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UNIVERSITY OF LONDON  
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INSTITUTE OF ADVANCED  
LEGAL STUDIES

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No. 13 of 1953.

In the Privy Council

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

IN THE MATTER of the Last Will and Testament of KATHRI  
ARACHIGE DON FREDERICK SIRIWARDANA of Walagedera,  
deceased.

BETWEEN

10 KATHRI ARACHIGE DON VELIN SIRIWARDANA *Appellant*  
AND

ARACHI APPUHAMILLAGE DON CARTHELIS  
APPUHAMY THE COLOMBO BUDDHIST  
THEOSOPHICAL SOCIETY LIMITED . . . *Respondents*

AND

KATHRI ARACHCHIGE PREMAWATHIE *Intervening*  
SIRIWARDANA and CECELIA KANNANGARA *Respondents.*

Case

FOR THE RESPONDENT ARACHI APPUHAMILLAGE DON  
CARTHELIS APPUHAMY

RECORD.

20 1. This is an appeal from a judgment and decree of the Supreme  
Court of Ceylon (Gunasekera and Pulle JJ.) dated the 25th April 1951, pp. 415-418.  
affirming a judgment and decree of the District Court of Colombo pp. 393-410.  
(Sinnathamby A.D.J.) dated the 17th January 1949 whereby the last  
will and testament of Kathri Arachige Don Frederick Siriwardana  
(hereinafter called "the deceased") was admitted to probate. The said  
judgment of the District Court of Colombo was delivered after retrial  
*de novo* of the case pursuant to a judgment and decree of the Supreme  
Court of Ceylon (Keuneman and Canekeratne JJ.) under date the pp. 220-230.  
22nd November 1945 allowing an appeal from a judgment and order of  
30 the District Court of Colombo (Joseph J.) in which the learned District pp. 208-215.  
Judge, discharging an order *nisi* that the will be declared proved, held that  
the will was a forgery.

2. The proceedings were begun by petition of Aratchi Appuhamillage p. 39  
Don Carthelis Appuhamy, the first Respondent in this appeal (hereinafter  
called "Carthelis"), dated the 8th December 1942 in the District Court

p. 504. of Colombo. By this petition Carthelis stated that on the 5th October 1942 the deceased duly executed his last will and testament (a draft of which is set out in full in the printed Record and marked R.7) appointing Carthelis Managing Executor in connection with all matters mentioned in the will. After setting out the names of the intestate successors, of whom the chief is Kathri Aratchige Don Velin Siriwardene, stepbrother of the deceased and Appellant in this appeal (hereinafter called "the Appellant") together with full particulars of the deceased's estate contained in a schedule thereto, Carthelis prayed in his petition for an order declaring the will proved and that he be declared Executor thereof and probate issued to him accordingly; the costs of the proceedings and for such other and further relief as to the Court might seem meet. An affidavit sworn by Carthelis in support of the petition was filed on the 8th December 1942. There was a further affidavit dated the 4th December 1942 sworn by the following :—

Don Sammy Jayasinghe (hereinafter called "Sammy Jayasinghe")  
Kamburawala Kankanange Allis alias Thomas (hereinafter called  
"Thomas")

Don Peter Jayasinghe (hereinafter called "Peter Jayasinghe")  
Galatarage Don Handy Singho (hereinafter called "Handy")  
Induruwage Don Parlis Goonetilleke (hereinafter called "Parlis")

whereby they affirmed and declared that they had witnessed due execution of the will by the deceased on the 5th October 1942.

p. 51. On the 6th January 1943 the order *nisi* above mentioned was made by the District Court of Colombo (Swan A.D.J.) declaring the will proved and Carthelis to be the executor thereof unless cause to the contrary was shown.

pp. 58-62. 3. On the 25th February 1943 the Appellant filed a petition and affidavit showing cause why the order of the 6th January 1943 should not be made absolute. He affirmed and declared that the will was a forgery and that Carthelis was not entitled to prove the will, and prayed that the order *nisi* be discharged and that he, the Appellant, be declared entitled to Letters of Administration of the deceased's estate; costs and such other relief as to the Court should seem meet.

