

~~61162~~

5, 1962

IN THE PRIVY COUNCIL

No. 19 of 1960

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N

EVELYN LETITIA PEIRIS Appellant

- and -

MILLIE AGNES de SILVA Respondent

R E C O R D O F P R O C E E D I N G S

VOLUME I

(Pages 1 to 282)

UNIVERSITY OF LONDON INSTITUTE OF ADVANCED LEGAL STUDIES  <b>29 MAR 1963</b>  25 FULBURN SQUARE LONDON, W.C.1.
-------------------------------------------------------------------------------------------------------------------------------------

68192

DARLEY CUMBERLAND & CO.  
36, John Street,  
Bedford Row,  
London, W.C.1.  
Solicitors for the Appellant.

EDWIN COE & CALDER WOODS,  
7, New Court,  
Lincoln's Inn,  
London, W.C.2.  
Solicitors for the Respondent.

IN THE PRIVY COUNCILNo. 19 of 1960

ON APPEAL  
 FROM THE SUPREME COURT OF CEYLON

B E T W E E N

EVELYN LETITIA PEIRIS

Appellant

- and -

MILLIE AGNES de SILVA

RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCEPART I

No.	Description of Document	Date	Page
	<u>IN THE DISTRICT COURT OF COLOMBO</u>		
1	Journal Entries	26th February 1954 to 19th February 1959	Not Print- ed.
2	Petition of Mrs. M.A.de Silva	26th February 1954	1
3	Affidavit of Mrs. M.A. de Silva	26th February 1954	4
4	Last Will and Testament No.454 of S.W. Fernando attested by Felix de Silva (R.34)	13th May 1950	5
5	Affidavit of J.D.B.Fernando (P.23)	26th February 1954	8
6	Application for Order Nisi	26th February 1954	9
7	Petition of Mrs. N.C.C. Fernando	2nd March 1954	9
8	Affidavit of Mrs. N.C.C. Fernando	2nd March 1954	11

No.	Description of Document	Date	Page
9	Application to open safe	8th April 1954	12
10	Order to open safe.	8th April 1954	13
11	Affidavit of Mrs. M.A. de Silva	13th May 1954	13
12	Joint Affidavit of F.C.A.D. de Silva A.J.C. Fernando and H.A.J. Perera	13th May 1954	16
13	Petition of Mrs. M.A.de Silva	14th May 1954	18
14	Order Absolute in the First Instance	16th June 1954	22
15	Affidavit of D.A.J. Tudugalla (P.14)	24th June 1954	23
16	Affidavit of V.C.C. Dewapurarathna (P.15)	24th June 1954	24
17	Objections of Mrs. E.L. Peiris	8th July 1954	25
18	Application to obtain photo- graphic copy of Mr. Vethecan's signature on Will in case No.14666/T.	23rd September 1954	27
19	Judge's Notes on procedure application	30th September 1954	28
20	Order allowing Mrs. E.L. Peiris to regularise appli- cation	7th October 1954	30
21	Petition of Mrs. E.L.Peiris	20th October 1954	32
22	Affidavit of Mrs. E.L.Peiris	20th October 1954	34
23	Last Will and Testament No. 474 of S.W. Fernando attested by D.A.J.Tudugalla (P11)	4th June 1951	36
24	Interlocutory Order appoint- ing date for hearing	9th November 1954	39
25	Objections of Mrs. M.A. de Silva	16th December 1954	40
26	Issues Framed	19th September 1955	42

No.	Description of Document	Date	Page
	<u>Petitioner's Evidence</u>		
27	Mrs. E.L. Peiris	-	43
28	A.V. Fernando	-	78
29	Rev. B.M. Wickremanayake	-	81
30	Rev. D.D. Thero	-	84
31	V.H.P. Fernando	-	92
32	Mrs. N.C. Fernando	-	105
33	D.A.J. Tudugalla	-	123
34	V.C.G. Devapuraratne	-	186
35	K.A. Nona	-	197
36	P.V.H.F. Perera	-	210
37	G.J. Appuhamy	-	227
38	C.A. Peiris	-	244
	<u>Respondent's Evidence</u>		
39	Mrs. Millie A. de Silva	-	283
40	Victor de Silva	-	326
41	M.D. Simon Perera	-	327
42	A.H.F. Caldera	-	341
43	V.C.S. Perera	-	348
44	Mrs. A.V.P. Joseph	-	349
45	D. Muthukrishna	-	350
46	V. Gurupatham	-	406
47	A.W. Joachim	-	406
48	M. Wijeratne	-	407
49	Application to call evidence in rebuttal	31st May 1956 and 1st June 1956	414

No.	Description of Document	Date	Page
50	Addresses to Court	-	Not Print- ed.
51	Judgment of the District Court	28th September 1956	419
<u>IN THE SUPREME COURT OF CEYLON</u>			
52	Petition of Appeal of Mrs. E.L. Peiris	9th October 1956	475
53	Judgment of the Supreme Court	16th December 1956	485
54	Decree of the Supreme Court	19th December 1956	494
55	Application for conditional Leave to Appeal to the Privy Council	16th January 1959	Not print- ed
56	Decree granting conditional Leave to Appeal to the Privy Council	23rd January 1959	"
57	Application for final leave to Appeal to the Privy Council	11th February 1959	"
58	Decree granting final leave to appeal to the Privy Council	4th March 1959	497

PART II

EXHIBITS.

Exhibit Mark	Description of Document	Date	Page
	<u>Petitioner's Exhibits</u>		
P1	Notarial Agreement No.591	16th August 1941	499
P2	Letter from S.W. Fernando to Village Headman	22nd May 1950	503
P3	Letter from S.W. Fernando to Mrs. E.L. Peiris	7th October 1952	504

Exhibit Mark	Description of Document	Date	Page
P4	Letter from S.W. Fernando to Mrs. E.L. Peiris	18th November 1952	504
P5	Letter from S.W. Fernando to Mrs. E.L. Peiris	Undated	505
P6	Letter from S.W. Fernando to Mrs. E.L. Peiris	"	505
P7	Letter from S.W. Fernando to Mrs. E.L. Peiris	"	505
P8	Notarial Agreement No.583	18th November 1952	506
P9	Mortgage No.586	29th October 1952	510
P10	Letter from S.W. Fernando to Mrs. E.L. Peiris	20th February 1954	514
P11	Will of S.W. Fernando No.474	4th June 1951 (Same as document No.23) -	
P12	Statement by S.W.Fernando	25th February 1940	515
P13	Receipt given by Inspector of Police	24th February 1954	515
P14	Affidavit of D.A.J. Tudugalla	24th June 1954 (Same as document No.15) -	
P15	Affidavit of V.C.C. Dewapuraratne	24th June 1954 (Same as document No.16) -	
P16	Complaint by Mrs. E.L. Peiris	3rd March 1954	516
P17	Report of M.D. Simon Perera	3rd March 1954	516
P18	Complaint by Mrs. N.C.C. Fernando	24th February 1954	517
P21	Statement of S.W.Fernando and Marina Fonseka	8th May 1953	517
P22	Deed No.491	22nd November 1951	518
P23	Affidavit of J.D.B. Fernando	26th February 1954 (Same as document No.5) -	

Exhibit Mark	Description of Document	Date	Page
P34	Copy evidence of Examiner of Questioned Documents in the District Court of Matara	8th March 1951	522
	<u>Respondent's Exhibits</u>		
R1	Deed by S.W. Fernando No.1724	17th January 1934	528
R2	Deed by S.W. Fernando No.1725	17th January 1934	532
R3	Deed by S.W. Fernando No.1757	2nd October 1934	539
R4	Deed by S.W. Fernando No.1758	2nd October 1934	542
R5	Plaint in Divorce case No. 820/D	23rd November 1943	547
R6	Answer in Divorce case No. 820/D	18th February 1944	549
R7	Decree in Divorce case No. 820/D	14th August 1944	552
R8	Agreement between S.W. Fernando and Marina Fonseka	11th February 1942	553
R9	Will of S.W. Fernando No.268	1st February 1940	554
R10	Authority to Raymond & Co.	14th March 1946	556
R10a	Funeral Account receipt	14th March 1946	556
R10b	Grave Account receipt	14th March 1946	557
R11	Letter signed by S.W. Fernando	Undated	558
R12	Letter from S.W.Fernando to Superintendent of Police	9th September 1952	559
R13	Complaint by S.W.Fernando	8th September 1952	559

Exhibit Mark	Description of Document	Date	Page
R14	Statement by Mrs. S.W. Fernando	24th February 1954	560
R15a	Petition in Insolvency Case No.5569	26th February 1943	561
R15b	Extract from evidence given by Mr. Tudugala in Insolvency Case No.5569	26th February 1943	562
R15c	Extract from Insolvency Case No.5569	26th February 1943	565
R15d	Extract from Insolvency Case No.5569	26th February 1943	567
R15e	Judgment in Insolvency Case No.5569	9th April 1943	573
R20	Will of D.S.W.Samarakone No.541	13th June 1954	578
R20a	Affidavit of D.A.J. Tudugalla and M.L.F. Jayawardena filed in Will Case No.16308	17th February 1955	583
R21	List of Objectors Witnesses	20th September 1954	Not printed
R22	Register of Deeds of Mr. Tudugalla	1st January 1950 to February 1954	585
R23	Entry by S.I. Joachim	28th February 1954	591
R24	Letter from John Appuhamy to de Silva & Mendis	1st April 1954	591
R25	Letter from John Appuhamy to de Silva & Mendis	6th May 1954	592
R26	Letter de Silva & Mendis to John Appuhamy	26th April 1954	593
R30	Deed by S.W. Fernando No.605	16th January 1953	593



Exhibit Mark	Description of Document	Date	Page
R31	Deed by S.W. Fernando No. 3016	25th July 1952	597
R32a	Entry in Album made by S.W. Fernando	15th September 1950	602
R33	Complaint by Mrs. M.A. de Silva to Police	24th February 1954	603
R34	Will of S.W. Fernando No. 454	13th May 1950 (Same as document No. 4)	-
R35	Deed of Transfer No. 17018	31st December 1915	604
R36	Receipt by Mrs. C.A. Peiris	15th August 1944	606
R37	Receipt of Raymond & Co. for Rs. 2550	14th March 1946	607
R37a	Estimate for Funeral fees	14th March 1946	607
R37b	Estimate for Grave fees	14th March 1946	608
R38	Letter Raymond & Co. to S.W. Fernando	22nd July 1952	609
R39	Entry in Police Informa- tion Book	24th February 1954	610
R39a	Receipt given by Inspector of Police	24th February 1954 (Same as P13)	-
R45	Affidavit sworn by C. Vethecan and others filed in Testamentary case No. 14666	14th September 1955	611
R65	Report of Examiner of Questioned Documents	19th September 1955	613

LIST OF EXHIBITS NOT TRANSMITTED

Exhibit Mark	Description of Document	Date
P19	Village Headman's Diary	-
P20	Sinhalese writing "KIYAMATAI" and "NIVI" made in Court	-
P24	Book of photographs con- taining signatures of C. Vethecan	-
P25	Copy of Lankadipa	14th March 1956
P26	Transmitted Light photo- graph of letter "CV" as appearing in R47	-
P27	Transmitted light photo- graph of "CV" as in P11	-
P28	Transmitted light photo- graph of "V"	-
P29	Transmitted light do. do.	-
P30	Negative of photograph of R47	-
P31	Negatives of "V" of P11 and R47	-
P32	do. do. do.	-
P33	Drawing by Examiner of Questioned documents	-
P35	Cheque Book	-
P36	Photographs of signatures of S.W. Fernando	-
R16	Instruction book of Mr. Tudugalla	20th August 1955
R17	Instruction book of Mr. Tudugalla	27.7.54 - 12.8.55
R18	Instruction book of Mr. Tudugalla	7.7.48 - 30.6.50

