took place on the 4th 50

June. The evidence is that Girigoris informed the relatives by telegram and Felix Wijesinghe came and removed the corpse to Dehiowita, where the funeral was held on the 4th of June. Adliet herself attended the funeral. According to Wijesinghe it was when he went to Talangama on the 3rd of June that he first saw Adliet, but he did not speak to her as she was in distress. At the funeral she is alleged to have spoken to him and to have asked him to look after her and her children. Some slight corroboration of this statement of his is given by Proctor Jacolyn who was called at this trial for the first time. I must say that it is remarkable for a Proctor to remember a detail
 10 of this nature after a lapse of so many years. However, even if Adliet did say so it does not necessarily mean that the request to look after her and her children indicates the absence of any Will. In the Will Felix Wijesinghe is a co-executor, and as Felix Wijesinghe himself admits, what the 1st Petitioner may have meant was to have asked him to look after the properties that were bequeathed or dealt with by the Will in favour of herself and her children. Adliet however denies that she made such a request. It seems to me to be highly improbable that a woman who was much grieved at the death of her master would have chosen such an occasion to make an appeal to a person whom she had never spoken to before and whose attitude towards her she
 20 was unaware of. After the funeral Adliet went back to Talangama.

It would appear that hearing of the funeral on the wireless, Muriel Amarasekera the 6th Respondent and her husband came to Dehiowita but missed Felix Wijesinghe. They then returned but Mr. Amarasekera went back shortly thereafter and brought Felix to Colombo. They discussed matters and according to Mr. Amarasekera, Felix undertook to file papers for administration of the estate. On the 6th of June, 1943, Felix sent Girigoris and Hearath the brother of Adliet who was at that time employed at Dehiowita as Manager of the deceased's business on a salary of Rs. 25, to ask for the deeds. Adliet, however, refused to hand over the deeds and said
 30 that they should come with a Proctor if they wished to have the deeds. They went back and in the meantime on the 7th of June she handed over the deeds to Proctor Seneviratne and obtained receipt X4. Apart from the deeds she also handed over all important papers and documents including the book P1. It is significant that according to her own evidence when she did hand over these documents she made no reference to the existence of the Will to her Proctor. This is an omission which was strongly commented upon by learned Counsel for the objectors. It is certainly a point in their favour and is a fact which would operate against the case of the 1st Petitioner. It is difficult to understand why no reference was made to this by Adliet. She
 40 knew that a Will was then in existence: if not a will she knew that there was in existence a writing. Her explanation for not mentioning it to the Proctor is not satisfactory. The Proctor himself did not give evidence, but the objectors state that the Proctor informed them that it was he who discovered the existence of the Will in book P1. On the 7th itself Adliet signed the proxy P11 Adliet herself was confused with regard to this date but it is possible she was, when questioned about the proxy, thinking also of the various other documents she had to sign such as the affidavits and so on. Apparently when the proxy was signed by her it was in blank because ex facie the proxy authorises the proctor to prove the Will. Proctor Seneviratne was
 50 brought to the 1st Petitioner by Mr. Weerakoon's Clerk and it is possible that this clerk had indicated to Mr. Seneviratne why the 1st Petitioner wished

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to retain his services. Subsequently Wijesinghe sent Proctor Burhan with Direcksz and Girigoris to Talangama but they were told that the documents had all been given over to Proctor Seneviratne. Thereafter on the 16th or 17th of June, Wijesinghe himself went to Talangama and met the Petitioner. On that occasion, which was the first occasion after the funeral that Felix Wijesinghe met the 1st Petitioner, the 1st Petitioner told him that the deceased had left what she called "Liyavillak." Even then she did not, according to him, say that it was a Will that the deceased had left. On this point Wijesinghe at first denied that she had told him that even a writing had been left, but later admitted it. He says he asked her what the document was, but she could not explain. He also said that Adliet told him that her husband had advised her before he died to hand over the deeds and documents to a Proctor. In cross-examination he admitted that Adliet told him that the properties were bequeathed and that the bequests were to all of them. He then went along with her to Mr. Seneviratne's office and there he read the Will. He admits in cross-examination that though he denied it in examination in chief that he was then quite satisfied that the Will was a genuine Will despite the fact that he then noticed the absence of apostrophes, the mis-spelling, the omission of the sterling companies, etc., These were the reasons he subsequently gave for thinking that the Will was not genuine. In fact he says in unmistakable terms that at that time he definitely thought that it was the deceased's Will and that he had no suspicion at all with regard to it. He accordingly signed the proxy P11 in favour of Mr. Seneviratne. Though at first in examination in chief he said that he signed the proxy in order to enable Mr. Seneviratne to draw some money and not to prove the Will, under cross-examination he admitted that his object in signing the proxy was to ask Mr. Seneviratne to prove the Will. At the same time Proctor Seneviratne handed him a typed copy of the Will R20. Up to the stage of the granting of the proxy by Mr. Wijesinghe no doubt appears to have existed in his mind with regard to the genuineness of the Will. He appears to have been satisfied that the signatures appearing in P1 were the signatures of the deceased and the writing of the Will itself was in his handwriting. If the Will was in existence at the time the documents were handed over to Proctor Seneviratne to the knowledge of Adliet, why is it that she did not mention it specifically to her Proctor. The only possible explanation appears to be that she being an illiterate and an unintelligent woman did not fully appreciate the significance of the Will. In her evidence she states that she thought she was entitled by reason of the fact that she was the "wife" of the deceased, to share his property. It must not be forgotten that she comes from the labouring classes and that her intelligence and understanding are both of a low order. It may be that she thought it was not necessary for a Will to be executed to entitle her to inherit and enjoy the property of the deceased. Though she did not mention it to her Proctor, the fact remains that at the first opportunity she had of discussing the matter with Wijesinghe, she mentioned it to him. The Will and the book P1 were in the hands of Mr. Seneviratne on the 7th June; if it was to be forged it should have been done some date between the 3rd and 7th. I do not think it is suggested that the Will was fabricated after the book P1 reached Proctor Seneviratne's hands. There appears to be no reason why Paulis Perera and the other witnesses to the Will should have made themselves parties to a fraud which brought them no benefit. Somewhat belatedly it is suggested that James De Alwis was in terms of intimacy with Adliet and that even the two children were his children. It was Mr. Amarasekera who

made this allegation. It was completely disproved by the birth certificates of the two children which were produced wherein Ratnayake describes himself as the father of the children. It also disproved the other evidence in the case. Girigoris himself says that the children were born when Adliet was living with Mr. Ratnayake as his mistress. He makes no suggestion of any intimacy between Adliet and James Alwis at that time.