p. 61, l. 10.

p. 66. 4. On these pleadings issues were framed which are set out in full in the Record and were adopted at the retrial by consent from the previous hearing. The basic question at issue in these proceedings is whether or not the will is a forgery.

p. 234.

p. 236, l. 42-p. 241, l. 20. 5. The retrial began on the 9th July 1947 before Sinnathamby A.D.J., and, the onus being on Carthelis to prove the will, evidence on his behalf was taken first. He himself stated that he had known and been employed by the deceased for over 20 years and that for some time past he had managed the deceased's considerable estate; he had been trusted by the deceased and in fact treated more as a son than a servant. In September 1942 the deceased had become ill and, as a result of his doctor's advice, decided to go to hospital in Colombo. On the 7th October 1942 the deceased, accompanied by Carthelis, Lewis Appuhamy (a relative of the deceased) and Thomas set out for Colombo by car. After a number of

p. 237, ll. 1-9.

p. 238, ll. 2-4.

p. 238, ll. 4-16.

- stops the car reached the Maliban Hotel in Colombo and there the deceased went into the hotel to relieve himself and take some refreshment. Carthelis went with him but, after a short time, went out to look for the car which had gone to get petrol. The witness rejoined the deceased after about half an hour and the party set out again. After calling at Dr. Jayasuriya's house the deceased was admitted to hospital. Carthelis, having sent the car back to Welagedera with Lewis Appuhamy and Thomas, stayed himself in Colombo at the deceased's request, visiting the deceased in hospital and attending to business. On the 11th October he returned to Welagedera but came back to Colombo on the morning of the 12th, but before he had reached the hospital he learned of the deceased's death. Having made all the necessary arrangements he removed the deceased's body to Welagedera on the night of the 12th October. At some time on that day Carthelis sent a telegram (R.3) to the Appellant and, apparently in response to this, the Appellant arrived at the deceased's house on the 13th. From the very first the Appellant suggested that he should take charge of the deceased's affairs, leaving the arrangements for the cremation to Carthelis. There was in fact a serious dispute between the two as to the time when the deceased's keys should be handed over to the Appellant.
- 20 This dispute was only settled on the intervention of the headman Jayanetti who was entrusted with the keys for a few days. It was on the 13th that, for the first time, Carthelis learnt of the existence of the will; Sammy Jayasinghe, when he brought the message from the Appellant asking for the keys, told Carthelis of the existence of the will. The latter was, however, in no mood to discuss such matters at the time and it was only later, on the 15th, that he learnt the names of the witnesses and an outline of the contents of the will. Having learnt that the deceased had taken the will in a suitcase to Colombo on the 7th October and that to the best of his knowledge it had not come back, he, on the 16th October, consulted
- 30 Mr. Alwis, Crown Proctor. In accordance with Mr. Alwis's advice an affidavit (P.18) was sworn by the witnesses to the will on the 20th November 1942. Then, in order to recover the will itself, Carthelis inserted notices in the Daily News and the Dinamina and these were produced (P.4 and 5). In response to P.5 he received some days later letters (P.6 and P.7) from one John Perera of the Maliban Hotel, Colombo, stating that the documents advertised were safe. Carthelis thereupon went to the Maliban Hotel and recovered the will from John Perera. Carthelis also identified the deceased's signature on the will. The witness was then exhaustively cross-examined. He gave evidence as to the first time he heard about the will and its details;
- 40 he described his movements on the 5th October when the will was executed. He explained that he had been reluctant to hand over the keys to the Appellant on the 13th because he felt it humiliating after he had been trusted by the deceased; he did not know at that time that he was the executor and in fact then thought that the Appellant was entitled to the keys. Even if he had been told by Sammy Jayasinghe on the 13th that he was executor, he did not pay much attention.