Exhibit Mark	Description of Document	Date
R19	Instruction book of Mr. Tudugalla	22.6.50 - 6.7.52
R27	Cheque Counterfoils Book	-
R27a	Cheque Counterfoil	-
R28	Cheque Counterfoils Book	-
R28a	Cheque Counterfoil	-
R28b	Cheque Counterfoil	-
R29	Cheque Counterfoils Book	-
R29a	Cheque Counterfoil	-
R32	Autograph Album	-
R34a	Photograph of signature	-
R40	Cheque R15/-	30th April 1951
R40a	Photograph of signature on R40	-
R41	Cheque R225/-	30th April 1951
R41a	Cheque	30th April 1951
R42	Cheque R50/-	30th April 1951
R43	Cheque R50/-	5th June 1951
R43a	Photograph of signature on R43	5th June 1951
R44	Cheque R5000/-	17th October 1952
R44a	Photograph of signature on R44	17th October 1952
R45a	Photograph of signature C. Vethecan on page 2 of R45	-
R46	Will filed in Testamentary case No.1984	21st December 1948
R46a	Photograph of signature of C. Vethecan on page 4 of R46	-

Exhibi Mark	Description of Document	Date
R47	Photograph of signature on P11 of C. Vethecan	-
R48	Photograph of signature on page 2 of P.11 of S.W.Fernando	-
R49	Drawing of Letter "C" in R45a & R46a	-
R50	Drawing of letter "C" and dot appearing in R45a and R56a	-
R51	Drawing of letter "V" appearing in R45a and R46a and R47	-
R52	Drawing of letters "E" and "T" appearing in R45a R46a and R47	-
R53	Drawing of letters "TH" appear- ing in R45a, R46a and R47	-
R54	Drawing of letter "C" appearing in R45a, R44a and R47	-
R55	The ending stroke of the signa- ture appearing in R45a, R46a and R47	-
R56	Drawing of letter by Examiner of Questioned Documents	-
R57	Drawing of letter by do. of Questioned Documents	-
R58	Drawing of letter by do. of Questioned Documents	-
R59	Drawing of letter by do. of Questioned Documents	-
R60	Drawing of letter by do. of Questioned Documents	-
R61	Drawing of letter by do. of Questioned Documents	-
R62	Drawing of letter by do. of Questioned Documents	-
R63	Photograph of signature of S.W. Fernando appearing on Proxy dated 24.5.44	-
R64	Photograph of signature of S.W. Fernando appearing on Proxy dated 1.9.48.	-

IN THE PRIVY COUNCIL

No. 19 of 1960

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N

EVELYN LETITIA PEIRIS Appellant

- and -

MILLIE AGNES de SILVA Respondent

RECORD OF PROCEEDINGS

No. 1

JOURNAL ENTRIES

26th February 1954 to 19th February 1959  
(Not printed)

No. 2

PETITION of MRS. M.A. de SILVA

IN THE DISTRICT COURT OF COLOMBO

IN THE MASTER of the Last Will and Testament  
of Sellaperumage William Fernando of  
Kaldemulla in Moratuwa deceased

No. 15908 }  
Testamentary }  
Jurisdiction } MRS. MILLIE AGNES de SILVA  
presently of No.27/3, Melbourne  
Avenue, Colombo 4. Petitioner

On this 26th day of February, 1954.

The petition of the Petitioner abovenamed  
appearing by Felix Charles Aloysius Domingo de  
Silva and Noel Servulus Oswald Mendis and Cyril  
Xavier Martyn practising in partnership in Colombo

In the  
District Court  
of Colombo

No. 1

Journal Entries  
26th February  
1954 to 19th  
February 1959  
(Not printed)

No. 2

Petition of Mrs.  
M.A. de Silva.  
26th February,  
1954.

10

20

In the  
District Court  
of Colombo

No. 2

Petition of Mrs.  
M.A. de Silva.

26th February,  
1954

- continued.

under the name style and firm of DE SILVA AND MENDIS and their Assistants John Samuel Parनावитана, Joseph Domingo Bertram Fernando, Ananda Clarence Dimbulane, Rajeswary Nagalingam, Arthur Francis Bertram de Waas Tillekeratne, Maduwage Diananda de Silva and Christopher Gilbert Jayasuriya Proctors, states as follows:-

1. Sellaperumage William Fernando late of Kaldemulla in Moratuwa died on the 22nd day of February 1954 at Colombo, within the jurisdiction of this Court. 10

2. The said Sellaperumage William Fernando duly executed his Last Will No.454 dated 13th May 1950 and attested by Felix de Silva, Notary Public. The said Will marked "A" is annexed hereto.

3. By the said Will the deceased devised all his property movable and immovable to the Petitioner and also appointed the Petitioner the Executrix of the said Will.

4. The said deceased died leaving behind property inter alia (a) one safe and (b) Car No. E.L-4615 (Humber Hawk) which were in premises called "Nance Villa", Kaldemulla, Moratuwa. 20

5. On the 24th February 1954 when the corpse of the deceased was in the said premises Nancy Catherine Charlotte Fernando (nee Perera), Evelyn Letitia Peiris and Austin Peiris all of Lakshapathiya, Moratuwa, sought to take possession of the safe and the car (which as stated above were in the said premises) by violence. The said Nancy Catherine Charlotte Fernando (nee Perera), Evelyn Letitia Peiris and Austin Peiris have no title to or interest in the said Car and/or the safe. 30

6. The Petitioner caused a complaint to be made to the Mount Lavinia Police of the facts set out above; and thereupon the Inspector Mount Lavinia Police at the request of the Petitioner took custody of the said safe and the said Car. This was done by the said Inspector to prevent a breach of the peace. 40

7. The said Car and the said safe (which safe was duly sealed before the Inspector took the same into his custody) are now in the custody of the said Inspector of Police, Mount Lavinia.

8. The Petitioner is informed that the Inspector of Police Mount Lavinia is not willing to have the custody of the safe and/or the Car.

In the  
District Court  
of Colombo

No. 2

Petition of Mrs.  
M.A. de Silva.

26th February,  
1954

- continued.

10 9. The Petitioner states that it is necessary and expedient in the circumstances that the Inspector of Police Mount Lavinia be ordered to deliver (a) to the Secretary of the District Court the said Safe (b) to the Petitioner the said Car. The Petitioner is willing to give security the Court may deem necessary that she would safely and securely keep the said Car pending orders of Court. The said Car is of the value of Rs.12,000/- and the Safe Rs.500/-.

10. The Petitioner will in these proceedings duly make an application for the proof of the Will and of grant of Probate.

Wherefore the Petitioner prays for an Order directing the Inspector of Police Mount Lavinia to:-

- 20 (a) deposit in the district Court of Colombo the said Safe,
- (b) deliver to the Petitioner the said Car
- (c) that probate of the Will limited to the property referred in the petition be granted to the petitioner,
- (d) for costs, and
- (e) for such other and further relief in the premises not herein specially prayed for as to this Court shall seem meet.

30

Sgd: De Silva & Mendis.  
Proctors for Petitioner.

LWP.

---

In the  
District Court  
of Colombo

No. 3

AFFIDAVIT of MRS. M. A. de SILVA

No. 3

IN THE DISTRICT COURT OF COLOMBO

Affidavit of  
Mrs. M.A. de  
Silva.

IN THE MATTER of the Last Will and Testament  
of Sellapperumage William Fernando of  
"Nance Villa" Kaldamulla, Moratuwa,  
deceased.

26th February,  
1954.

No. 15908/T.

MILLIE AGNES DE SILVA, presently  
of 27/3 Melbourne Avenue, Colombo  
Petitioner

10

I, MILLIE AGNES de SILVA presently of 27/3,  
Melbourne Avenue, Colombo, make oath and say as  
follows:-

1. Sellapperumage William Fernando late of  
Kaldamulla Moratuwa died on 22nd day of February  
1954 at Colombo, within the jurisdiction of this  
Court.

2. The said Sellapperumage William Fernando,  
duly executed his Last Will No.454 dated 13th May  
1950 and attested by Felix de Silva, Notary  
Public. The said Will marked "A" is annexed  
hereto.

20

3. By the said Will the deceased devised all  
his property moveable and immovable to me and also  
appointed me the executrix of the said Will.

4. The said deceased died leaving behind  
property inter alia (a) one safe and (b) Car No.  
EL-4615 (Humber Hawk) which were in premises  
called "Nance Villa" Kaldamulla, Moratuwa.

30

5. On the 24th day of February 1954 when the  
corpse of the deceased was in the said premises  
Nancy Catherine Charlotte Fernando (nee Perera),  
Evelyn Letitia Peiris and Austin Peiris all of  
Laksapathiya, Moratuwa, sought to take possession  
of the safe and the Car (which as stated above  
were in the said premises) by violence. The said  
Nancy Catherine Charlotte Fernando (nee Perera),  
Evelyn Letitia Peiris and Austin Peiris have no  
title to or interest in the said Car and/or the  
safe.

40



5.

6. I caused a complaint to be made to the Mount Lavinia Police of the facts set out above; and thereupon the Inspector Mount Lavinia Police at my request took custody of the said Car and the safe. This was done by the said Inspector to prevent a breach of the peace.

In the District Court of Colombo

No. 3

Affidavit of Mrs. M.A. de Silva.

26th February, 1954

- continued.

10 7. The said Car and the safe (which safe was duly sealed before the Inspector took the same into his custody) are now in the custody of the said Inspector of Police Mount Lavinia.

8. It is necessary and expedient in the circumstances that the Inspector of Police Mount Lavinia be ordered to deliver (a) to the Secretary of the District Court the said safe (b) to me the said Car. I am willing to give security the Court may deem necessary that I would safely and securely keep the said car pending orders of Court. The said Car is of the value of Rs.12,000/- and the Safe Rs.500/-.

20 9. I am informed that the Inspector of Police Mount Lavinia is not willing to have the custody of the safe and/or the Car.

10. I will in these proceedings duly make an application for the proof of the Will and for grant of Probate.

Read over signed and sworn to at) Colombo this 26th day of Febru- } Sgd. M.A.de Silva.  
ary 1954.

Before me

30 Sgd. Illegibly  
A JUSTICE OF THE PEACE.

No. 4

LAST WILL AND TESTAMENT No.454 of S.W. FERNANDO  
ATTESTED by F. de SILVA

No. 4

Last Will and Testament No.454 of S.W.Fernando dated 13th May, 1950.

"A"

This is the identical Last Will )  
marked "A" and referred to in } Sgd. M.A.de Silva.  
my affidavit )

Declared before me.

40 Sgd. Illegibly  
J.P. 26.2.54.

In the  
District Court  
of Colombo

No. 4

Last Will and  
Testament No.454  
of S.W. Fernando  
dated  
13th May, 1950  
- continued.

No.454.