Having signed the proxy Wijesinghe went home and informed his sisters of the existence of the Will, in particular he mentioned it to Mr. and Mrs. Amarasekera. He also told them that he had signed a proxy and showed them the copy of the Will R20. According to Mrs. Amarasekera the very same evening they went to Proctor Seneviratne's office, introduced themselves and had a look at the Will. She said that immediately she felt that it was not in the handwriting of her uncle. Her husband gave similar evidence. Then Mr. Seneviratne is alleged to have made a remarkable statement. He is alleged to have said "It is very strange that you say so, because even the handwriting expert says it is Mr. Ratnayake's." One would hardly think it possible for a Proctor to make such a statement. There is no reason then for Mr. Seneviratne to have consulted any handwriting expert up to that stage; everyone was satisfied with the Will. Mr. Seneviratne, however, has not been called to give any evidence with regard to this matter. According to Mr. Amarasekera, Proctor Seneviratne also showed him page 47 of P1 and that there he saw the following entry: "see page 61": it was then that he turned to page 61 and showed them the Will. He says that the writing immediately above the entry "see page 61" was his uncle's and that there was a vast difference between the entry itself and that writing. In place of the words "see page 61" there now appears the words "see page 223 ahead for my Will". Mr. Amarasekera's view is that the figure "61" has been erased and where the letters "ah" of the word "ahead" now stands there stood the figure 61. Muriel Amarasekera gave similar evidence and says that she too saw the Will at page 61 of the book P1 and not at page 223 where it now appears. According to Mr. Amarasekera from Mr. Seneviratne's office they went and saw Proctor Amarasekera. Later he learnt that the Will had been filed in Court and he inspected it in the Record Room. He then found that the Will was not the same Will he had seen earlier on page 61 and he informed Proctor Amarasekera immediately. He says that he first saw the Will at page 223 in the Record Room: what he saw in Mr. Seneviratne's office was on page 61 or 62. Mr. Amarasekera in cross-examination at first stated that he saw the Will P1 in Court a few days after he had seen it at Proctor Seneviratne's office: it was then that he remembered the reference to page 61 and brought it to Mr. Muttukrishna's notice. The entry on page 60 by the Secretary of this Court with regard to the fact that pages 61 and 62 are missing was made on the 24th of September. When reminded of this fact he stated that he discovered the missing pages not four or five days after the case was instituted, but on the 24th of September. This he says was after the 6th Respondent's proxy was filed by Proctor Amarasekera. His contention later was that when his wife filed objections on the 25th August he was aware of the fact that the Will at page 61 had been destroyed, but still no reference to it is made in his wife's affidavit.

Muriel Amarasekera says that when she came with Mr. Muttukrishna and she saw the Will she remembered the entry "see page 61" and the words

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were still there after the document was filed in Court: she was quite definite that the entry "see page 61" was in the handwriting of her uncle: she now finds that not only is the entry "see page ahead 223," etc. not the handwriting of her uncle but the entirety of page 46 and what appears above that entry is not in the handwriting of her uncle. The first inspection in Court she says took place about eight days after she gave her proxy to Proctor Amarasekera when the words "see page 61" still appeared on page 47 of P1. It is her surmise that the document had been altered thereafter. It is obvious that both husband and wife are not speaking the truth on this point. Mr. Muttukrishna, the handwriting expert, appears the first person to have discovered something in the entry which suggests the original existence of the figures 61 at page 47. It is he who discovered the absence of pages 61 and 62 in the book P1 and I am quite satisfied that Mr. & Mrs. Amarasekera are giving evidence which is utterly false on this point. Mrs. Amarasekera in fact says that she did not even turn to page 61, she turned to page 47 and saw "see page 61" written there when she inspected the document in Court: she did not verify to see if page 61 was there, but she asked her Proctor, Mr. Amarasekera to do so: he however did not do so: he said he had other business and went away. In the same breath she says:—

"He turned over to some other page. I am sure he turned to some other page and then we saw the Will at page 223. I did not note the page on which it appeared but I knew it was not page 61."

When she left the Court that day she was satisfied that page 61 was missing. Subsequently she says:—

"Because I saw the Will at page 223 I thought the Will at page 61 was destroyed. I did not know that page 61 was not in the book even. I did not say in the affidavit that there was another Will at page 61."

She added that she told her Proctor about the existence of a Will at page 61 and discussed the matter with him, but he did not enlighten her and she admits that it was Mr. Muttukrishna who for the first time suggested that the alteration at page 47 indicated an erasure and the deletion of 61. She admitted that she had read Mr. Muttukrishna's evidence before she came to Court, the evidence he had given at the previous trial. It is obvious that the evidence of these two witnesses Mr. & Mrs. Amarasekera on this point as well as their reason for saying that the Will is a forgery have been influenced and even inspired by the evidence given by Mr. Muttukrishna at the previous hearing.

Pages 61 and 62 of P1 are missing from the book and it is clear that these pages are torn. It may even be that Mr. Muttukrishna's surmise with regard to the entry that originally appeared on page 47 is correct, viz. "see page 61." But this does not necessarily mean that the Petitioner or someone interested on her behalf tore out pages 61 and 62. It is possible that the Testator himself having written a Will at page 61 tore it out himself and altered the entry appearing at page 47. This perhaps is the true explanation. It is significant that the evidence given by Mr. & Mrs. Amarasekera was given for the first time in these proceedings and no suggestion ever was made at the previous hearing that there existed a Will at page 61.

Both Mr. & Mrs Amarasekera stated in evidence that Felix Wijesinghe was not speaking the whole truth for fear that he would be murdered by James Alwis. It was suggested that when he was coming in the car from Talangama to Proctor Seneviratne's office, both Adliet and Herath had told him murderous stories of James Alwis and he got afraid. This suggestion has only to be mentioned to be rejected. Having seen and heard the parties, I cannot imagine how a woman of the status and position of Adliet could intimidate a man like Wijesinghe. According to Wijesinghe, Herath, though he drew a higher salary, was under him in the Dehiowita office of the deceased.

10 Herath was one of the persons whom Wijesinghe sent to obtain the deeds and documents from Adliet. Neither Adliet nor Herath are likely to have intimidated Wijesinghe into silence. Furthermore if Wijesinghe was afraid of James Alwis he would not have taken even the steps that he has in fact taken to oppose the Will. He himself has filed no objections to the proof of the Will. When he applied for the revocation of the proxy granted to Mr. Seneviratne the only ground given was that he did not wish to act as executor; he did not state that the Will was a forgery; nor did he state this in a subsequent application he made requesting the Court to appoint the Public Trustee to take charge of the estate pending decision of this Court on 1st

20 Petitioner's application. In that affidavit he only stated that the Will is being impugned as a forgery, presumably by the 6th Respondent.

Martin is one of the witnesses to the Will. He has given evidence with regard to its due execution, but one must necessarily regard his evidence with caution in view of the fact that in case No. 4615 M. C., Colombo, he denied on oath that he was related to the 1st Petitioner. In those proceedings 1st Petitioner is referred to as Alice. Though she denied that she was known by the name Loku Dissanayake also refers to her as Alice. It is, as she says, possible that she refused to accept the summons served on her in that case, because she was referred to as Alice. Perhaps she likes to forget

30 altogether that part of her life when she was employed as a labourer on the estate. She was then, according to Loku Dissanayake, known as Alice. Martin says that after the funeral he went to Matara. Subsequently on the 23rd of August, Amarasekera and Felix Wijesinghe paid him a visit and asked him to give evidence stating that the Will was signed three days after the death of the deceased. Martin also stated that Amarasekera and Wijesinghe offered him Rs. 2,000 if he gave evidence as suggested. Both Amarasekera and Felix Wijesinghe admit that they paid a visit to Martin. They also admit the version given by Martin with regard to what occurred in the course of the visit regarding their movements. They however denied that they offered

40 him Rs. 2,000 to say that the Will was written after the death of Ratnayake. According to them it was in consequence of a message left by Martin that they went to Matara after a previous visit had been made by Amarasekera's brother. Then Martin is alleged to have appealed to them to save him from trouble by coming to some terms of settlement with the 1st Petitioner as he had executed a document purporting to be a Last Will at the instigation of one James Alwis three or four days after the death of Ratnayake. This alleged message of Martin is stated to have been given about four or five days after the death requesting Wijesinghe to see Martin on some urgent matter. If Wijesinghe regarded this as a matter of some

50 importance one would have expected him to have gone to Martin shortly thereafter, but actually he does not take any steps until long afterwards.