6. The evidence of Carthelis was interrupted so that two short witnesses might be heard.

- 50 N. de Alwis said that in 1942 he was Crown Proctor for Balapitiya. He remembered Carthelis coming to consult him about a missing will in

October of that year. He advised that an affidavit should be sworn by the witnesses to the will and on the 20th October this was done; he identified P.18 as the affidavit.

p. 243.

p. 243, ll. 16-32.

p. 243, ll. 33-42.

p. 244, ll. 13-22.

p. 244, ll. 23-26.

Wilson de Silva said that he was a Proctor practising at Kalutara. In October 1942 he had been consulted by the deceased about a land case in the Kalutara Court. He recalled giving some documents including an opinion of Counsel (P.8c) to Thomas on the deceased's behalf. He said that a few days later when the deceased was going to Colombo he had a conversation with him; the deceased remained in the car and appeared to be very ill. In cross-examination he agreed that the deceased was a confirmed litigant and well known to all the local Proctors. He had never discussed with the deceased the question of making a will, although he acted as his Proctor. 10

pp. 282-284.

p. 282, ll. 2-8.

p. 283, ll. 1-35.

7. The next witness was Peter Jayasinghe; he gave evidence that he was an old friend and a distant relation of the deceased, the relationship being through the Appellant's wife. On the 5th October, in answer to a message, he went to the deceased's house which was situated at a little less than a mile from his own. On arrival he asked the deceased why he had been sent for and the latter explained his illness and intention to make a will and asked him if he would be a witness. Having accepted, he then had some time to wait till the other witnesses arrived, so he went and conversed with the schoolmaster, who was a near neighbour. At about 4 or 4.30 p.m. he returned to the deceased's house and there saw Handy and Parliss; Thomas also came in at the same time. Sammy Jayasinghe, the deceased's clerk, then summoned the four of them into the deceased's presence, and when they were all in the room, he read out the will. The will was then signed by the deceased and all five witnesses; after it was duly executed the deceased asked the witnesses to keep the matter secret and they apparently made up their minds to do so. It was not till the 15th October, the day of the cremation, that he discussed the matter with Carthelis. 20 30

p. 284, ll. 1-6.

p. 284, ll. 28-32.

pp. 284-296.

p. 288, ll. 8-28.

p. 290, l. 22.

p. 289, ll. 27-32.

In cross examination he amplified this evidence. He said that although he heard on the 14th from outsiders to the family that there had been a quarrel about the keys, it did not occur to him to disclose the existence of the will. He said that he was not very friendly with Carthelis and that although he knew the Appellant had wrongfully entered the deceased's property, he did nothing about it. Since the will was missing, he appeared to think nothing could be done.

pp. 296-7.

p. 297, ll. 12-22.

p. 297, ll. 25-40.

8. The next witness, D. H. Jayanetti, said that in 1942 he was the headman at Welagedera. On the 13th he had gone to the deceased's house at the Appellant's request and had settled the dispute over the keys by taking custody of them. When he got home Thomas came and told him that there was a will and that Carthelis was the executor. Some days later on the 17th the Appellant came and asked for the keys, and it was arranged that they should be handed back in the presence of a responsible person. The witness then said that he asked the Appellant whether there was a will, repeating what he had heard from Thomas; the Appellant, however, said he knew nothing about a will. On the 18th the keys were handed back in the presence of the Inspector of Police. 40

When he was cross-examined Jayanetti agreed that it was his duty to inquire whether there was a will, and admitted that he had only inquired of the Appellant, and, casually, of Lewis Baddevidane, neither of whom knew anything about it. He said that he did not ask Carthelis because he thought that the latter would have mentioned it when the keys were handed over. He made it clear that his main preoccupation at the time was that Carthelis and the Appellant should not quarrel or fight.

p. 300, ll. 12-42.  
p. 302, l. 12.  
p. 301, ll. 9-29.  
p. 303, ll. 26-39.