THIS IS THE LAST WILL AND TESTAMENT of me  
SELLAPPERUMAGE WILLIAM FERNANDO of Kaldemulla in  
Moratuwa in the Island of Ceylon.

I do hereby revoke cancel and annul all  
former Wills, Codicils and Writings of a Testa-  
mentary nature heretofore made by me.

I do hereby appoint my daughter MILLIE AGNES  
DE SILVA of No.24, Alfred House Avenue, Kollupiti-  
iya, Colombo to be the sole Executrix of this my  
Last Will.

10

I direct my Executrix to carry out the terms  
of the agreement I have entered into with Messrs.  
A.F. Raymond & Co., Colombo dated Fourteenth day  
of March 1948 regarding my funeral.

I give devise and bequeath all the property  
wheresoever situate both real and personal movable  
and immovable I shall die possessed of unto my  
daughter MILLIE AGNES DE SILVA of No.24, Alfred  
House Avenue, Kollupitiya.

20

I have already made provision for my second  
daughter Evelyn Letitia Peiris nee Fernando.

IN WITNESS WHEREOF I have hereunto and to  
another of the same tenor and date as these pres-  
ents set my hand at Colombo this Thirteenth day of  
May One thousand nine hundred and fifty.

SIGNED AND DECLARED by the said )  
Sellapperumage William Fernando ) This is the  
as and for his Last Will and ) signature of  
Testament in the presence of us ) Sellapperumage  
who at his request in his pres- ) William Fernando  
ence and in the presence of one )  
another all being present at ) Sgd. S. William  
the same time have hereunto ) Fernando  
subscribed our names as wit- ) (In Sinhalese)  
nesses :- )

30

Sgd. A.J.C. Fernando  
Sgd. H.A. John Perera.

Sgd. Felix de Silva  
N.P.

40

No.454

I, FELIX CHARLES ALOYSIUS DOMINGO DE SILVA  
of Colombo in the Island of Ceylon Notary Public

do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me to the within named executant Sellapperumage William Fernando (who has signed in Sinhalese characters) in the presence of the subscribing witnesses hereto Anthony Joseph Christopher Fernando of 10 Chilaw Street, Negombo and Heenatigala Aratchige John Perera of Stace Road, Colombo, all of whom are known to me, the same was signed by the said executant and also by the said witnesses in my presence and in the presence of one another all being present together at the same time at Colombo aforesaid this thirteenth day of May One Thousand Nine Hundred and Fifty.

In the District Court of Colombo

No. 4

Last Will and Testament No.454 of S.W. Fernando dated 13th May, 1950 - continued.

10

Dated 13th May 1950.

Which I Attest,

Sgd. Felix De Silva. Notary Public.

SEAL.

20 This is the identical Last Will marked "A" and referred to in my affidavit dated 13th May 1954. ) Sgd. Felix de Silva.

Before me Sgd. J.H. Forbes J.P.

This is the identical Last Will marked "A" and referred to in my affidavit dated 30th April 1954. ) Sgd. A.J.C. Fernando

Before me Sgd. J.H. Forbes J.P.

30

This is the identical Last Will marked "A" and referred to in my affidavit dated )

Before me

J.P.

\_\_\_\_\_

In the  
District Court  
of Colombo

No. 5

AFFIDAVIT OF J.D.B. FERNANDO  
(P.23)

No. 5

IN THE DISTRICT COURT OF COLOMBO

Affidavit of  
J.D.B. Fernando.  
26th February,  
1954.

IN THE MATTER of the Last Will and Testament  
of Sellapperumage William Fernando of  
"Nance Villa" Kaldamulla, Moratuwa,  
deceased.

No. 15908/T.

MILLIE AGNES de SILVA, presently  
of No.27/3 Melbourne Avenue,  
Colombo.

10

Petitioner

I, JOSEPH DOMINGO BERTRAM FERNANDO of Colombo  
make oath and say as follows:-

1. At the request of the Petitioner above-  
named I repaired to "Nance Villa" Kaldamulla,  
Moratuwa, on the night of 23rd February 1954 and  
24th morning.

2. On the 24th day of February 1954 when the  
corpse of Sellapperumage William Fernando,  
(deceased) was in "Nance Villa" Kaldamulla, Mora-  
tuwa, Nancy Catherine Charlotte Fernando (nee  
Perera) Evelyn Letitia Peiris and Austin Peiris  
all of Laksapathiya Moratuwa, sought to take  
possession of the safe and Car No.EL-4615 (Humber  
Hawk) belonging to the deceased which were in the  
said premises by violence.

20

3. I in the company of Petitioner abovenamed  
caused a complaint to be made to the Mount Lavinia  
Police of the facts set out above and thereupon  
the Inspector Mount Lavinia Police at our request  
took custody of the said Car and Safe. This was  
done by the said Inspector to prevent a breach of  
the peace.

30

4. The said Car and the Safe (which Safe was  
duly sealed before the Inspector took the same  
into his custody) are now in the custody of the  
said Inspector of Mount Lavinia Police.

5. I am informed that the Inspector of Police  
Mount Lavinia is not willing to have the custody  
of the said safe and/or the car.

40

Read over signed and sworn to at )  
Colombo this 26th day of February )  
1954

Sgd. J.D.B.  
Fernando

Before me  
Sgd. Illegibly  
A JUSTICE OF THE PEACE.

No. 6

APPLICATION FOR ORDER NISIIn the  
District Court  
of Colombo

104 No.

26th February, 1954.

No. 6

Mr. Adv. Navaratnarajah says he is making the application under Section 539.

Application for  
Order Nisi.

Issue Order Nisi on the Petitioner's application in the first instance.

26th February,  
1954.

10 Also direct the Inspector of Police, Mount Lavinia, to deposit in the District Court, Colombo, the safe referred to in the petition and to deliver the car to the Petitioner on the petitioner furnishing security in a sum of Rs.10,000/- in cash or Rs.20,000/- by way of immovable property by entering into a bond with the Secretary of this Court.

Mr. Navaratnarajah also states that the Inspector of Police has in his possession a sealed envelope containing certain articles belonging to the deceased.

20 Let the sealed envelope be kept in the custody of the Court for the present.

The Inspector of Police, who is present in Court, is directed to keep the car in his custody till the petitioner furnishes security and takes charge of it.

Sgd. Illegibly  
A.D.J.

No. 7

PETITION OF MRS. N.C.C.FERNANDO

No. 7

30 IN THE DISTRICT COURT OF COLOMBOPetition of Mrs.  
N.C.C.Fernando.

IN THE MATTER of the Last Will and Testament  
of Sellapperumage William Fernando of  
"Nance Villa" Kaldemulla, Moratuwa.

2nd March, 1954.

No.15908/ .

MILLIE AGNES de SILVA presently of  
27/3 Melbourne Avenue, Colombo.

Petitioner

NANCY CATHERINE CHARLOTTE FERNANDO  
37, Angulana Station Road, Moratuwa

Petitioner

40

Vs.

MILLIE AGNES de SILVA of 27/3  
Melbourne Avenue, Colombo

Petitioner-Respondent

In the  
District Court  
of Colombo

No. 7

Petition of Mrs.  
N.C.C. Fernando.

2nd March, 1954  
- continued.

On this 2nd day of March 1954.

The Petition of the petitioner appearing by her Proctor P.M. Paul Pillai states as follows:-

1. The Petitioner is the widow of the late Sellapperumage William Fernando.

2. The late Sellapperumage William Fernando departed his life on 22nd February, 1954 in Colombo within the jurisdiction of this Court.

3. Thereafter the Petitioner-respondent sought to remove from the house of the deceased among other articles Car. No. EL 4615 and an Iron Safe. 10

4. On the Petitioner opposing the removal of these, the petitioner-respondent caused the Inspector of Police, Mount Lavinia to remove the same to the Police Station on 24th February, 1954.

5. An application for an order has been made on 26th February, 1954 to this Court by the Petitioner-respondent to direct the Inspector of Police Mount Lavinia to deposit in this Court the Iron Safe in his custody and to deliver over to the Petitioner-respondent the Car No. EL 4615. 20

6. An order has been made by this Court to enter Order Nisi in the first instance, and to publish the same in the Gazette and in the Daily News.

7. This Petitioner avers that the safe was sealed by the said Inspector of Police without his having made an Inventory of the contents of the safe and without having paid heed to the requests made by the petitioner to him to make such an inventory before sealing and removing the same. 30

8. The Petitioner believes that there is a document which may contain terms and conditions counter to the contents of the Will and Testament filed of record by the Petitioner-respondent, on which she relies for an order of this Court on her application.

9. It is therefore necessary that the safe now in the custody of the Court should be opened in the presence of all parties. 40

Wherefore the Petitioner prays that the safe now in the custody of the Court be opened in the presence of the parties and an inventory made.

Sgd. P.M. Paul Pillai

Proctor for Petitioner.

No. 8

AFFIDAVIT OF MRS. N.C.C. FERNANDO

IN THE DISTRICT COURT OF COLOMBO

IN THE MATTER of the Last Will and Testament  
of Sellapperumage William Fernando of  
"Nance Villa" Kaldemulla, Moratuwa.

No.15908/T.

In the  
District Court  
of Colombo

No. 8

Affidavit of  
Mrs. N.C.C.  
Fernando.

2nd March, 1954.

MILLIE AGNES de SILVA presently of  
27/3 Melbourne Avenue, Colombo.

Petitioner

NANCY CATHERINE CHARLOTTE FERNANDO  
37, Angulana Station Road, Moratuwa

Petitioner

Vs.

MILLIE AGNES de SILVA of 27/3  
Melbourne Avenue, Colombo.

Petitioner-Respondent

I, NANCY CATHERINE CHARLOTTE FERNANDO of 37,  
Angulana Station Road, Moratuwa, do hereby make  
oath and say as follows:-

1. I am the widow of the late Sellapperumage  
William Fernando.

2. The late Sellapperumage William Fernando  
departed this life on 22nd February, 1954 in  
Colombo within the jurisdiction of this Court.

3. Thereafter the petitioner-respondent  
sought to remove from the house of the deceased  
among other articles Car No.EL 4615 and an Iron  
Safe.

4. On my opposing the removal of these, the  
Petitioner-respondent caused the Inspector of  
Police Mount Lavinia to remove the same to the  
Police Station on 24th February 1954.

5. An application for an order has been made  
on 26th February 1954 to this Court by the Peti-  
tioner-respondent to direct the Inspector of Police  
Mount Lavinia to deposit in this Court the Iron  
Safe in his custody and to deliver over to the  
Petitioner-respondent the Car No. EL 4615.

In the  
District Court  
of Colombo

No. 8

Affidavit of  
Mrs. N.C.C.  
Fernando.

2nd March, 1954  
- continued.

6. An order has been made by this Court to enter Order Nisi in the first instance, and to publish the same in the Gazette and in the Daily News.

7. I aver that the safe was sealed by the said Inspector of Police without his having made an inventory of the contents of the safe and without having paid heed to my request made by me to him to make such an inventory before sealing and removing the same.

10

8. I believe that there is a document which may contain terms and conditions counter to the contents of the Will and Testament filed of record by the Petitioner-respondent on which she relies for an order of this Court on her application.

9. It is therefore necessary that the safe now in the custody of the Court should be opened in the presence of all parties.