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 —Continued.

According to the affidavit which Martin subsequently signed reciting these facts (P5 dated 4th October, 1943) the actual visit by Amarasekera and Wijesinghe occurred on the 23rd August, 1943. When this date was put to Wijesinghe and Amarasekera they admitted that that may be the date of their visit. The conclusion is irresistible that the visit on the 23rd August could not have been induced by the alleged message which Martin is stated to have left for Wijesinghe. Martin denies this. In point of fact some circumstantial corroboration of Martin's statement in his affidavit is provided by the fact that Wijesinghe admits that he went to see Martin after he had consulted his Proctor, Mr. Amarasekera, and inquired whether it was in order to see a witness to the Will in order to find out the truth: so obviously his visit to Martin was not because of a message left by Martin over two months prior to that date, but because after consulting his Proctor he thought that he should see a witness to the Will in order to find out the truth with regard to the circumstances under which the Will was executed. He also says that prior to the visit he sent the brother of Amarasekera to question Martin posing off as a C.I.D. officer. What was the need to do this? It seems to me that Martin's statement in his affidavit is true, that these two witnesses Amarasekera and Wijesinghe went to Martin in order to suborn him and persuade him to give evidence which will not support the 1st Petitioner's case. In that they failed. 10

Witness Wijesinghe states that the writing of the Will P1 is similar to the entries appearing in book R10 at page 792, etc. by one Ramanayake who was an employee of the deceased. In point of fact he drew similarities in the formation of the letters "D" and "B" but subsequently on his attention being drawn to the fact that they were not similar he admitted that these letters appearing in R10 were not similar to the same letters appearing in the Last Will. Ramanayake himself was called. He gave evidence and he says that P1 was not his work; nor is it the work of Marshal who is another employee of the deceased, who is alleged to be able to imitate the deceased's handwriting. The objectors also rely upon the evidence of the handwriting expert, Mr. Muttukrishna, who has examined the documents and given his opinion. Mr. Muttukrishna, however admits that he was not aware of the fact that the deceased was suffering from pernicious anaemia at the time the Will is alleged to have been executed and he admits that a debilitating disease as pernicious anaemia would have an effect on a person's handwriting. He tried to find out what the deceased died of and what his age was and on both these points he has given no information. He, however, makes the statement that he knew that the deceased was an old man and makes the conjecture that "he must have died of pernicious anaemia." Why he came to that conclusion it is difficult to ascertain. He says that he inferred that the deceased was in a state of physical disability when he wrote the Last Will from his tremulous writing. Subsequently he described the tremours as tremours of fraud. He has given his reasons for his opinion that the Will writing was not in the hand of the deceased and that he had not signed the Will. With regard to the writing there is no evidence as to who wrote it though the inference as suggested by the case for the 1st Petitioner is that it was in the handwriting of the deceased. The Will is a fairly long document and, as Mr. Muttukrishna admits it is more difficult to forge a long document than it is to forge a short one. He draws attention to differences in the formation of letters and makes reference to pen pressure, pen movement, pen lift and all other features to 30 40 50

which a handwriting expert normally refers. He also says that to judge from the book R8 the deceased had a good knowledge of the English language and that his spelling and syntax were of a very high order: in the impugned Will the spelling of the word "until" which is spelt in the Will with two l's supports the view that it is not in the deceased's handwriting. He admits that the impugned document shows a close conformity to design and variation of letters of the genuine writing.

10 The deceased, according to the evidence, adopted two forms of signature; the monogram signature he adopted for writing his cheques. P4a and P4b are letters in which the monogram signature is used: so are also cheques R14, R15, R16 and R17 produced by the objectors. The ordinary signature he used for documents other than cheques. In the Will he has used both. Considering the fact that a man's signature may vary in detail from time to time, I am not disposed on the evidence of the handwriting expert alone to hold that the Will was a forgery. In point of fact according to Wijesinghe if it is a forgery it is a very good forgery and Wijesinghe when he first saw it had no reason to doubt it. The fact that the body of the Will was in the handwriting which bears a close similarity, according to the objectors, to the deceased's admitted handwriting suggests that the Will itself is
20 not a forgery. A forger would make the Will as short as possible and not try to write out an elaborate document like the impugned Will. The mistakes in spelling, etc. which are corrected in certain places may have been due to the fact that the deceased at the time he wrote the Will was not in the best of health. However, expert evidence can only be regarded as evidence in corroboration of other evidence. In this case on the facts I am satisfied that the Will was written by the deceased and on this point I accept the evidence of the witnesses, in particular Loku Dissanayake. I see no reason to reject the evidence of James Alwis either. With regard to the evidence of Martin and Alice, though their evidence must be considered with caution
30 I am satisfied that they too spoke the truth when they referred to the execution of the Last Will. In the result, I am satisfied that the Will produced was duly executed by the deceased and attested by the five witnesses and I answer the issue framed in favour of the 1st Petitioner.

I accordingly make order admitting the Will to probate. The 2nd Petitioner and the 4th, 5th and 6th Respondents will pay the 1st Petitioner all costs incurred by her in proving the Will, which will include costs of the previous proceedings.

Signed N. SINNETHAMBY,
Additional District Judge.

40 Pronounced in open Court in the presence of Mr. P. C. Seneviratne for Petitioner and Mr. Seyed Hamidu has taken notice on behalf of Mr. Amarasekera for the Respondents.

Sgd. N. SINNETHAMBY,
A. D. J.
25-1-49.

NO. 34
PETITION OF APPEAL TO THE SUPREME COURT
S.C. No. 56 (Inty). D.C., Colombo. Case No. 10504/T...
50 In the Matter of the Last Will and Testament of JAMES ALBERT RAT-NAYAKE of Bank Hill Estate, Talangama.....deceased.

No. 34
Petition of Appeal
to the
Supreme Court
5-2-49
—Continued.