9. The next witness was Thomas ; although he lived about 8 miles from the deceased's house, he had property at Welagedera, had been married from there and was a close friend and frequent visitor to the deceased, to whom he was related. From about the 1st October 1942 he was staying at Welagedera for a period of about 12 days. On the 5th October he visited the deceased and, at his request, went on an errand to Proctor Wilson Silva. He returned to the deceased's house between 4 and 4.30 p.m. He then gave an account of the execution of the will, substantially confirming the evidence of Peter Jayasinghe. On the morning of the 7th October the witness went to the deceased's house and saw him put the will into the envelope containing the documents brought on the 5th from Proctor Wilson Silva and then into a suitcase ; the suitcase was then put into the car and the party set off for Colombo. He briefly described the journey, confirming Carthelis's account. On the 13th after the dispute over the keys he went to the headman Jayanetti and explained that there was a will by which Carthelis was appointed executor. Jayanetti, however, replied : " Don't mention it now ; they will kill each other." He said nothing more about the will till the 15th when he told Carthelis that he was executor and a beneficiary.

pp. 307-311.  
p. 307, l. 36-p. 308, l. 12.  
p. 308, l. 44-p. 309, l. 42.  
p. 309, l. 42-p. 310, l. 8.  
p. 321, l. 24.  
p. 310, ll. 8-21.  
p. 310, l. 31-p. 311, l. 3.

In cross-examination he said that he regarded the Appellant as his uncle and his family had, till the present dispute, been on friendly terms with the Appellant. He personally had not associated intimately with Carthelis, but he knew the deceased treated him as a son rather than a servant ; he, Thomas, therefore regarded Carthelis as a cousin.

p. 313, l. 1.  
p. 314, ll. 1-4.

10. Sammy Jayasinghe, who had been the deceased's clerk, next gave evidence. He said that on the 5th October 1942 he had written out a draft of the will at the deceased's dictation ; having read over the draft to the deceased, the witness made a fair copy of the will. He then identified the document A, annexed to the Petition, as the document which he had written out. He said that at about 1 p.m. on the 5th October he was ordered to bring the headman, Jayanetti, but that on reaching his house the headman was not at home. He also gave an account of the execution of the will, of which he was a witness, similar to that given by Peter Jayasinghe. Referring to the incident over the keys, he said that when he brought the message from the Appellant to Carthelis asking for the keys he mentioned that there was a will making him, Carthelis, a beneficiary, but that the latter had said this was not the time to discuss such matters.

p. 325, ll. 1-18.  
p. 325, ll. 33-33.  
p. 326-p. 327, l. 30.  
p. 329, ll. 1-12.

In cross-examination he admitted that he had realised that if there was a will, the Appellant was a complete intruder on the deceased's

p. 335, l. 32-p. 336, l.

property, and that, on being asked by the Appellant whether the deceased left a will, his answer was most equivocal. He in fact made it fairly clear that his main preoccupation was to keep his job as clerk in the deceased's house and he was not the least concerned whether he was employed by the Appellant or Carthelis.

p. 349, ll. 1-15.

11. D. A. John Perera, manager of the Maliban Hotel, Colombo, was the next witness. He described the occasion early in October 1942 when the deceased had come to the hotel. The deceased had first gone to the lavatory and then asked for soda water. He asked Carthelis to go and see about the car; and while the latter was away handed over a letter to the witness. The deceased had said it was addressed to Wilson Silva and was valuable; he asked the witness to keep it safe while he was in hospital and said that he would return for it in three or four days. He then gave evidence that while he was subsequently ill in bed he had seen the advertisement P.5 in the Dinamina and had written the letters P.6 and P.7. He also described the interview with Carthelis at which he handed over the documents entrusted by the deceased. 10

p. 349, l. 15.  
p. 350, l. 10.

p. 356, ll. 22-26.

He was cross-examined as to the advisability of his handing over the documents to Carthelis when they had been entrusted by the deceased; he admitted that he was satisfied by the fact of the advertisement and was anxious for the reward of Rs.50. He said that the deceased had on earlier occasions entrusted him with important articles, being a frequent visitor at the hotel. 20

p. 364, ll. 20-30.

p. 365, ll. 1-6.