The foregoing affidavit having )  
been duly read over and ex- )  
plained by me and she appear- )  
ing to understand the contents )  
thereof, the same was signed )  
by the said Nancy Catherine )  
Charlotte Fernando on this 2nd )  
day of March, 1954, at Colombo )

Sgd. )  
Nancy Catherine )  
Charlotte Fernando )  
(In Sinhalese)

20

Before me  
Sgd. A.V.P. Joseph  
Commissioner for Oaths.

No. 9

Application to  
open Safe.  
8th April, 1954.

No. 9

APPLICATION TO OPEN SAFE

D.C.15908/T.

8th April 1954.

Mr. Adv. Rustomjee for the present petitioner Nancy Catherine Charlotte Fernando (widow of the deceased) instructed by Mr. Paul Pillai.

Messrs. de Silva & Mendis for the original petitioner.

Reference J.E. 2. M/S de Silva & Mendis have no objection to the widow's application for the opening of the Iron Safe, which is now in the custody of the Court, being allowed.

40



13.

No. 10

ORDER TO OPEN SAFE

ORDER. Let the safe be opened tomorrow in the presence of all parties and in the presence of the Administrative Secretary.

Sgd.

A.D.J.

In the  
District Court  
of Colombo

No. 10

Order to open  
Safe.  
8th April, 1954.

No. 11

AFFIDAVIT OF MRS. M.A. de SILVA

10 IN THE DISTRICT COURT OF COLOMBO.

IN THE MATTER of the Last Will and Testament of Sellapperumage William Fernando of Kaldemulla, deceased.

No. 11

Affidavit of Mrs.  
M.A. de Silva.  
13th May, 1954.

No.15908/T  
Testamentary  
Jurisdiction

MRS. MILLIE AGNES de SILVA present-ly of No.27/3, Melbourne Avenue, Colombo 4. Petitioner

I, MILLIE AGNES de SILVA of No.27/3, Melbourne Avenue, Colombo make oath and say as follows:-

20 1. I am the Petitioner abovenamed.

2. Sellapperumage William Fernando, the deceased abovenamed, duly made and executed his last Will and Testament bearing No.454 dated 13th May 1950 attested by Felix de Silva of Colombo, Notary Public, which is filed in these proceedings marked "A".

30 3. The deceased testator died, without having revoked or altered the said Will, on the 22nd day of February 1954 in Colombo within the Local Limits of the jurisdiction of this Court.

4. By his said Will the deceased testator appointed me to be the sole Executrix and devisee under the Will.

5. The Next of kin of the deceased testator are (1) his widow, Nancy Catherine Charlotte Fernando, (nee Perera), (2) his daughter, Evelyn Petitia Peiris (nee Fernando), and (3) myself, his daughter, the Petitioner abovenamed.

In the  
District Court  
of Colombo

No. 11

Affidavit of Mrs.  
M.A. de Silva.  
13th May, 1954  
- continued.

6. The property estate and effects to which the deceased testator was entitled at the time of his death are, so far as I have been able to ascertain the same, described in the Schedule hereto.

7. I claim to be entitled to Probate of the said Will as the sole Executrix and heir named therein and I apprehend no opposition to my application.

The Schedule above referred to:-

10

Assets (Immovable)

1. All that Rubber Estate  
called and known as Kottago-  
dawatta situated at Nadurana  
in the Meda Pattu of Kuruwita  
Korale in the District of  
Ratnapaura containing in ex-  
tent A34.R2.P.12. ) 26,100.00

2. All that Rubber land  
called Bewilehenyaya situ-  
ated at Nadurana aforesaid  
containing in extent five  
acres (A5.R0.P0) ) 3,750.00

20

3. All that Rubber land  
called Bewilehenyaya situated  
at Nadurana aforesaid con-  
taining in extent about three  
acres (A3.R0.P0) ) 2,250.00

4. An undivided half ( $\frac{1}{2}$ ) of  
Bewilewatta situated at  
Nadurana aforesaid contain-  
ing in extent two acres two  
roods and twenty seven  
perches (A2.R2.P27.) exclud-  
ing therefrom an undivided  
extent of one rood planted  
with coconuts. ) 1,000.00

30

5. An undivided two third  
( $\frac{2}{3}$ ) of Bewilahena and  
Weweldolehenyaya shown as  
Lot 177A in B.S.P.P.53 situ-  
ated at Nadurana aforesaid  
containing in extent  
A3.R0.P06). ) 1,575.00

40

Carried forward 34,675.00

Brought forward 34,675.00

6. An undivided 7/9 share of )  
 Bewilehena and Weweldoleheny- )  
 aya shown as Lot 177 in )  
 B.S.P.P. 53 situated at Nadu- )  
 rana aforesaid in extent )  
 (A4.R2.P09). ) 2,755.00

10 7. Diganwela Tottam alias )  
 Hettiawatte situated at )  
 Diganwela and Bakmuruppe in )  
 Yagam Pattu Korale of Katu- )  
 gampola Hatpattu in the )  
 District of Kurunegala con- )  
 taining in extent formerly )  
 A35.R0.P0. and now . . . )  
 A28.R1.P30. ) 43,030.00 80,460.00

Assets (Movable)

20 1. Amount lying at the Bank )  
 of Ceylon Colombo ) 3,801.20  
 2. Motor Car No.EL-4615 ) 12,000.00  
 3. Iron Safe ) 500.00  
 4. Two Gold Rings ) 1,000.00  
 5. Gold Watch-Chain ) 1,000.00  
 6. Waist Chain ) 50.00  
 7. Furniture ) 600.00 18,951.20

Liabilities

30 (a) Amount due to the Elec- )  
 tricity Dept. U.C., )  
 Moratuwa ) 24.50  
 (b) Amount due to Aslin )  
 (Domestic servant) ) 76.00  
 (c) Amount due to Sethan )  
 (Domestic servant) ) 68.00

Medical Expenses

(a) Amount due to the Central )  
 Hospital Ltd. ) 1,228.90  
 (b) Amount due to Dr. )  
 Kirthisinghe ) 74.00

Funeral Expenses

40 (a) Foodstuffs ) 198.97  
 (b) Refreshments ) 60.48  
 (c) Gloves ) 2.00  
 (d) Advertisements ) 65.43  
 (e) Radio announcements ) 15.00

Carried forward 1,813.28

In the  
District Court  
of Colombo

No. 11

Affidavit of Mrs.  
M.A. de Silva.13th May, 1954  
- continued.

In the  
District Court  
of Colombo

No. 11

Affidavit of Mrs.  
M.A. de Silva.

13th May, 1954  
- continued.

	Brought forward	1,813.28	99,411.20
(f)	Telegrams	15.75	
(g)	Band	70.00	
(h)	Church	23.50	
(i)	Grave	47.00	1,969.53

Nett value of Estate 97,441.67

S U M M A R Y

Assets (Immovable)	80,460.00	
Assets (Movable)	<u>18,591.20</u>	
	99,411.20	10
Liabilities	<u>1,969.53</u>	
Nett value of Estate	<u>Rs.97,441.67</u>	

Read over signed and sworn )  
to at Colombo this 13th )  
day of May 1954 )

Before me,  
(Sgd.) Illegibly  
A JUSTICE OF THE PEACE.

No. 12

Joint Affidavit  
of F.C.A.D. de  
Silva, A.J.C.  
Fernando and  
H.A.J. Perera.

13th May, 1954.

No. 12

JOINT AFFIDAVIT of F.C.A.D. de SILVA  
A.J.C. FERNANDO and H.A.J. PERERA.

20

IN THE DISTRICT COURT OF COLOMBO

IN THE MATTER of the Last Will and Testament  
of Sellapperunage William Fernando of  
Kaldemulla in Noratuwa, deceased.

No.15908/T )  
Testamentary )  
Jurisdiction )

MRS. MILLIE AGNES de SILVA  
presently of No.27/3, Melbourne  
Avenue, Colombo. Petitioner

We, FELIX CHARLES ALOYSIUS DOMINGO de SILVA  
of Colombo and ANTHONY JOSEPH CHRISTOPHER FERNANDO  
of No.10, Chilaw Street, Negombo, make oath and  
say, and I, HEENETIGALA ARATCHIGE JOHN PERERA of  
Stace Road, Colombo, do hereby solemnly sincerely  
and truly declare and affirm as follows:-

30

1. I, Felix Charles Aloysius Domingo de Silva, am the Notary who attested the Last Will and Testament of Sellapperumage William Fernando late of Kaldemulla in Moratuwa, deceased, bearing No. 454 dated 13th May 1950 and we, Anthony Joseph Christopher Fernando and Heenetigala Aratchige John Perera are the two witnesses to the said Last Will.

In the District Court of Colombo

No. 12

Joint Affidavit of F.C.A.D.de Silva, A.J.C. Fernando and H.A.J. Perera.

13th May, 1954 - continued.

10 2. On the 13th day of May 1950, we, Felix Charles Aloysius Domingo de Silva, Anthony Joseph Christopher Fernando and Heenetigala Aratchige John Perera were personally present at Colombo and saw the said Sellapperumage William Fernando subscribe his name to the paper writing marked "A" filed of record in Testamentary proceedings No.15908 of the District Court of Colombo, which we have now seen in the record of this action.

20 3. On the said 13th day of May 1950, the said Sellapperumage William Fernando declared the same to be his Last Will and Testament and in testimony whereof and at the request of the said Sellapperumage William Fernando and in the presence of one another I, Felix Charles Aloysius Domingo de Silva, as Notary attesting the said Last Will and we, Anthony Joseph Christopher Fernando and Heenetigala Aratchige John Perera, as witnesses to the said Last Will, subscribed our names thereto and the signature of the said Sellapperumage William Fernando is in the hand writing of the said Sellapperumage 30 William Fernando and the signatures of us the said Anthony Joseph Christopher Fernando and Heenetigala Aratchige John Perera are in our true hand writing and I the said Felix Charles Aloysius Domingo de Silva as Notary Public attested the execution of the said Last Will and Testament.

4. The said Sellapperumage William Fernando at the time of the execution of the said last Will and Testament appeared to be of sound mind memory and understanding.

40 Read over signed and sworn to )  
by Felix Charles Aloysius )  
Domingo de Silva at Colombo ) Sgd. Felix de Silva.  
this 13th day of May 1954. )

Before me  
Sgd. J.H. Forbes  
JUSTICE OF THE PEACE.

In the  
District Court  
of Colombo

No. 12

Joint Affidavit  
of F.C.A.D. de  
Silva, A.J.C.  
Fernando and  
H.A.J. Perera.  
13th May, 1954  
- continued.

Read over signed and sworn  
to by Anthony Joseph  
Christopher Fernando at  
Colombo this 30th day of  
April 1954.

Sgd. A.J.C.Fernando

Before me,  
Sgd. J.H. Forbes  
JUSTICE OF THE PEACE.

Read over signed and affirmed )  
to by Heenetigala Aratchige )  
John Perera at Colombo this )  
30th day of April 1954. )

Sgd. H.A.J.Perera

10

Before me,  
Sgd. J.H. Forbes  
JUSTICE OF THE PEACE.

No. 13

Petition of Mrs.  
M.A. de Silva.  
14th May, 1954.

No. 13

PETITION OF MRS. M.A. de SILVA

IN THE DISTRICT COURT OF COLOMBO

IN THE MATTER of the Last Will and Testament  
of Sellapperumage William Fernando of  
Kaldemulla in Moratuwa deceased.