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE of Bank Hill Estate, Talangama.
 2. FELIX WIJESINGHE of Dehiowita.....*Petitioners.*
and
1. PERCY ARNOLD RATNAYAKE,
2. PEARL BANDARA MENIKE RATNAYAKE both of Bank Hill Estate, Talangama.
 3. HETTIARATCHIGE DON HERATH of Piliyandala, Guardian ad litem of 1st and 2nd Respondents, Minors.
 4. ELLEN WIJESINGHE. 10
 5. GERTIE WIJESINGHE both of Riverton, Matale Road, Kandy.
 6. MURIEL AMARASEKERA *nee* WIJESINGHE of Deal Place, Colombo. *Respondents.*
 1. FELIX WIJESINGHE of Dehiowita.
2. ELLEN WIJESINGHE.
3. GERTIE WIJESINGHE of Riverton, Matale Road, Kandy.
4. MURIEL AMARASEKERA *nee* WIJESINGHE of Deal Place, Colombo. *Appellants.*
- Vs.*
1. HETTIARATCHIGE DONA ADLIET RATNAYAKE. 20
 2. PERCY ARNOLD RATNAYAKE.
 3. PEARL BANDARA MENIKE RATNAYAKE, all of Bank Hill Estate, Talangama.
 4. HETTIARATCHIGE DON HERATH of Piliyandala, Guardian ad litem of 2nd and 3rd Respondents.....*Respondents.*

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

This 5th day of February, 1949.

The Petition of Appeal of the Appellants above named appearing by Samuel Robert Amarasekera, their Proctor, states as follows:— 30

1. The 1st Respondent is the 1st Petitioner abovenamed. She made an application in these proceedings to obtain Probate of a Last Will alleged to have been executed by the late James Albert Ratnayake in the presence of five witnesses.
2. The Appellants opposed the grant of Probate of the said Will on the ground that the said Will was not duly executed and attested and that the said Will was a forgery.
3. After Inquiry the learned District Judge made order on the 25th January, 1949 admitting the Will to Probate.

Being dissatisfied with the said order and decree entered thereon the Appellants beg to appeal therefrom to Your Lordships' Court on the following amongst other grounds that may be urged by Counsel at the hearing of the appeal:— 40

- (a) The said order is contrary to law and to the weight or evidence in the case.
- (b) The chief beneficiaries under the Will are the 1st Respondent and her two children the 2nd and 3rd Respondents. Admittedly the 1st Respondent had been employed at one time under the deceased as a Rubber Tapper and thereafter was his mistress. The 2nd and 3rd Respondents were alleged to be his children 50

by the 1st Respondent. But on the evidence in the case it is submitted that the deceased did not during his lifetime treat the 2nd and 3rd Respondents as his children. Nor is there any evidence to show that the deceased was attached to the 1st Respondent. The Will sought to be propounded is in the circumstances an unnatural Will. But the learned District Judge held that it was a natural Will and had thereby misdirected himself with regard to the nature or quantum on the proof necessary for admitting the Will to Probate.

- 10 (c) The circumstances in which the alleged Will was made are improbable.
- (d) The witnesses to the Will are the relations and/or close friends of the 1st Respondent. The evidence of these witnesses in regard to the execution of the Will is contradictory and it is submitted should not have been accepted by the learned District Judge. The witnesses have failed to give any explanation why they failed to mention even after the death of the deceased to the 1st Respondent about the existence of this Will.
- 20 (e) The 1st Respondent's story that although she was present at the time the Will was made and although according to her the deceased mentioned that he was making his Last Will, yet she did not know what was meant by a Last Will, is a story which is unacceptable.
- (f) This story of the 1st Respondent is only an attempt on her part to explain why she did not mention anything about the Will for a few days after the death of the deceased.
- (g) It was in evidence that the deceased was a good scholar of the English language. It is submitted that the language used in the Will and the obvious mistake made in the Will in regard to the names of his relations and of his assets—all indicate that the Will was not written by the deceased.
- 30 (h) Further more it is in evidence that since the beginning of May, 1943, the deceased was so ill that he did not even write any account in his account books. Such a person it is submitted could not have written this long Will on the 23rd May.
- (i) Learned District Judge has not give weight to the erasure of "61" and the substitution of the words "ahead 223 for my Will." It is submitted that the forgers made an attempt at page 61 first and thereafter tore up that page and forged the Will at page 223. The evidence of Mr. Lawrie Muthukrishna the hand-writing expert supports this view.
- 40

Wherefore the Appellants pray that your Lordship's Court be pleased:

- (1) To set aside the Order of the learned District Judge dated the 25th January, 1949.
- (2) To make Order that the estate of the deceased be administered as intestacy.
- (3) For costs and for such other and further relief as to Your Lordship's Court shall seem meet.

Signed S. R. AMARASEKERA,
Proctor for Appellant,

NO. 35

JUDGMENT OF THE SUPREME COURT

S.C. NO. 56/D.C. (INTY.) COLOMBO CASE NO. 10504

Present: WINDHAM, J. AND BASNAYAKE, J.

Counsel: R. L. Pereira, K.C., with Cyril E. S. Perera and G. L. L. de Silva for Defendant-Appellant.

E. B. Wickremanayake, K.C., with H. A. Kottegoda for the 1st Plaintiff-Respondent.

Argued and Decided on: 23rd January, 1950.

Windham, J.

This is an appeal against an order of the learned District Judge admitting to Probate the Will of one J. A. Ratnayake after finding it to have been duly executed and attested. The Appellant contended that it was a forgery. Of the five witnesses to the Will, four gave evidence that Will was duly executed and attested, the fifth witness not being called. The learned District Judge accepted their evidence, and in a long and reasoned judgment, after carefully reviewing all the evidence, he admitted the Will to probate.

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Upon a perusal of the evidence and the Judgment and after considering the arguments of learned Counsel for the Appellant, we see no reason to interfere with the decision of the learned District Judge, which was concerned solely with questions of fact and credibility. Indeed we would feel wholly unjustified in interfering. The appeal is accordingly dismissed with costs.

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Signed R. WINDHAM,
Puisne Justice.

Basnayake, J.
I agree.

Signed, HEMA BASNAYAKE
Puisne Justice.

NO. 36

DECREE OF THE SUPREME COURT

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IN THE SUPREME COURT OF THE ISLAND OF CEYLON
D.C. (Inty.) No. 56 of 1949

1. H. DONA ADLIET RATNAYAKE and another.....*Petitioners.*
Vs.

1. P. A. RATNAYAKE and 5 others.....*Respondents.*

1. FELIX WIJESINGHE and 3 others.....*Appellants.*
Against

1. H. DONA ADLIET RATNAYAKE and 3 others.....*Respondents.*
Action No. 10504. District Court of Colombo.

This cause coming on for hearing and determination on the 23rd day of January, 1950, and on this day, upon an appeal preferred by the Defendant before the Hon. Mr. R. Windham, Puisne Justice and the Hon. Mr. H. H. Basnayake, K.C., Puisne Justice of this Court, in the presence Counsel for the Defendant-Appellant and Counsel for the 1st Plaintiff-Respondent,

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

Witness the Hon. Sir Edwin Arthur Lewis Wijewardene, Kt., K.C., Chief Justice, at Colombo, the 23rd day of January, in the year of our Lord One Thousand Nine hundred and fifty and of Our Reign the Fourteenth.

Signed W. G. WOUTERS,
Acting Deputy Registrar, S.C.

No. 36
Decree of the
Supreme Court
23-1-50
—Continued.