12. The last witness to give evidence on behalf of Carthelis was Cecilia Siriwardene; she was a half-sister, though it was admitted an illegitimate one, of the deceased and was a beneficiary under the will. She said that from 1937 she had lived in the deceased's house, being joined there a few years later by her husband Lewis Baddevidane. The deceased was not on good terms with the Appellant, who did not visit prior to the deceased's death. Towards Carthelis, however, the deceased was most affectionate, treating him like his own child. 30

p. 157, l. 26.

13. Finally, by agreement, the evidence of Father Julian Fernando, a handwriting expert, given at the previous trial was read. The effect of his evidence was that the signature of the deceased on the will was genuine.

p. 158, l. 40.

14. At the beginning of the Appellant's evidence the evidence of Lawrie Muttukrishna, a handwriting expert, given at the previous trial, was read by consent. In his opinion the signature on the will was not genuine.

p. 370, ll. 20-26.

15. The first witness for the Appellant was James Wedasinghe, who, in October 1942, was in the employment of the deceased as a tapper. In the mornings he tapped the trees and in the afternoons he rolled out the rubber. For a few days before the 7th October he was assisting in the house. He said that on the 5th October he saw no one come to the house; if they had done so, he would have seen them. 40

16. The evidence of Amarasinghe given at the previous hearing was then read; it was agreed that this evidence was admissible because the witness had since died. He said that in October 1942 he was employed by the deceased to be in charge of his rubber lands and that, although on the 5th October he was in the deceased's house, he did not remember any unusual incident. In cross-examination he admitted that he had never tapped a tree in his life and that till a short time before the deceased's death he had been employed in a plumbago pit some distance from the house. There was in fact considerable doubt whether he was present at the house on the 5th October.

p. 190, l. 29-p. 191, l. 31.

p. 192, l. 9-p. 193, l. 20.

p. 196, ll. 1-11.

17. In his address to the Court Counsel for the Appellant argued that although the story of the execution of the will had been testified to by six witnesses, it was nevertheless so improbable that the Court ought not to accept it. With great ingenuity he emphasized all the inconsistencies and improbabilities in the evidence given on behalf of Carthelis; the main points may perhaps be summarised as follows :—

p. 376.

(A) It was untrue that the deceased was on bad terms with the Appellant and the Appellant's family; reliance was placed on the obituary notice R.5 of Don Davith Siriwardene, the Appellant's brother.

p. 377, ll. 8-12.

(B) The deceased, being a shrewd business man and used to litigation, would not have made a will in this haphazard manner.

p. 377, ll. 14-22

(C) There was evidence that the deceased did not intend to stay in hospital; so there could be no explanation of his leaving the will with Perera.

p. 377, ll. 22-28

(D) There were other witnesses available, such as the school-master and headman, who could have witnessed the will; it is most improbable that the deceased would have got witnesses from a long distance when others were to hand. This was a device so that Thomas, one of the alleged conspirators, could give false evidence.

p. 377, ll. 29-46.

(E) There was no satisfactory explanation of why the deceased took the will to Colombo at all rather than leaving it in his house with other valuables.

p. 378, ll. 3-11

(F) Carthelis in his evidence had mistaken the identity of one of the places at which the car stopped on its journey to Colombo on the 7th October 1942; his evidence therefore was deliberately false.

p. 378, ll. 11-30.

(G) The witness Thomas was obviously mistaken when at the previous trial he purported to identify the documents P.8. His evidence was wholly unreliable.

p. 378, ll. 12-18.

(H) It was extraordinary that, although at the time of the dispute over the keys Carthelis had been told about the will, he said nothing about this to the Appellant and this was not his grounds for resisting the Appellant's claim for the keys.

p. 380, ll. 15-30.

p. 380, ll. 32-44.