20

No.15908/T )  
Testamentary )  
Jurisdiction )

MRS. MILLIE AGNES de SILVA of  
No.27/3, Melbourne Avenue,  
Colombo 4. Petitioner

On this 14th day of May 1954.

The Petition of the Petitioner abovenamed  
appearing by Felix Charles Aloysius Domingo de  
Silva, Noel Servulus Oswald Mendis and Cyril  
Xavier Martyn practising in partnership in  
Colombo under the name style and firm of DE SILVA  
& MENDIS and their Assistants John Samuel Parana-  
vitana, Joseph Domingo Bertram Fernando,  
Christopher Gilbert Jayasuriya, Ananda Clarence  
Dimbulane, Rajeswary Nagalingam, Arthur Francis  
Bertram De Waas Tillekeratne, Maduwage Diananda  
de Silva, Sugathadasa Gunesekera, Florence  
Augustus Iris Ratnayaka, Shelton Ernest Abeysuriya  
and George Ternus Bibile Makalande, Proctors,  
states as follows:-

30

40

1. Sellapperumage William Fernando deceased

above-named, duly made and executed his Last Will and Testament bearing No.454 dated 13th May 1950, attested by Felix de Silva of Colombo, Notary Public, which is filed in these proceedings marked "A".

In the  
District Court  
of Colombo

\_\_\_\_\_  
No. 13

2. The deceased testator died without having revoked or altered the said Will, on the 22nd day of February 1954 in Colombo within the Local Limits of the Jurisdiction of this Court.

Petition of Mrs.  
M.A. de Silva.  
14th May, 1954  
- continued.

10 3. By his said Will the deceased testator appointed the Petitioner abovenamed to be the sole Executrix and devisee under the Will.

4. The next of kin of the deceased testator are  
(1) his widow, Nancy Catherine Charlotte Fernando (nee Perera),  
(2) his daughter, Evelyn Letitia Peiris (nee Fernando) and  
(3) his daughter, the Petitioner abovenamed.

20 5. The property estate and effects to which the deceased testator was entitled at the time of his death are, so far as the Petitioner abovenamed has been able to ascertain the same, described in the Schedule hereto.

6. The Petitioner abovenamed claims to be entitled to Probate of the said Will as the sole Executrix and heir named therein and she apprehends no opposition to her application.

Wherefore the Petitioner prays:-

- 30 (a) for an order declaring the said Last Will and Testament of the said Sellapperumage William Fernando, deceased, is proved,  
(b) that the Petitioner abovenamed be declared entitled as the Executrix and heir named in the said Last Will to Probate thereof and the Probate thereof be granted to her accordingly,  
(c) for costs of these proceedings and  
(d) for such other and further relief in the premises as to this Court shall seem meet.

40

Sgd. De Silva & Mendis  
Proctors for Petitioner.

In the  
District Court  
of Colombo

No. 13

Petition of Mrs.  
M.A. de Silva.  
14th May, 1954  
- continued.

The Schedule above referred to:-

Assets (Immovable)

1. All that Rubber Estate called and known as Kottagodawatta situated at Nadurana in the Meda Pattu of Kuruwita Korale in the District of Ratnapura containing in extent A34.R2.P12)	26,100.00	
2. All that Rubber land called Bewilehenyaya situated at Nadurana aforesaid, containing in extent five Acres (A5.R0.P0)	3,750.00	10
3. All that Rubber land called Bewilehenyaya situated at Nadurana aforesaid, containing in extent about three acres (A3.R0.P0)	2,250.00	
4. An undivided half ( $\frac{1}{2}$ ) of Bewilewatta situated at Nadurana aforesaid containing in extent two acres two roods and twenty seven perches (A2.R2.P27) excluding therefrom an undivided extent of one rood planted with coconuts.	1,000.00	20
5. An undivided two third ( $\frac{2}{3}$ ) of Bewilahena and Weweldolehenyaya shown as Lot 177A in B.S.P.P.53 situated at Nadurana aforesaid containing in extent A3.R0.P06.	1,575.00	30
6. An undivided $\frac{7}{9}$ share of Bewilehena and Weweldolehenyaya shown as Lot 177 in B.S.P.P.53 situated at Nadurana aforesaid in extent (A4.R2.P09).	2,755.00	40
Carried forward	37,430.00	



	Brought forward	37,430.00	
	7. Diganwela Tottam alias ) Hettiawatta situated at ) Diganwela and Bakmuruppe in ) Yagam Pattu Korale of Katu- ) gampola Hatpattu in the ) District of Kurunegala, ) containing in extent former- ) ly A35.RO.PO now A28.R1.P30 )	43,030.00	80,460.00
10	<u>Assets (Movable)</u>		
	1. Amount lying at the Bank of Ceylon Colombo	3,801.20	
	2. Motor Car No.EL-4615	12,000.00	
	3. Iron Safe	500.00	
	4. Two gold rings	1,000.00	
	5. Gold Watch Chain	1,000.00	
	6. Waist chain	50.00	
	7. Furniture	600.00	18,951.20
	<u>Liabilities</u>		
20	(a) Amount due to the Elec- tricity Dept. U.C. Moratuwa	24.50	
	(b) Amount due to Aslin (domestic servant)	76.00	
	(c) Amount due to Sethan (domestic servant)	68.00	
	<u>Medical expenses</u>		
	(a) Amount due to the Central Hospital Ltd.	1,228.90	
30	(b) Amount due to Dr. C. Kirthisinghe	74.00	
	<u>Funeral Expenses</u>		
	(a) Foodstuffs	198.97	
	(b) Refreshments	60.48	
	(c) Gloves	2.00	
	(d) Advertisements	65.43	
	(e) Radio announcements	15.00	
	(f) Telegrams	15.75	
	(g) Band	70.00	
40	(h) Church	23.50	
	(i) Grave	47.00	1,969.53

Nett value of Estate Rs.97,441.67

In the  
District Court  
of Colombo

No. 13

Petition of Mrs.  
M.A. de Silva.

14th May, 1954  
- continued.

In the  
District Court  
of Colombo

No. 13

Petition of Mrs.  
M.A. de Silva.

14th May, 1954  
- continued.

S U M M A R Y

Assets (Immovable)	80,460.00
Assets (Movable)	<u>18,591.20</u>
	99,411.20
Liabilities	<u>1,969.53</u>
Nett value of Estate	<u><u>Rs.97,441.67</u></u>

Sgd. De Silva & Mendis  
Proctors for Petitioner.

No. 14

Order Absolute  
in First  
Instance.

16th June, 1954.

No. 14

ORDER ABSOLUTE IN FIRST INSTANCE

10

IN THE DISTRICT COURT OF COLOMBO

IN THE MATTER of the Last Will and Testament  
of Sellaperumage William Fernando of  
Kaldemulla in Moratuwa deceased.

No. 15908 )  
Testamentary ) MRS. MILLIE AGNES DE SILVA  
Jurisdiction ) Presently of 27/3, Melbourne  
Avenue, Colombo. Petitioner

This matter coming on for disposal before  
V. Siva Subramaniam Esquire, Additional District  
Judge of Colombo on the 14th day of May 1954, in  
the presence of Messrs. De Silva & Mendis,  
Proctors, on the part of the Petitioner abovenamed,  
and the affidavits of (1) the petitioner above-  
named dated 13th May 1954 and (2) the attesting  
Notary and the witnesses to the Last Will dated  
13th May and 30th April 1954 respectively having  
been read: 20

It is ordered that the Last Will and Testa-  
ment No.454 dated 13th May 1950, attested by Felix  
de Silva of Colombo, Notary Public, and executed  
by Sellaperumage William Fernando, the deceased  
abovenamed (the original of which has been pro-  
duced and is now deposited in this Court) be and  
the same is hereby declared proved. 30

It is further ordered that the Petitioner abovenamed is the sole Executrix and heir named in the said Will and she is hereby declared entitled to have Probate thereof issued to her accordingly, on her taking the usual Oath and tendering security.

Sgd. V. Siva Subramaniam  
Additional District Judge.

The 16th day of June, 1954.

In the  
District Court  
of Colombo

No. 14

Order Absolute  
in First  
Instance.

16th June, 1954  
- continued.

No. 15

AFFIDAVIT OF D.A.J. TUDUGALLA

No. 15

Affidavit of  
D.A.J. Tudugalla.

24th June, 1954.

10

I, DON ARTHUR JOSEPH TUDUGALLA of Colombo do hereby solemnly, sincerely and truly declare and affirm as follows:-

1. I am the affirmant abovenamed.

2. I am a Notary Public duly authorised to practice as such in the Judicial District of Colombo.

3. I was well acquainted with the late Sellapperumage William Fernando of Moratuwa.

20

4. On the 4th day of June 1951 I attested the execution of a Last Will and Testament by the same Sellapperumage William Fernando in the presence of Victor Collin Constantine Dewapurarathna Proctor S.C. and Cyril Vethecan Proctor S.C. both of Hultsdorp Colombo, as subscribing witnesses who are both known to me.

5. By this Last Will and Testament the same Sellapperumage William Fernando disposed of all his movables and immovables that he may be possessed of.

30

6. The said Sellapperumage William Fernando removed the original of the said Last Will and Testament when the attestation had been completed.

7. The said Sellapperumage William Fernando never at any time posterior to the date of the execution of the Last Will expressed to me his intention to alter the terms of the Last Will or destroy the same Last Will or in any way invalidate the purport of the said Will.

8. When the said Sellapperumage William

In the District Court of Colombo

Fernando did execute his Last Will and Testament he appeared to be in good health and of sound mind and memory.

No. 15

Signed and affirmed to at )  
Colombo on this 24th day of ) Sgd. D.A.J.Tudugalla  
June 1954. )

Affidavit of D.A.J. Tudugalla. 24th June, 1954. - continued.

Before me, (Sgd.) Illegibly Commissioner for Oaths.

No. 16

No. 16

10

Affidavit of V.C.C. Dewapurarathna. 24th June, 1954.

AFFIDAVIT OF V.C.C. DEWAPURARATHNA

I, VICTOR COLLIN CONSTANTINE DEWAPURARATHNA of No.51, Kuruwe Street, Colombo make oath and state as follows :-

- 1. I am the affirmant abovenamed.
- 2. I was one of the subscribing witnesses to the Last Will and Testament of the late Sellapperumage William Fernando attested by Notary D.A.J. Tudugalla of Colombo, dated 4th June 1951 and bearing No.474. 20
- 3. I am known to the said Notary and the testator.
- 4. I was present at the time of the execution of the Last Will and Testament by the said Sellapperumage William Fernando and the same was executed in my presence and in the presence of the other subscribing witness at which time I subscribed my signature as witness to the Last Will and Testament.
- 5. At the time of the execution of the said Last Will and Testament, the late Sellapperumage William Fernando appeared to be in good health and of sound mind and memory and understanding. 30

Signed and sworn to at )  
Colombo on this 24th day ) Sgd. Victor C.C.  
of June, 1954. ) Dewapurarathna.

Before me, Sgd. Illegibly Commissioner for Oaths.

No. 17

OBJECTIONS OF MRS. E. L. PEIRIS

IN THE DISTRICT COURT OF COLOMBO

IN THE MATTER of the Last Will and Testament  
of Sellapperumage William Fernando of  
"Nance Villa" Kaldemulla, Moratuwa.