NO. 37

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL
TO THE PRIVY COUNCIL

No. 37
Application for
Conditional Leave
to Appeal to the
Privy Council
21-2-50

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IN THE SUPREME COURT OF THE ISLAND OF CEYLON
S.C. No. 56 (Inty.) D.C. Colombo Case No. 10504 Testy.

In the matter of the Last Will and Testament of JAMES ADLIET RATNAYAKE of Bank Hill Estate, Talangama,.....*deceased.*

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE
.....and another
Petitioners.

and

1. PERCY ARNOLD RATNAYAKE and others.....*Respondents.*

20

1. FELIX WIJESINGHE of Dehiowita.
2. ELLEN WIJESINGHE.
3. GERTIE WIJESINGHE OF RIVERTON, Matale Road, Kandy.
4. MURIEL AMARASEKERA *nee* WIJESINGHE of Deal Place, Colombo *Appellants.*

and

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE.
2. PERCY ARNOLD RATNAYAKE.
3. PEARL BANDARA MENIKE RATNAYAKE, all of Bank Hill Estate, Talangama.
30 4. HETTIARATCHIGE DON HERATH of Piliyandala, Guardian-ad-litem of 2nd and 3rd Respondents, Minors..... *Respondents.*

On this 21st day of February, 1950.

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

The Petition of the Appellants abovenamed and appearing by their Proctor Edmund Peter Samarakody states as follows:—

40

- (1) That feeling aggrieved by the Judgment and decree of this Honourable Court pronounced on the 23rd day of January, 1950, the abovenamed Appellants are desirous of appealing therefrom.
- (2) That the said judgment is a final judgment and the matter in dispute on the appeal involves directly or indirectly some claim or question to or respecting property in some Civil right amounting to or of the value of Five Thousand Rupees or upwards.

(2) Deposit in terms of the 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).

No. 38
Decree granting
Conditional Leave
to Appeal to the
Privy Council.
9-5-50
—Continued.

Provided that the applicant may apply in writing to the said Registrar stating whether she 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. Mr. Reginald Felix Dias, LL.D., Senior Puisne Justice, at Colombo, the 11th day of May, in the year of our Lord One thousand Nine hundred and fifty, and of our Reign the Fourteenth.

Signed W. G. WOUTERSZ,
Deputy Registrar, S.C.

NO. 39

APPLICATION FOR FINAL LEAVE TO APPEAL TO
THE PRIVY COUNCIL

No. 39
Application for
Final Leave to
Appeal to the
Privy Council
9-6-50

IN THE SUPREME COURT OF THE ISLAND OF
CEYLON

S.C. No. 56 Inty.

D.C. Case No 10504 Testy.

20 In the matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama.....*deceased.*

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE and another.
..... *Petitioners.*

and

1. PERCY ARNOLD RATNAYAKE and others.....*Respondents.*

1. MURIEL AMARASEKERA *nee* WIJESINGHE of Deal Place, Colombo.....*Appellant.*

and

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE.

30 2. PERCY ARNOLD RATNAYAKE.

3. PEARL BANDARA MENIKE RATNAYAKE.
all of Bank Hill Estate, Talangama.

4. HETTIARATCHIGE DON HERATH of Piliyandala, Guardian-ad-litem of 2nd and 3rd Respondents, Minors.....*Respondents.*

This 9th day of June, 1950.

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

The Petition of the Appellant abovenamed and appearing by her Proctor Edmund Peter Samarakkody states as follows:—

(1) That the Appellant on the 9th day of May, 1950, obtained conditional leave from this Honourable Court to appeal to His Majesty the King in Council against the judgment of this Court pronounced on the 23rd day of January of 1950.

No. 39
Application for
Final Leave to
Appeal to the
Privy Council
9-6-50
—Continued,

- (2) That the Appellant has in compliance with the conditions on which such leave was granted deposited as security for costs of Appeal a sum of Rs. 3,300 in cash with the Registrar and hypothecated same by bond.
- (3) That the Appellant has given stamps for the duty payable in respect of the Registrar's Certificate in Appeal to the King in Council.

Wherefore the Appellant prays that she be granted final leave to Appeal against the said judgment of this Court dated the 23rd day of January, 1950 to His Majesty the King in Council.

10

Signed EDMUND SAMARAKKODY,
Proctor for Appellant.

No. 40
Decree Granting
Final Leave
to Appeal to the
Privy Council
29-6-50

NO. 40

DECREE GRANTING FINAL LEAVE TO APPEAL TO
THE PRIVY COUNCIL

IN THE SUPREME COURT OF THE ISLAND OF
CEYLON

H. A. DONA ADLIET RATNAYAKE and another.....*Petitioners.*
against

P. A. RATNAYAKE and others.....*Respondents.* 20

MURIEL AMARASEKERA *nee* WIJESINGHE.....*Appellant.*
against

H. A. DONA ADLIET RATNAYAKE and others.....*Respondents*
Action No. 10504 (S.C. No. 56). District Court of Colombo.

In the matter of an application by the Appellant abovenamed for Final Leave to Appeal to His Majesty the King in Council against the decree of this Court dated 23rd January, 1950.

This matter coming on for hearing and determination on the 29th day of June, 1950, before the Hon. Mr. R. F. Dias, LL.D., Senior Puisne Justice, and the Hon. Mr. V. L. St. Clair Swan, Puisne Justice, of this Court, 30 in the presence of Counsel for the Applicant.

The applicant having complied with the conditions imposed on him by the Order of this Court dated 9th May, 1950, granting Conditional Leave to Appeal.

It is considered and adjudged that the application for Final Leave to appeal to His Majesty the King in Council be and the same is hereby allowed.

Witness the Hon. Mr. E. G. P. Jayatilleke, K.C., Chief Justice, at Colombo the 3rd day of July, in the year of our Lord One thousand Nine hundred and fifty, and of Our Reign the Fourteenth.

40

Signed W. G. WOUTERSZ,
Deputy Registrar, S.C.

PART II.
EXHIBITS

D.C. Col. Testy. Case No. 10504.

S.C. No. 56

It is agreed that the following documents only be printed for the Privy Council:—

- (1) Document marked P1 only page 47.
- (2) Document marked P1A only pages 223 and 224.
- (3) Birth Certificate of Percy marked P2.
- 10 (4) Translation of above P2A
- (5) Birth Certificate of Pearl marked P3.
- (6) Translation of above P3A
- (7) Affidavit of Martin marked P5.
- (8) Affidavit of 7-7-43 marked X1.
- (9) Check Roll only 2 pages marked X3 showing date of payments for April and May, 1943.
- (10) Sketch drawn by Dissanayake marked Y1.
- (11) Page 132 of Book marked Y4.
- (12) Letter of deceased marked Y8.
- 20 (13) One page of School Register marked Y9.
- (14) Copy of Last Will formerly R11 and later R20.
- (15) Letter dated 17-11-42 marked P6.

Signed EDMUND SAMARAKKODY,
Proctor for Appellant.

Signed P. C. SENEVIRATNE,
Proctor for Respondents.

Colombo, 22nd October, 1951.

Exhibits
No. Y 4
Account Book—
Page 132,
January 1930.