(I) The headman, Jayanetti, although it was his duty to find out if there was a will, and although he had in fact been told there was one by Thomas, only made inquiry of the people who did not know. His explanation was improbable and ought not to be believed.

p. 381, ll. 1-9.

(J) Sammy Jayasinghe, although he said that he wrote out the will and signed it, was content to work for the Appellant, even though he was an intruder.

pp. 393-410.

18. On the 17th January 1949 Sinnathamby A.D.J. delivered the long and careful judgment of the District Court of Colombo. 10

p. 393, l. 34-p. 395, l. 25.

Dealing first with the relationship between the deceased and the beneficiaries under the will, he was satisfied that, though no blood relation, Carthelis was a member of the household and treated by the deceased, according to some witnesses, as a son. It was clear that the two sisters, Cecilia and Lily, were both related, albeit illegitimately, and dear to the deceased. The will only dealt with the after-acquired property; the inherited property, though no doubt small by comparison, would go to the Appellant and other blood relations. On the other hand the Appellant and his family were not on visiting terms with the deceased, and in fact there was litigation between Davith, the Appellant's mother, and the deceased. In these circumstances the learned Assistant District Judge concluded that the will was a reasonable will; he adopted the reasoning of Keuneman J. in the judgment of the Supreme Court in the earlier proceedings. The evidence on these matters was uncontradicted by the Appellant, and in so far as it was contradicted by Wedasinghe and Amerasinghe the learned Judge rejected their evidence. 20

p. 395, ll. 5-25.

pp. 224-225, l. 35.

p. 395, ll. 1-4.

p. 395, l. 35-p. 396, l. 41.

The learned Judge then considered the events of the 5th October 1942. He accepted the account of the execution of the will given by Peter Jayasinghe, which was in the main corroborated by Thomas and Sammy Jayasinghe. He also accepted Carthelis's explanation of why he was absent on the 5th October. To some extent the evidence of Thomas and Sammy Jayasinghe of what happened immediately after the signing of the will was corroborated by Proctor Wilson Silva. 30

p. 404, ll. 22-25.

p. 396, l. 42-p. 397, l. 14.

p. 397, ll. 15-34.

p. 397, l. 34-p. 400, l. 4.

Next the learned Judge dealt with the events of the 7th October. He came to the conclusion, it is submitted correctly so, that Carthelis's mistake as to the identity of the place where the car stopped en route for Colombo was evidence of his bona fides and entirely inconsistent with the Appellant's contention that this mistake proved his evidence to be wholly false and concocted. He also rejected the Appellant's contention that the deceased was too ill to walk on the 7th October, and therefore that the evidence given of him walking to the lavatory at Wellawatte and into the Maliban Hotel was necessarily false. 40

p. 398, ll. 13-44.

p. 398, l. 45-p. 399, l. 18.

p. 400, l. 4-p. 403, l. 44.

After reviewing the evidence of what happened after the deceased's death, the learned Judge considered the circumstances in which the will was recovered from John Perera. He was satisfied that, although John Perera may have been more anxious to receive the Rs. 50 reward than



scrupulous that he should return the documents to the rightful owner, he had in fact handed over the documents entrusted by the deceased, including the will, to Carthelis.

19. In assessing the reliability of the witnesses the learned Judge said :—

“ . . . I may say that witness Carthelis . . . and Peter Jayasinghe impressed me as being truthful witnesses. With all due deference to the views expressed by my learned predecessor of the impressions these witnesses created upon him at that hearing, my view is that these two witnesses spoke the truth and I feel I can act upon their evidence with confidence.”

p. 404, ll. 22-28.

With regard to Thomas the learned Judge said that he considered it unsafe to act on his testimony except where it was corroborated. It is submitted that on all the main issues his evidence is corroborated either by the other witnesses to the will, Carthelis or Perera.

p. 404, ll. 28-43.

The learned Judge was not impressed by Sammy Jayasinghe, who was chiefly concerned with himself and his own interest. It is respectfully submitted that that would be no reason for rejecting his evidence, which in any event, on the main issues, is corroborated.

p. 404, l. 42-p. 405, l. 20.