In the  
District Court  
of Colombo

No. 17

Objections of  
Mrs. E.L. Peiris.  
8th July, 1954.

No. 15908/T.      MILLIE AGNES DE SILVA of Melbourne  
Avenue, Colombo.      Petitioner

Vs.

10      EVELYN LETITIA PEIRIS nee Fernando  
of Station Road, Angulana,  
Moratuwa.      Objector

This 8th day of July 1954.

The statement of objections of the objector  
appearing by her Proctor P.M. Paulpillai states as  
follows:-

1. The objector is a daughter of the late  
Sellapperumage William Fernando.

20      2. The late Sellapperumage William Fernando  
died on the 22nd day of February, 1954.

3. The Petitioner who is another daughter of  
the late Sellapperumage William Fernando filed  
through her Proctors De Silva & Mendis on the 26th  
of February, 1954 the original of the Last Will and  
Testament executed by the late S.W. Fernando dated  
13th May 1950 bearing No.454 and attested by  
Felix de Silva, Notary Public of Colombo.

30      4. The Objector states that the said Last Will  
and Testament bearing No.454 dated 13th May, 1950  
was revoked by the Testator and that he executed a  
subsequent Last Will and Testament bearing No.474  
dated 4th June, 1951 and attested by Notary D.A.J.  
Tudugalla of Colombo.

5. This subsequent Last Will and Testament  
bearing No.474 was with the Testator till the time  
of his death and the objector fears that the Peti-  
tioner who was in charge of the house of the  
Testator sometime before his death and immediately  
thereafter is keeping it away from the Court.

In the  
District Court  
of Colombo

-----  
No. 17

Objections of  
Mrs.E.L.Peiris.

8th July, 1954.  
- continued.

6. The objector therefore files herewith
- (a) A certified copy of the said Last Will No.474 dated 4th June 1951 and attested by Notary D.A.J. Tudugalla marked "A".
  - (b) Affidavit of the said Notary D.A.J.Tudugalla marked "B".
  - (c) Affidavit of the surviving witness V.C.C. Dewapurarathna of 51, Kuruwe Street, Colombo marked "C", the other witness C. Vethecan being dead.

10

Wherefore the objector prays:-

- (a) that the application of the Petitioner for Probate of the Last Will No.454 of 13th May 1950, be refused.
- (b) Probate be granted in terms of Last Will No.474 dated 4th June 1951 attested by Notary D.A.J. Tudugalla.
- (c) Or in the alternative that the estate be administered as upon an intestacy, and for such other and further relief as to this Court shall seem meet, and
- (d) for costs of this suit.

20

Sgd. P.M. Paulpillai  
Proctor for Objector.

Documents filed herewith:-

- 1. Appointment.
- 2. Certified copy of the Last Will No.474 dated 4th June 1951 attested by Notary D.A.J. Tudugalla, marked "A".
- 3. Affidavit of Notary D.A.J. Tudugalla marked "B".
- 4. Affidavit of the surviving witness V.C.C. Dewapurarathna, marked "C".

30

Sgd. P.M. Paulpillai  
Proctor for Objector.

-----

No. 18

APPLICATION TO OBTAIN PHOTOGRAPHIC COPY OF  
MR. VETHECAN'S SIGNATURE ON WILL in CASE  
No.14666/T.

In the  
District Court  
of Colombo

No. 18

D.C. 15908/T.

23rd September 1954.

Application to  
obtain Photo-  
graphic copy of  
Mr. Vethecan's  
signature on  
Will.

10

Mr. Adv. Jansz states that Mr. Tudugalle has been noticed to produce the protocol copy of the Last Will in Court and that the protocol is in a bound volume and he suggests that the petitioner do obtain a photostatic copy of the Will.

23rd September,  
1954.

Mr. Dimulane for the petitioner states that a photostatic copy will be of no use for his purpose and moves that the protocol copy be impounded and kept in the custody of the Court. He undertakes to pay Mr. Tudugalla the cost of rebinding the volume of protocols after the Will in question is removed.

Mr. Jansz has no objection.

20

Mr. Tudugalla will tender to Court the protocol copy of the Will in question. The petitioner may take photostatic copies of it, if she so desires, in the presence of the Administrative Secretary.

The protocol copy of the Will should be kept in the safe.

Proctors for the petitioner will pay Mr. Tudugalla the cost of rebinding the Volume of protocols.

30

Mr. Dimbulane also supports his application journalised at (20).

I allow the application. The petitioner is permitted to obtain a photographic copy of Mr. Vethecan's signature on the document filed in Case 14666/T in the presence of the Administrative Secretary of this Court.

Sgd.

A.D.J.

In the  
District Court  
of Colombo

No. 19

JUDGE'S NOTES ON PROCEDURE APPLICATION

No. 19

D.C.15908/T.

30th September 1954.

Judge's Notes  
on procedure  
application.

30th September,  
1954.

Mr. Adv. Navaratnarajah with Mr. Adv. de Silva  
for the Petitioner instructed.

Sir Lalita Rajapaksa, Q.C., with Messrs. Adv.  
Weerasinghe and Mendis for the objector in-  
structed.

Mr. Navaratnarajah heard: The deceased died  
on 22/2/54 leaving behind, according to the Peti- 10  
tioner, a Will dated 13.5.50 and attested by Mr.  
Felix de Silva. Petitioner asked for a Probate.  
He refers to Journal Entry (9). The Objector  
filed a statement of objections. He refers to the  
prayer. Once Order Absolute is entered in the  
first instance, it is not open to the objector to  
file objections in this way. If he is dissatis-  
fied with the Order Absolute entered in the case  
on the Will filed by the Petitioner, then his 20  
remedy is by way of Section 537 of the Civil Pro-  
cedure Code. Order Absolute entered in this Case  
cannot be attacked by a statement of objections.  
Presumably the objector has followed the procedure  
laid down in a case where Order Nisi is entered in  
the first instance. He refers to Sections 524,  
525, 529, 532, 533. Objector has proceeded on the  
basis that Order Nisi had been entered in the  
first instance. All applications for the recall  
or revocation of probate shall be made by petition 30  
in terms of the rules of summary procedure. In  
so far as the claim of the objector is to ask that  
the probate be recalled, the only way in which he  
can do it is by way of petition by way of summary  
procedure and not by filing objections.

Sir Lalita Rajapaksa submits that the prelim-  
inary objection is totally devoid of merit. The  
testator was an old gentleman who had two daught-  
ers. They produced one Will trying to shut out  
the second Will. Petitioner says the deceased 40  
made a Will in 1950. The objector says that the  
deceased revoked that Will by making a subsequent  
Will 474 of 4.6.51. The subsequent Will is one  
attested by a Proctor of this Court, witnessed by  
two proctors also of this Court and of the Supreme  
Court. Already there have been proceedings in  
this case. At the time the deceased died there  
were two daughters and the elder daughter, who



sought to get probate on the earlier Will which had been revoked, had charge of the keys of the safe and the wardrobe in which the second Will was. He refers to journal entry (1) and the petition dated 26.2.54. Court ordered Order Nisi to be entered in the first instance. On the next day Mr. Navaratnarajah says he is making the application under Section 539. He refers to the proceedings of 26th February. The objector made application that the safe be brought to Court and opened in Court because the objector wanted to see whether the second Will was still there or extracted and destroyed. He refers to Journal Entries of 2.3.54, 8.4.54, 14.5.54. He refers to the petition dated 14.5.54. They moved for an order Absolute in the first instance. The objector never dreamt that Proctor Tudugalla had a Will. It is with the greatest difficulty that the Will was obtained from Mr. Tudugalla. What in substance is the objector's application? He refers to Sections 536 and 537. Court is going to make an order in rem. He refers to the Statement of objection dated 8.7.54. That is a Petition to Court. Summary Procedure is under Section 374. The objector has complied with the provisions of the Section. He refers to Section 377. Court fixed the matter for inquiry today. The first Will gives all the property to the first girl and the second Will says that the first girl is the executrix and the properties are to be divided among the two daughters. A petition is an application to Court to grant a certain redress. The petition has a prayer. The objector has complied with 536 and 537. After the objections were filed, Proctors made an application to inspect the protocol. That was produced in Court by Mr. Tudugalla. The preliminary objection is based on some technical matter and it is entirely devoid of merit. Court should allow the inquiry to go on.

Mr. Navaratnarajah says that the objector has been acting fraudulently. The only way in which Court can deal with a petition by way of summary procedure is under 377 and in no other way. No interlocutory order has been entered. He refers to Form 66. No such order has been made in this case. The order under 377 has not been made. The statement of objections cannot be treated as a petition.

Order on 7 October 1954.

Sgd.

A.D.J.

In the  
District Court  
of Colombo

No. 19

Judge's Notes  
on procedure  
application.

30th September,  
1954

- continued.

10

20

30

40

50

In the  
District Court  
of Colombo

No. 20

ORDER ALLOWING MRS. E.L. PEIRIS to  
REGULARISE APPLICATION.

No. 20

Order allowing  
Mrs. E.L. Peiris  
to regularise  
application.

7th October,  
1954.

15908/T.

O R D E R

Order Absolute in the first instance was entered in this case on 16th June 1954. On 8th July the present Objector filed a statement of objections, and prayed that the application of the Petitioner for probate of Last Will No.454 of 13th May 1950 be refused, and that probate be granted in terms of Last Will No.474 of 4 June 1951 or, in the alternative, that the Estate be administered as upon an intestacy. Along with her statement of objections, the objector filed certain affidavits testifying to the facts set out in her statement. The matter was fixed for inquiry on the basis of the statement of objections filed. 10

At the inquiry Learned Counsel for the Petitioner raised a preliminary objection to an inquiry being held on the basis of the statement of objections filed by the objector. He submitted that Order Absolute having been entered in the first instance, the Objector's application for recall of the probate should conform to the requirements of Sec. 537 of the Civil Procedure Code. Under that Section "All applications for the recall or revocation of probate, or grants of administration, shall be made by petition in pursuance of the rules of summary procedure hereinbefore prescribed". Learned Counsel also submitted that if the application was made by way of summary procedure as required by Sec. 537, then the Court would have proceeded under Sec.377 of the Civil Procedure Code and made either an Order Nisi or an Interlocutory Order which would have been served on the respondent in terms of Sec.379; and that the Objector, having failed to conform to that procedure, her statement of objections should be dismissed. 20 30 40

Learned Counsel for the Objector, however, argued that the "Statement of Objections", although styled as such, is, nevertheless, a petition to the Court, and that in filing that petition, supported by affidavits, the Objector had conformed

to the requirements of summary procedure as laid down in Cap. 24 of the Civil Procedure Code. He submitted that there was nothing more that the Objector could have done to conform to the rules of summary procedure, and that she is, therefore, entitled to maintain her application. He also urged that if the objection of Learned Counsel for the Petitioner was based on the failure of the Court to make an order under Section 377 of the Code, it is still open to the Court to make an order under Sec.377.

In the  
District Court  
of Colombo

No. 20

Order allowing  
Mrs. E.L.Peiris  
to regularise  
application.

7th October,  
1954

- continued.