PART II.
EXHIBITS

NO. Y4

ACCOUNT BOOK—PAGE 132

December, 1929

X	X	X	X
X	X	X	X

January, 1930

	Rate	Days	Wages	Advacne	Balance	Debt.
Pedrick Watcher ..	20.00	25	20.00	12.73	7.27	paid 17.2 10
Cornelis ..	0.68	29	19.72	10.95	8.77	do
Podina First ..	0.65	26	16.90	8.60	8.30	do
James ..	0.60	22½	13.50	9.74	3.76	do
Podi Nona ..	0.40	23	9.20	11.35	1.45	do
Do in Bungalow ..	0.20	12	3.60			
Martin ..	0.60	26	15.60	7.76	7.84	do
Chalo Singho ..	0.35	28½	9.98	7.31	2.57	do
Alice ..	0.35	12	4.20	3.00	6.20	do
Do Keeping Accounts			5.00			
			117.70	77.44	46.25	20

No. P. 2 A
Translation of P 2
18-2-32

NO. P2A

TRANSLATION OF P2

Certificate of Birth

No. 14194.

Western Province.

COLOMBO DISTRICT

Kottawa Division

1. Date and place of birth: Eighteenth day of February, 1932
at Talangama South.
2. Name: Percy Arnold. 30
3. Sex: Male.
4. Name and surname of father: James Albert Ratnayake.
5. Mother's name, including Maiden Name: and
Nationality: Liyana Aratchige Dona Adliet.
Sinhalese.
6. Rank or profession: and
Nationality of father: Merchant.
Sinhalese
7. Whether parents married: No.
8. Informant's name, dwelling
place and in whose capacity
he gave information: James Albert Ratnayake and Liyana
Aratchige Dona Adliet, Talan- 40
gama South, Father and mother.
9. Signature of the informant: Registered upon Certificate under
Section 12.
10. Date of registration: Twenty-third day of March, 1932,

11. Signature of the Registrar: Signed in English.
Signed A. D. C. Rodrigo.
12. If any name altered or substituted after the registration of the birth by altering the former name that name: —
13. The date of alteration or substitution of name as aforesaid: —

Exhibits
No. P2A
Translation of P2
18-2-32
—Continued.

10

Signed W. JAYASINGHE,
Adtl. Asst. Provincial Registrar,
Colombo District.

Provincial Registrar's Office,
Colombo, 18th October, 1943.

NO. P3A
TRANSLATION OF P3
Certificate of Birth

No. P3A
Translation of P3
20-8-40

Western Province. Colombo District. No. 3075.

20

Ranala Division.

1. Date and place of birth: Twentieth day of August, 1940, at Talangama South, Bank Hill Estate.
2. Name: Pearl Bandara Menike Ratnayake Suriyagoda.
3. Sex: Female.
4. Name and surname of father: James Albert Ratnayake.
5. Mother's name, including Maiden name and nationality: Liyana Aratchige Dona Adliet. Sinhalese.
- 30 6. Rank or profession and nationality of father: General Merchant and Landed Proprietor. Sinhalese.
7. Whether parents married: No.
8. Informant's name, dwelling place and in whose capacity he gave information: James Albert Ratnayake—Liyana Aratchige Dona Adliet—Talangama South, Bank Hill Estate. Parents.
9. Signature of the informant: Registered under the declaration of Section 10.
10. Date of registration: Twentieth October, 1940.
- 40 11. Signature of the Registrar: Signed in English.
Signed P. D. Esson.
12. If any name altered or substituted after the registration of the birth by altering the former name that name: —

Exhibits
 No. P3A
 Translation of P3
 20-8-40
 —Continued.

13. The date of alteration or substitution of name as aforesaid:

Signed W. JAYASINGHE,
Adtl. Asst. Provincial Registrar,
Colombo District.

Provincial Registrar's Office,
 Colombo, 18th October, 1943.

No. P6
 Letter from
 A. B. N. Kulasekera
 17-11-42

NO. P6

LETTER FROM A. B. N. KULASEKERA

10

Christian College,
 Kotte,
 17-11-42.

Dear Mr. Ratnayake,

I was very sorry I could not meet you the other day I came there. I trust Mrs. Ratnayake told you that I came and what I had to say concerning your son Percy. I am very sorry I could not give her any good news as regards the boy. But I expected to send you better news now. Yet, I am afraid I'll have to disappoint you even now.

Your son is rather backward in his studies yet. But this is not to deal on his studies so much as his actions towards me his teacher, today. I am deeply sorry that a boy of a respectable father and mother should have behaved in this way. 20

He complained to me that a boy, one of his fellows in the class, had hurt him yesterday and that you had wanted him to bring the matter to my notice. In my last visit, his mother had told me that he was rather naughty at home. As such I knew that unless he had done something he would not have. I went into the matter promptly and found that Percy too was in the fault. Well, I punished both boys. To my utter horror and sorrow, Percy took up his books and while leaving the class had mentioned to the others that he was coming to the Principal to complain, take leave and go home, which action was too hard for me to bear up. He, however, did not leave the school premises. I am sure you will agree with me, when I say that I as a teacher has as much a responsibility as you his father. You would not have allowed such insolence. I am sure. So I have already punished the boy for this. For if these actions are not nipped in the bud I am sure they may develop. So please do advise him that he should not have treated me so, nor should he any other. I heard that you were rather strict with him yourself and I ask you very sincerely not to be hard on the boy but warn and advise him. 30 40

I am sorry once more that I have to write such a letter to you. But I am sure you will pardon me. It is in the best interests of the child.

Now with kindest regards to self and Mrs. Ratnayake.

I remain,
Yours sincerely,
ALIC B. N. KULASEKERA:

Exhibits
No. P6
Letter from
A. B. N. Kulasekera
17-11-42
—Continued.

P.S.—If I find the time I shall look you up sometime before Saturday.

Intd. A.B.N.K.

NO. Y8

**LETTER FROM DECEASED TO THE 2ND
PETITIONER**

No. Y8
Letter from
Deceased to the
2nd Petitioner
1-2-43

10

Bank Hill,
1-2-43.

My darling Sonnie,

My loving kisses and thanks are not sufficient for the nice things I had on 22-1-43 which were highly appreciated. If your man is coming tomorrow please send the following:—

One gallon K oil—tin sent, 2 lbs. fresh ghee, vegetables—tin sent, ½ lb., good fresh Awt Tea. Fresh flour, one good ripe plantain, about six manioc and battala if available.

I am under medical treatment of Dr. Fonseka from last Saturday,
20 and our prescription is dispensed at Millers.

Details tomorrow.

Yours affect.,
J. A. R.

P.T.O.

A Cheque for Rs. 135-32 was handed by me to Millers on last Saturday in full settlement of their memo to date which please note. The Kitulgoda one will be sent by your man.

J.A.R.

NO. P1

ACCOUNT BOOK (page 47)

No. P1
Account Book
(page 47)
April & May 1943

30

1943.

Apl.	To brought forward from 46:						
	Sundries	X	X	X	X	X	.. 23.84
	135 Cadjans	1.35;	Strings	0.12;	Milk	6.36;	Rice 0.39 .. 8 22
	March Check	Roll Pay	15.00;	April Hoppers	1.50		.. 2.50
May	Dhody	0.50;	Rice, M.	Fish 1.20;	Washing Soap	0.70	.. 2.40
	Sundries	29.02,	3.70,	1.65			
14	Poda C'nut	picking	May 3.00;	3.00			.. 6.00
	May Crop	C'nuts	2,382				

40

See page ahead 223 for my Will

NO. P1A
 LAST WILL

By the Grace of God.