20 The conduct of headman, Jayanetti, the learned Judge found difficult to understand ; and had his evidence stood alone he said that he would not have attached much value to it. It is submitted by this Respondent that his evidence is not of great importance, since it does not go directly to the issue of the genuineness of the will. It is true that he appears to have performed his duty as headman indifferently well ; but it is difficult to see why this should detract from the truth of his evidence, which in any event, so far as it goes, is substantially corroborated.

p. 405, ll. 21-41.

Finally, summarising his conclusions as to the reliability of these witnesses, he said :—

p. 408, ll. 30-44.

30 “ Some of the witnesses were subjected to lengthy and gruelling cross-examination and I am not surprised that they did on certain matters, not of a very material nature, contradict themselves. After making due allowance for these factors, and not forgetting that the witnesses were mainly village witnesses, I am satisfied that their evidence with regard to the main facts is true.”

p. 408, l. 38.

20. The learned Judge then considered in detail some of the Appellant's contentions :—

p. 405, l. 42.

40 (A) He considered that there was much force in the criticism that the witnesses did not discuss the existence of the will when the dispute over the keys arose. He appears, however, in view of his assessment of Carthelis's evidence, to have accepted the explanation that he, Carthelis, was overcome with grief and concerned with the cremation on the 13th ; and that the main objection in his mind was the humiliation that handing over the keys would entail. It is submitted that an additional reason explaining this

p. 406, l. 9.  
p. 404, l. 21.  
p. 404, ll. 31-45.

conduct is to be found in the fear, entertained, at any rate by headman Jayanetti, if not by the others, of further trouble between Carthelis and the Appellant if the existence of the will was made known to the latter.

p. 406, l. 46-p. 407, l. 8.

(B) It was true that the deceased told no one of his intention to make a will prior to the 5th October and that, having made it, one might expect him to entrust it either to Proctor Wilson Silva or Carthelis. The learned Judge, it is submitted correctly, would not speculate as to the reasons which prompted the deceased to act as he did.

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p. 407, ll. 9-34.

(C) He disposed of the contention that other and more probable witnesses for the will were available and that the actual witnesses were most unlikely.

21. The case for the Respondents was considerably strengthened in the view of the learned Judge by two factors :—

p. 407, l. 35-p. 408, l. 10.

(A) He inferred that the will could not have been fabricated, if it was fabricated, by Carthelis after the 12th October. And he did not think that anyone would consider forging a will during the lifetime of the alleged testator, especially when there was no expectation that the testator was about to die.

20

p. 408, ll. 11-29.

(B) He considered that the suggestion that John Perera had been persuaded to become a collaborator in forging the will was, in the circumstances, too far fetched.

p. 409, ll. 12 &amp; 33.

p. 409, l. 34-p. 410, l. 14.

22. All the evidence called on behalf of the Appellant the learned Judge rejected as being untrue. The expert witnesses gave contradictory opinions and no importance was attached to their evidence.

p. 410, ll. 15-25.

23. In conclusion the learned Judge answered all the issues in favour of the Respondents ; he admitted the will to probate and awarded the costs of all the proceedings to the Respondent.

pp. 415-417.

24. On appeal by the Appellant to the Supreme Court the leading judgment was delivered on the 25th April 1951 by Gunasekera J. After considering the judgment of the trial Judge and the contentions of the Appellant, the learned Judge said :—

p. 417, ll. 24-32.

“ In my opinion there is great force in most of these (the Appellant’s) contentions ; all of them were matters that deserved the earnest consideration of the District Judge. Not even the minute scrutiny to which learned Counsel has subjected all the evidence in the case, however, has brought to light a single point of substance that the learned Judge has omitted to consider, in what I may be permitted to describe as an exceedingly careful judgment. I can see no reason for holding that the learned Judge has erred in his findings of fact, which alone are challenged in this case. I would therefore dismiss the appeal with costs.”