In dealing with the preliminary objection raised by Learned Counsel for the Petitioner, the only question I have to determine is whether the application of the Objector satisfies the requirements of Sec.537. Learned Counsel for the Objector conceded that the Application has to be by way of summary procedure. Under Sec.374 of the Code, a petition should contain, inter alia, (i) the name, description and place of abode of the petitioner or petitioners, and (ii) the name, description and place of abode of the respondent or respondents. Under Sec.379 a copy of the order made by the Court under Sec.377, together with a copy of the petition "shall be served upon the respondent". In the "Statement of Objections" filed by the Objector, the person mentioned as petitioner is the original petitioner in this case, and there is no respondent named. Even if the Court treated that "Statement of Objections" as a petition, and made an order under Sec.377, there is no respondent named in the Petition on whom that order can be served as required by Sec.379. I am, therefore, of opinion that the "Statement of Objections" cannot be regarded as a petition for the recall of probate under Sec.537 of the Code. The procedure adopted by the Objector would, no doubt, have been correct if the order that had been made by the Court was an order nisi and not an order absolute in the first instance. I uphold the preliminary objection raised by Learned Counsel for the petitioner, and hold that an inquiry cannot be held on the basis of the "Statement of Objections" filed.

Having regard, however, to the facts set out in the "Statement of Objections" filed by the Objector, I am of opinion that the Objector should be given an opportunity of regularising her application by making a proper application under Sec. 537. I allow her time till 21 October 1954 to file proper papers. The Objector will pay the petitioner the costs of the proceedings of 30th September 1954.

Call case on 21 October 1954.

Sgd.

Order delivered in Open Court.

A.D.J.

Sgd.

A.D.J.

7.10.54.

In the  
District Court  
of Colombo

No. 21

PETITION OF MRS. E.L. PEIRIS

No. 21

IN THE DISTRICT COURT OF COLOMBO

Petition of  
Mrs.E.L.Peiris.  
20th October,  
1954.

IN THE MATTER of the Last Will and Testament  
of Sellapperumage William Fernando of  
Kaldemulla, Moratuwa, deceased.

MRS. MILLIE AGNES de SILVA  
presently of No.27/3, Melbourne  
Avenue, Colombo 4. Petitioner

IN THE MATTER of an application for the  
recall or revocation of Probate

10

EVELYN LETITIA PEIRIS of  
Angulana Station Road, Moratuwa  
Petitioner

Vs.

MILLIE AGNES de SILVA of No.27/3,  
Melbourne Avenue, Colombo 4.  
Respondent.

On this 20th day of October, 1954.

The Petition of the Petitioner abovenamed  
appearing by her Proctor P.M. Paul Pillai states  
as follows:-

20

1. The late Sellapperumage William Fernando  
died on the 22nd day of February, 1954 leaving a  
widow Nancy Catherine Charlotte Fernando and two  
daughters the Respondent by the first bed and the  
Petitioner by the second bed.

2. The Respondent on 26th February, 1954  
applied through her Proctors De Silva & Mendis  
for Probate of a document alleged to be the Last  
Will and Testament of the said Sellapperumage  
William Fernando executed on 13th May, 1950 bear-  
ing No.454 attested by Felix de Silva Proctor and  
Notary Public.

30

3. Order Nisi was allowed; but thereafter  
on 14th May, 1954 the Respondent made another  
application for an Order Absolute in the first  
instance without making anyone a Respondent to  
it; and Order Absolute was entered on the same

day for 8th July 1954 and the Respondent was ordered to make publication in the Local Papers.

In the  
District Court  
of Colombo

\_\_\_\_\_  
No. 21

Petition of  
Mrs.E.L.Peiris.

20th October,  
1954

- continued.

10 4. The Petitioner was aware that the said Sellapperumage William Fernando had executed a Last Will subsequent to the alleged Last Will No. 454 relied on by the Respondent and that such subsequent Last Will was with the said Testator till the time of his death. The Petitioner fears that the Respondent who was in charge of the house and things of the Testator sometime before his death and immediately thereafter has either destroyed it or is fraudulently keeping it away from the Court.

20 5. The Petitioner was endeavouring to find out where the deceased had executed the said subsequent Last Will and it was after much effort and the lapse of sometime that the Petitioner ascertained that the deceased had executed it on 4th June 1951 and that the said subsequent Last Will bearing No.474 had been attested by D.A.J.Tudugalla, Proctor and Notary who had the protocol with him.

30 6. The Petitioner filed a certified copy of the said Last Will No.474 dated 4th June, 1951 attested by Notary D.A.J. Tudugalla marked "A" and affidavit of the said Notary marked "B" and affidavit of the surviving witness Proctor V.C.C. Dewapuraratna marked "C" and made application on 8th July, 1954 that Probate of the alleged earlier Last Will No.454 be refused, that Probate be granted in terms of the subsequent Last Will No.474 of 4th June, 1951 or that the Estate be administered as upon an intestacy.

7. The matter was fixed for inquiry and upon an objection by the Respondent to the form of the application the Learned District Judge made order on 7th October, 1954, that the Petitioner be given an opportunity to regularise her application.

40 8. The Petitioner has an interest in the estate of the deceased to entitle her to make the present application in that the present Petitioner is an heir of the deceased Sellapperumage William Fernando.

9. The Petitioner states that the grant of Probate of the alleged Last Will No.454 should not have been allowed and that events have occurred which render the administration thereunder useless.

10. The Petitioner has already filed in this case, the certified copy of the Last Will No.474

In the  
District Court  
of Colombo

No. 21

Petition of  
Mrs. E. L. Peiris.

20th October,  
1954

- continued.

dated 4th June 1951, attested by Notary D.A.J. Tudugalla marked "A", affidavit of the said Notary marked "B", affidavit of the surviving witness Proctor V.C.C. Dewapuraratna marked "C" and the other witness Proctor C. Vethecan being dead, which the Petitioner begs be read along with this Petition.

11. The alleged Last Will No. 454 has been revoked by the execution of the subsequent Last Will No. 474 dated 4th June 1951.

Wherefore the Petitioner prays:-

- (a) that Probate of the alleged Last Will No. 454 dated 13th May, 1950 be recalled and the grant thereof be revoked.
- (b) that Probate be granted in terms of the Last Will No. 474 dated 4th June, 1951.
- (c) Or in the alternative that the estate be administered as upon an intestacy.
- (d) For costs of this suit, or
- (e) for such other and further relief as to this Court shall seem meet.

Sgd. P.M. Paul Pillai  
Proctor for Petitioner.

No. 22

Affidavit of  
Mrs. E. L. Peiris.

20th October,  
1954.

No. 22

AFFIDAVIT OF MRS. E. L. PEIRIS

IN THE DISTRICT COURT OF COLOMBO

IN THE MATTER of the Last Will and Testament of Sellapperumage William Fernando of Kaldemulla, Moratuwa, deceased.

No. 15908/T.

MRS. MILLIE AGNES de SILVA  
presently of No. 27/3, Melbourne  
Avenue, Colombo 4. Petitioner

IN THE MATTER of an application for the recall or revocation of Probate.

EVELYN LETITIA PEIRIS of Angulana  
Station Road, Moratuwa Petitioner

Vs.

MILLIE AGNES de SILVA of No. 27/3,  
Melbourne Avenue, Colombo 4.

Respondent. 40

I, EVELYN LETITIA PEIRIS of Angulana Station

Road, Moratuwa, do make oath and state as follows:--

In the  
District Court  
of Colombo

No. 22

Affidavit of  
Mrs.E.L.Peiris.

20th October,  
1954

- continued.

1. I am the deponent abovenamed.

2. The late Sellapperumage William Fernando died on the 22nd day of February, 1954 leaving a widow Nancy Catherine Charlotte Fernando and two daughters the Respondent by the first bed and me the Petitioner by the second bed.

10 3. The Respondent on 26th February, 1954 applied through her Proctors De Silva & Mendis for Probate of a document alleged to be the Last Will and Testament of the said Sellapperumage William Fernando executed on 13th May, 1950 bearing No.454 attested by Felix de Silva Proctor and Notary Public.

20 4. Order Nisi was allowed, but thereafter on 14th May, 1954 the Respondent made another application for an Order Absolute in the first instance without making anyone a Respondent to it; and Order Absolute was entered on the same day for 8th July, 1954 and the Respondent was ordered to make publication in the Local papers.

30 5. I was aware that the said Sellapperumage William Fernando had executed a Last Will subsequent to the alleged Last Will No.454 relied on by the Respondent and that such subsequent Last Will was with the said Testator till the time of his death. I fear that the Respondent who was in charge of the house and things of the Testator sometime before his death and immediately thereafter has either destroyed it or is fraudulently keeping it away from the Court.

6. I was endeavouring to find out where the deceased had executed the said subsequent Last Will and it was after much effort and the lapse of some time that I ascertained that the deceased had executed it on 4th June, 1951 and that the said subsequent Last Will bearing No.474 had been attested by D.A.J. Tudugalla, Proctor and Notary who had the protocol with him.

40 7. I filed a certified copy of the said Last Will No.474 dated 4th June 1951 attested by Notary D.A.J. Tudugalla marked "A" and affidavit of the said Notary marked "B" and affidavit of the surviving witness Proctor V.C.C. Dewapuraratna marked "C" and made application on 8th July, 1954 that Probate of the alleged earlier Last Will No.454 be refused, that Probate be granted in terms of the

In the  
District Court  
of Colombo

No. 22

Affidavit of  
Mrs.E.L.Peiris.

20th October,  
1954

- continued.

subsequent Last Will No.474 of 4th June, 1951 or that the Estate be administered as upon an intestacy.

8. The matter was fixed for inquiry and upon an objection by the Respondent to the form of the application the Learned District Judge made order on 7th October, 1954 that I be given an opportunity to regularise my application.

9. I have an interest in the Estate of the deceased to entitle me to make the present application in that I am an heir of the deceased Sellapperumage William Fernando.

10

10. I will state that the grant of Probate of the alleged Last Will No.454 should not have been allowed and that events have occurred which render the administration thereunder useless.

11. I have already filed in this case, the certified copy of the Last Will No.474 dated 4th June, 1951 attested by Notary D.A.J. Tudugalla marked "A", affidavit of the said Notary marked "B", affidavit of the surviving witness Proctor V.C.C. Dewapuraratna marked "C" and the other witness Proctor C. Vethecan being dead, which I beg be read along with the Petition and Affidavit.

20

12. The alleged Last Will No.454 has been revoked by the execution of the subsequent Last Will No.474 dated 4th June, 1951.

Signed and sworn to on the )  
20th day of October 1954. ) Sgd. E.L. Peiris.

Before me

30

Sgd. A.V.P. Joseph  
Commissioner for Oaths.

No. 23

Last Will and  
Testament No.474  
of S.W.Fernando.  
4th June, 1951.

No. 23

LAST WILL AND TESTAMENT No.474 of S.W. FERNANDO  
attested by D.A.J. TUDUGALLA

"A"

No. 474

THIS IS THE LAST WILL AND TESTAMENT of SELLAPPERUMAGE WILLIAM FERNANDO of "Nancy Villa", Kaldemulla in Moratuwa in the District of Colombo.

40



1. I do hereby revoke all Last Wills and Writings of Testamentary nature, if any, hereinbefore made by me and declare this to be my last Will and Testament.

In the District Court of Colombo

No. 23

Last Will and Testament No.474 of S.W.Fernando.

4th June, 1951 - continued.