This is my Last Will.

I distribute my Estate as follows:—

After my death a sum of Rs. 1,000 to St. Barnabas Church, at Avisawella may be given out of my Estate and also Rs. 10 a month out of the income of Yatiyantota property.

To my car driver Girigoris shall be given Rs. 1,500 from my Estate for his long service under me.

To my wife Dona Adliet my properties at Hendala, the furniture of this bungalow and my Car No. Z1570 to do whatever she likes with them.

I give to my two children Percy and Pearl (a) This Bank Hill Estate with everything therein, (b) My residing bungalow premises with furniture, the tenements under No. 7; the buildings, stores and garages under Nos. 75, 76 and 77 in Dehiowita subject to the life interest of the mother Dona Adliet and to be distributed between the two according to her choice. If my wife marries after my death she shall forfeit this life interest in favour of my sister's children to half share until the children attain 21 years of age and the other half share shall be managed by my sister's son Felix (Sonnie) 20 to the benefit of the two children until they come of age.

To my sister's son Felix (Sonnie) I give my Estates Supplies and Trading business together with everything belonging to it ; assets and liabilities as well from the date of my death. He shall also have the house property at Yatiyantota subject to the payment of Rs. 10 to the church.

My sister's children, Felix and his sisters, shall get jointly my lands and premises in Magamma and the two rooms at Dehiowita under Nos. 31 and 32.

My two children are to get exactly half the cash balances in the Banks; my wife to get one-fourth share and the balance one-fourth share to my sister's 30 children in equal shares.

All my other interests in Ceylon and foreign countries and anything that I might become entitled to at some future date or that I may inherit in the future shall go to my sister's children.

A monument shall be erected at the place of my burial at a cost of Rs. 500 out of my estate.

I give and bequeath my estate in the above manner and I appoint my wife and my sister's son Felix as Executors of this Will.

Signed in the presence of the following witnesses at Talangama on this 23rd day of May, 1943.

Sgd. J. A. RATNAYAKE.
 Sgd. J. A. RATNAYAKE.

40

Witness:

- (1) Sgd. J. D. A. Dissnayake.
- (2) W. P. Perera.
- (3) Sgd. In Sinhalese. (James de Alwis)
- (4) Sgd. . . . Dissanayake.
- (5) Sgd. In Sinhalese. (H. D. Martin)

NO. R20

COPY OF THE LAST WILL

BY THE GRACE OF GOD.

Exhibits

No. R20
Copy of the
Last Will
23-5-43

THIS IS MY LAST WILL. I distribute my Estate as follows:—

After my death a sum of Rs. 1,000/-, to St. Barnabas Church at Avisawella may be given out of my Estate and also Rs. 10/- a month out of the income of Yatiyantota Property.

To my car driver Girigoris shall be given Rs. 1,500/- from my Estate for his long service under me.

10 To my wife Dona Adliet my properties at Hendela. The furniture of this bungalow and my Car No. Z1570 to do whatever she likes with them.

I give to my two children Percy and Pearl:—

(a) This Bank Hill Estate with everything therein.

(b) My residing bungalow premises with furniture, the tenements under No. 7. The buildings, stores and garages under Nos. 75, 76 and 77 in Dehiowita subject to the life interest of the mother Dona Adliet and to be distributed between the two according to her choice.

20 If my wife marries after my death she shall forfeit. This life interest in favour of my sister's children to half share until. The children attain 21 years of age and the other half share shall be managed by my sister's son Felix (Sonnie) to the benefit of the two children until they come of age.

To my sister's son Felix (Sonnie) I give my Estate Supplies and Trading business together with everything belonging to it, Assets and liabilities as well from the date of my death. He shall also have the house property at Yatiyantota subject to the payment of Rs. 10/- to the Church.

My sister's children Felix and his sisters shall get jointly my lands and premises in Magamma and the two rooms at Dehiowita under No. 31 and 32.

30 My two children are to get exactly half the cash balance in the Banks my wife to get one-fourth share and the balance one-fourth share to my sister's children in equal shares.

All my other interests in Ceylon and foregin countries and anything that I might become entitled to at some future date or that I may inherit in the future shall go to my sister's children.

A monument shall be erected at the place of my burial at a cost of Rs. 500/- out of my Estate.

I give and bequeath my Estate in the above manner and I appoint my wife and my sister's son Felix as Executors of this Will.

40 Signed in the presence of the following witnesses at Talangama on this 23rd day of May, 1943.

Sgd. J. A. RATNAYAKE.

Witnesses:

- (1) J. D. C. Dissanayake.
- (2) W. P. Perera.
- (3) James Alwis.
- (4) K. D. Dissanayake.
- (5) H. D. Martin.

Exhibits
No. XI
Affidavit of the
Witnesses to the
Last Will
5-7-43

NO. XI

AFFIDAVIT OF THE WITNESSES TO THE
LAST WILL

IN THE DISTRICT COURT OF COLOMBO

No. 10504 Testy.

In the Matter of the Last Will and Testament of JAMES ALBERT RATNAYAKE of Bank Hill Estate, Talangama South.....*Deceased.*

1. HETTIARATCHIGE DON ADLIET RATNAYAKE of Bank Hill Estate, Talangama, and another.....*Petitioners*

and

10

1. PERCY ARNOLD RATNAYAKE, and five others.....*Respondents.*

We, John de Alwis Dissanayake of Talangama South, Welikadage Pawlis Perera of Talangama South, Weerasinghege James Alwis of Talangama South, Dissanayakege Joseph Richard de Alwis of Talangama South, and Hettiaratchige Don Martin of Talangama South, not being Christians do hereby solemnly sincerely truly declare and affirm as follows:—

(1) We are well acquainted with the late JAMES ALBERT RATNAYAKE who signed and executed the LAST WILL dated the 23rd day of May, 1943, at Talangama South, now deposited in this Court in the presence of us at the same time and place all being present at the same time and at his request we the said John de Alwis Dissanayake, Welikadage Pawlis Perera, Weerasinghege James Alwis, Dissanayakege Joseph Richard de Alwis and Hettiaratchige Don Martin subscribed our names as witnesses to the aforesaid LAST WILL bearing the above date and that the signature subscribed to the said LAST WILL is the proper and true signature of the said JAMES ALBERT RATNAYAKE and of no one else.

(2) The said Testator at the time of his subscribing his signature to the said LAST WILL and TESTAMENT we verily believe was of sound mind memory and understanding.

Sgd. J. de A. Dissanayake.
Sgd. W. P. Perera.
Sgd. (in Sinhalese) James Alwis.
Sgd. J. R. A. Dissanayake.
Sgd. (in Sinhalese) H. D. Martin.

The foregoing affidavit was duly read over and explained by me to the affirmants in their own language in Sinhalese and they appearing to understand the nature and contents thereof signed and affirmed to at Colombo on this 5th day of July, 1943.