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In a short judgment Pulle J., agreed and decree was entered accordingly. pp. 417-418.

25. It is respectfully submitted that this Appeal ought to be dismissed for the following reasons, in addition to those set out in the judgments of the District Court of Colombo and the Supreme Court :—

10 (A) The issue in the case, being whether or not the will was a forgery, is essentially a matter of fact depending on the credibility of witnesses, and as such was concluded by the findings of the learned District Judge as to who were reliable. He entirely accepted the evidence of Carthelis and Peter Jayasinghe, one of the witnesses who signed the will. He also accepted the evidence of Thomas and Sammy Jayasinghe in so far as it was corroborated. With regard to the execution of the will itself, which in substance is the only matter in dispute, their evidence is entirely corroborated, both by Peter Jayasinghe, each other, and the affidavit P.18 sworn by all five witnesses.

20 (B) In the absence of any direct evidence that the will was a forgery the Appellant relied on the improbability of the story put forward by the Respondents. It is submitted that, however unlikely the Respondents' story may be, the alternative version put forward by the Appellant and necessarily implied from the allegation that the will was a forgery, is infinitely more improbable. If the Appellant's version is correct, there was a conspiracy between at least seven entirely independent people, living at different places scattered over a fairly wide area. None of the witnesses to the will knew Carthelis particularly well, except possibly Thomas and Sammy Jayasinghe. John Perera did not even know him by name and barely by sight. There was no suggestion, let alone evidence, of what motive these gentlemen (with the exception of Carthelis, 30 who was the principal beneficiary) might have in committing both forgery and perjury. It was never made clear when or where the so called conspirators were alleged to have agreed on their nefarious conduct or executed the forged will. Allegations of forgery and fraud appear to have been made glibly by the Appellant without any substance in fact or evidence to support them.

26. This Respondent humbly submits that the judgment and decree of the Supreme Court ought to be affirmed and this appeal dismissed for the following among other

## REASONS

- 40 (1) BECAUSE the issue involved is solely one of fact on which both Courts in Ceylon have found concurrently against the Appellant.
- (2) BECAUSE the issue was essentially one depending on the credibility of the witnesses and the conclusions on this of the District Court in favour of the Respondents ought not to be disturbed.

- (3) BECAUSE there was ample evidence to support all the conclusions of the District Judge.
- (4) BECAUSE there was no direct, or indeed indirect, evidence acceptable to the District Judge, establishing that the will was a forgery.
- (5) BECAUSE the Appellant's case was admittedly based solely on attacking the probability of the Respondent's version ; yet to account for the existence of the will the Appellant must rely on establishing a conspiracy between seven independent men to commit forgery and perjury. 10  
There was no evidence in support of such a contention, which in any event is infinitely more improbable than the account put forward by the Respondents.
- (6) BECAUSE the judgments of the District Court of Colombo and the Supreme Court were right.

STEPHEN CHAPMAN.

**In the Privy Council.**

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**ON APPEAL**  
*from the Supreme Court of Ceylon.*

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IN THE MATTER of the Last Will and Testament of  
KATHRI ARACHIGE DON FREDERICK SIRIWARDANA  
of Walagedera, deceased.

BETWEEN

KATHRI ARACHIGE DON VELIN  
SIRIWARDANA .. .. . *Appellant*

AND

ARACHI APPUHAMILLAGE DON  
CARTHELIS APPUHAMY THE  
COLOMBO BUDDHIST THEOSOPHICAL  
SOCIETY LIMITED .. .. . *Respondents*

AND

KATHRI ARACHCHIGE PREMAWATHIE  
SIRIWARDANA and CECELIA *Intervening*  
KANNANGARA .. .. . *Respondents.*

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**Case**

FOR THE RESPONDENT ARACHI APPUHAMILLAGE  
DON CARTHELIS APPUHAMY

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AND LYDALL & SONS,  
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DON CARTHELIS APPUHAMY.*