40

Before me,
Sgd. E. B. WEERAKOON,
J. P.

NO. P5

AFFIDAVIT OF H. D. MARTIN

Exhibits.
 No. P5
 Affidavit of
 H. D. Martin
 4-10-43

I, Hettiaratchige Don Martin of Matara not being a Christian do hereby solemnly sincerely truly declare and affirm as follows:—

- (1) I am a witness to the Last Will of the late Mr. J. A. Ratnayake of Talangama.
- (2) I affirm and state that the deceased Mr. J. A. Ratnayake duly and solemnly signed the said Last Will on the 23rd day of May, 1943, in the presence of the other witnesses and in the presence of one another all being present at the same time at Talangama on the aforesaid date.
- (3) At the time I signed the said Last Will I was in charge of the Estate at Talangama.
- (4) I left the said estate in the beginning of July, 1943, and am living in my village in Matara.
- (5) On the 23rd day of August, 1943, one J. H. Amarasekera and Mr. Felix Wijesinghe the 2nd Petitioner came to my residence at Matara at 7 a.m. in the morning.
- (6) They called me to go to the town which is a distance of 3 miles from my residence and I accompanied them at their request. They took me to the Rest House and we had tea together.
- (7) They came to the market and having made a few purchases they required me to prepare breakfast. We then returned to my house and whilst the breakfast was being prepared Mr. Amarasekera and Mr. Wijesinghe sat outside and Mr. Wijesinghe then discussed about the testamentary case of Mr. Ratnayake.
- (8) He suggested that I should state that the Last Will was executed subsequent to the death of the late Mr. Ratnayake.
- (9) I refused to be a party to such a falsehood, Mr. Amarasekera promised me to give Rs. 2,000 after the same was decided if I give that evidence in his favour.

Sgd. In Sinhalese.

The foregoing affidavit was duly read over and explained by me to the affirmant in his own language in Sinhalese and he appearing to understand signed and affirmed to at Colombo on this 4th day of October, 1943.

Before me,

Sgd.
 Commissioner for Oaths,

SCHOOL REGISTER—PAGE 46

Exhibits
 No. Y9
 School Register—
 page 46
 5-5-48

Certified copy of the page 46 of the School Register:

Admission No. 609.

Name of Child: P. A. R. Suriyagoda.

Date of Birth: 18-2-32.

Date of Admission: 20-1-42.

Nationality: Sinhalese.

Religion: Church of Ceylon.

Name of father or guardian: J. A. Ratnayake.

10

Residence: Talangama.

Occupation of Father or Guardian: General Merchant.

School or schools at which child has received previous instruction:

St. Thomas', Kotte.

Date of Withdrawal: 6-12-43.

Cause of Withdrawal: Parent's wish.

Remarks: U.1.

Sgd. H. E. P. GUNAWARDENE,
Principal, Christian College.

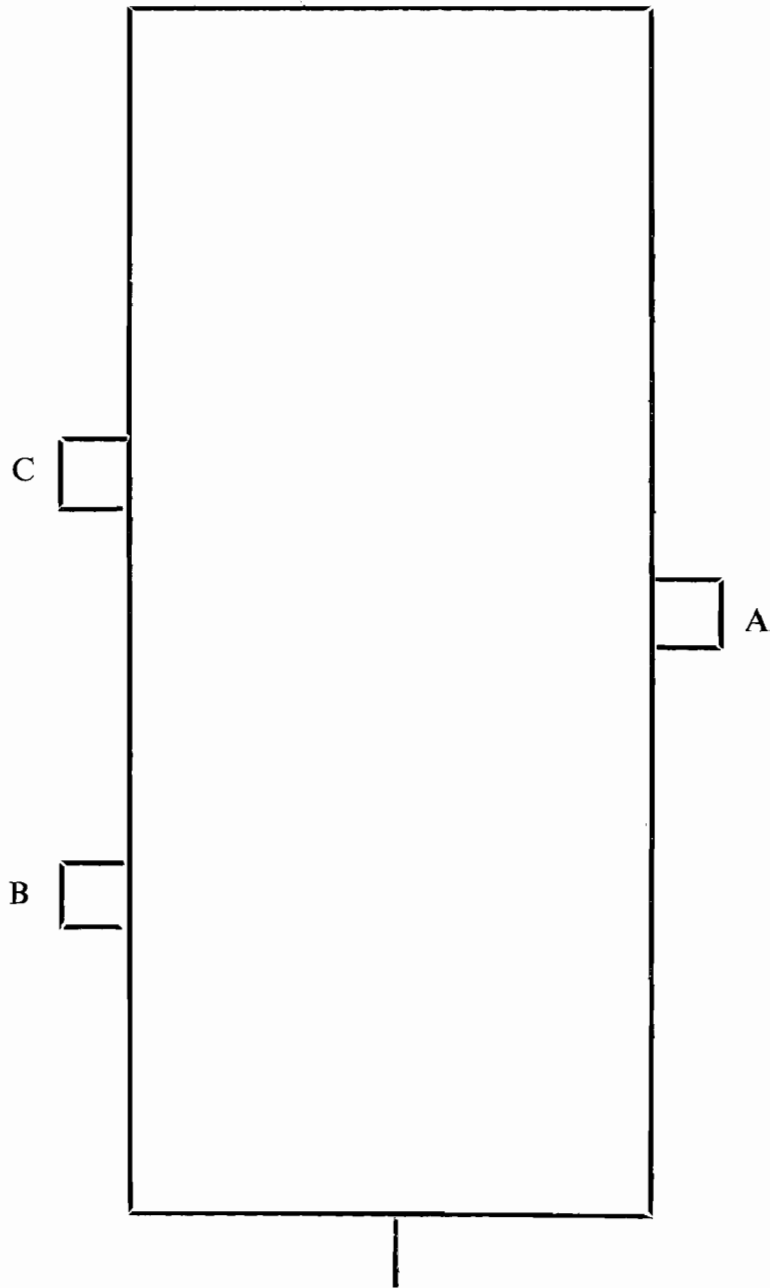
Kotte. 20

5-5-48.

No. Y 1

Sketch drawn by J. R. de A. Dissanayake

Exhibits
No. Y 1
Sketch drawn by
J. R. de A.
Dissanayake



Supreme Court of Ceylon
No. 56 (Interlocutory) of 1949.

District Court, Colombo
No. 11534.

*In Her Majesty's Privy Council
on an Appeal from the Supreme Court of Ceylon.*

IN THE MATTER OF THE LAST WILL AND TESTAMENT
OF JAMES ALBERT RATNAYAKE of Bank Hill Estate,
Talangama.....*Deceased.*

BETWEEN

MURIEL AMARASEKERA *nee* Wijesinghe of Deal Place,
Colombo.....*Appellant*

AND

1. HETTIARATCHIGE DONA ADLIET RATNAYAKE
2. PERCY ARNOLD RATNAYAKE
3. PEARL BANDARA MENIKE RATNAYAKE, all of Bank Hill Estate, Talangama
4. HETTIARATCHIGE DON HERATH of Piliyandala, Guardian-ad-litem of 2nd and 3rd Respondents.....*Respondents.*

RECORD OF PROCEEDINGS