10 2. After the payment of my funeral, religious and Testamentary Expenses and of winding my Estate and vesting my property in my heirs, I give and bequeath the following legacies:- (a) To my wife Nancy Katherine Charlotte Fernando a sum of Five Thousand Rupees (Rs.5000/-)

(b) To the deaf and blind school at Ratmalana a sum of Rupees Two Thousand (Rs.2000/-).

(c) To my driver John Appuhamy who has served me most faithfully for a long period a sum of Rupees One Thousand (Rs.1000/-).

20 3. It is my will and desire and I do hereby give devise and bequeath that all my property moveable and immoveable of what kind or nature or soever and wheresoever situate or whether the same to be in possession reversion remainder or expectancy nothing excepted unto my two daughters (1) Millie Agnes de Silva and (2) Evelyn Letitia Peiris in share and share alike, and I also do hereby nominate constitute and appoint my daughter the said Millie Agnes de Silva to be the Executrix of this my Last Will and Testament hereby giving and granting all such power and authority as are required by law.

30 IN WITNESS whereof I the said Sellapperumage William Fernando have hereunto and to another of the same tenor and date as these Presents set my hand at Colombo on this Fourth day of June One Thousand Nine Hundred and Fifty One.

Witnesses:

40 SIGNED by the said Testator Sellapperumage William Fernando as and for his Last Will and Testament in the presence of us who at his request in his presence and in the presence of each other all being present together have subscribed our names hereunder as attesting witnesses ) This is the signature of - Sgd. In Sinhalese SELLAPPERUMAGE WILLIAM FERNANDO.

- 1. Sgd. Victor C.C. Dewapuraratna.
2. Sgd. C. Vethecan.
Sgd. D.A.J. Tudugalla.
N.P.

In the  
District Court  
of Colombo

No. 23

Last Will and  
Testament No.474  
of S.W.Fernando.

4th June, 1951  
- continued.

I, DON ARTHUR JOSEPH TUDUGALLA of Colombo in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Instrument having been duly read over and explained by me the said Notary to the said Sellapperumage William Fernando who has signed in Sinhalese characters who is known to me in the presence of Victor Collin Constantine Dewapuraratne who has signed as "Victor C.C. Dewapuraratne" and Cyril Vethecan who signed as "C. Vethecan" both of whom are also known to me both of Hultsdorp Colombo the subscribing witnesses hereto and who declared that they are well acquainted with the said Testator the same was signed by said Testator and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Colombo on this Fourth day of June One Thousand Nine Hundred and Fifty One.

10

AND I further certify and attest that in the original letter "i" in "Religious" was corrected in line 20 the words "kind or" were deleted and in the protocol on page 1 in line 23 "two" was typed on erasure and in line 25 the word "said" was interpolated on page 2 in line 1 the words "the authority" were deleted before the foregoing Instrument was read over and explained by me as aforesaid and that at the time of executing this Last Will and Testament the said Testator appeared to me of sound mind memory and understanding and to have understood the contents of the said Last Will and Testament.

20

30

Date of Attestation. )  
4th June 1951 )

Which I Attest.

Sgd. D.A.J. Tudugalla.

Notary Public.

(SEAL)

A true copy to which a stamp of the value of One Rupee is affixed.

Sge. D.A.J. Tudugalla  
Notary Public.

40

Colombo 10th June 1954.

SEAL.

No. 24

INTERLOCUTORY ORDER APPOINTING DATE  
FOR HEARING

In the  
District Court  
of Colombo

INTERLOCUTORY ORDER

No. 24

IN THE DISTRICT COURT OF COLOMBO

Interlocutory  
Order appoint-  
ing date for  
hearing.

IN THE MATTER of the Last Will and Testament of  
Sellapperumage William Fernando of Kaldemulla,  
Moratuwa Deceased.

9th November,  
1954.

No.15908/T.

MRS. MILLIE AGNES de SILVA  
presently of No.27/3, Melbourne  
Avenue, Colombo 4. Petitioner

10

IN THE MATTER of an Application for the recall  
or revocation of Probate.

EVELYN LETITIA PEIRIS of Angulana  
Station Road, Moratuwa Petitioner

Vs.

MILLIE AGNES de SILVA of No.27/3,  
Melbourne Avenue, Colombo 4.  
Respondent

20

This matter coming on for disposal before  
V. Siva Supramaniam Esquire, Additional District  
Judge of Colombo on the 21st day of October, 1954  
after reading the Petition and affidavit of the  
Petitioner together with the certified copy of the  
Last Will No.474 attested by D.A.J. Tudugalla,  
Notary Public and affidavits of D.A.J. Tudugalla  
and of the surviving witness V.C.C. Dewapuraratna  
praying that (a) Probate of the alleged Last Will  
No.454 dated 13th May 1950 be recalled and the  
grant thereof be revoked (b) Probate be granted in  
terms of the Last Will No.474 dated 4th June, 1951,  
(c) or in the alternative that the Estate be ad-  
ministered as upon an intestacy; (d) for costs of  
this suit or (e) for such other and further relief  
as to this Court shall seem meet.

30

It is ordered that the 25th day of November,  
1954 be and the same is hereby appointed for de-  
termination of the matters in the said Petition  
contained and that the Respondent Millie Agnes de  
Silva of 27/3, Melbourne Avenue, Colombo be heard  
in opposition to the prayer of the same if she  
appear before this Court on the said day.

40

Sgd. V. Siva Supramaniam  
Additional District Judge.

This 9th day of November 1954.

Prepared by

Sgd. Illegibly Proctor for Petitioner.

In the  
District Court  
of Colombo

No. 25

OBJECTIONS OF MRS. M.A. de SILVA

No. 25

IN THE DISTRICT COURT OF COLOMBO

Objections of  
Mrs. M.A. de  
Silva.

IN THE MATTER of the Last Will and Testament  
of Sellapperumage William Fernando of  
Kaldemulla, Moratuwa, deceased.

16th December,  
1954.

No. 15908 )  
Testamentary )  
Jurisdiction )

MRS. MILLIE AGNES de SILVA  
presently of No.27/3, Melbourne  
Avenue, Colombo 4. Petitioner

10

IN THE MATTER of an application for the recall  
or revocation of Probate.

EVELYN LETITIA PEIRIS of  
Angulana Station Road, Moratuwa  
Petitioner

Vs.

MILLIE AGNES de SILVA of No.27/3,  
Melbourne Avenue, Colombo  
Respondent

On this 16th day of December 1954.

20

The Statement of Objections of the Respondent  
abovenamed appearing by Felix Charles Aloysius  
Domingo de Silva and Noel Servulus Oswald Mendis  
practicing in partnership in Colombo under the  
name style and firm of De Silva & Mendis and their  
Assistants John Samuel Paranaivitana, Joseph Domingo  
Bertram Fernando, Ananda Clarence Dimbulane, Rajes-  
wary Nagalingam, Arthur Francis Bertram de Waas  
Tillekeratne, Maduwage Diananda de Silva and  
Christopher Gilbert Jayasuriya, Proctors, states  
as follows:-

30

1. The Respondent admits the averments in  
paragraphs 1 and 7 of the petition.

2. Replying to paragraphs 2 and 3 of the  
petition the Respondent states:-

(a) the deceased duly executed his Last Will  
bearing No.454 dated the 13th May 1950  
attested by Felix de Silva Proctor and  
Notary Public.

41.

- (b) Order was duly and properly made declaring the said Will proved and also declaring the Respondent the Executrix of the said Will and that Probate thereof be issued to her.

In the  
District Court  
of Colombo

No. 25

3. Replying to paragraphs 4 and 5 of the Petition the Respondent states:-

Objections of  
Mrs. M.A. de  
Silva.

16th December,  
1954

- continued.

- 10 (a) the deceased did not execute any Last Will subsequent to the Last Will No.454 dated the 13th May, 1950.

- (b) the Last Will of the deceased is the one bearing No.454 and attested by Felix de Silva Proctor and Notary Public.

4. Replying to paragraph 6 of the Petition the Respondent states:-

- 20 (a) the petitioner filed a certified copy of an alleged Last Will No.474 dated the 4th June, 1951 and affidavit from D.A.J. Tudugalla and V.C.C. Dewapuraratna and made application on the 8th July 1954 that Probate be granted in terms of the alleged Last Will No.474 dated 4th June, 1951.

- (b) the alleged Last Will No.474 dated the 4th June 1951 is a forgery and is not the act and deed of the deceased.

- 30 (c) the alleged signature of the deceased appearing in the protocol of the document bearing No.474 dated the 4th June 1951 is not the signature of C. Vethecan and is a forgery.

- (d) the alleged signature of C. Vethecan appearing in the protocol of the document bearing No.474 dated the 4th June 1951 is not the signature of the deceased and is a forgery.

5. Replying to paragraph 8 of the petition the Respondent admits that the Petitioner is one of the intestate heirs of the deceased.

40 6. The respondent denies the allegations in paragraphs 9 and 11 of the petition.

7. Save as herein admitted the Respondent

In the  
District Court  
of Colombo

No. 25

Objections of  
Mrs. M.A. de  
Silva.

16th December,  
1954

-- continued.

denies the allegations in the petition.

Wherefore the Respondent prays:-

- (a) that the petition of the Petitioner Evelyn Letitia Peiris be dismissed,
- (b) for costs, and
- (c) for such other and further relief in the premises as to this Court shall seem meet.

Sgd. De Silva & Mendis  
Proctors for Respondent.

Settled by,  
Mr. Ananda de Silva,  
Mr. P. Navaratnarajah,  
Advocate.

10

No. 26

Issues Framed.

19th September,  
1955.

No. 26

ISSUES FRAMED

D.C.15908/T.

19.9.55

SIR LALITHA RAJAPAKSA, Q.C. with Mr. Adv. G.D.C. WEERASINGHE and Mr. Adv. COLLIN MENDIS for the Petitioner, EVELYN LETITIA PEIRIS, instructed.

20

Mr. Adv. NAVARATHARAJAH with Mr. Adv. ANANDA DE SILVA for the Respondent, MILLIE AGNES de SILVA, instructed.

Sir Lalitha Rajapaksa suggests the following Issue:-

1. Was the Last Will No.454 of 13/5/50 revoked by the deceased?
2. Did the deceased execute the Last Will No.474 of 4.6.51?
3. If issues 1 and 2 are answered in the affirmative, should Probate of Last Will 454 be revoked and Probate of Last Will 474 be granted?

30

Mr. Navaratnarajah has no objection to the Issues.

I accept the Issues.

Sir Lalitha Rajapaksa states that he will lead evidence to propound the Will reserving the right to lead evidence in rebuttal, if necessary.

Mr. Navaratnarajah states that his position in regard to Will 474 is that the signature of the deceased is a forgery and that the signature of the witness Vethevan is also a forgery.

In the District Court of Colombo

No. 26

Issues Framed.  
19th September, 1955  
- continued.

PETITIONER'S EVIDENCE.

No. 27

Petitioner's Evidence

No. 27

10

MRS. E. L. PEIRIS

Mrs. E.L. Peiris.  
Examination.

Sir Lalitha Rajapaksa calls:-

MRS. EVELYN LETITIA PEIRIS - Sworn - 34 -  
Naxapathiya.

20

The deceased William Fernando was my father. He was married twice. By his first bed he had Millie Agnes, and after the death of the first wife in 1917 the deceased married my mother, Nancy Catherine. I am the only child of that second marriage. My step-sister was about 6 years old at the time her mother died. At the time of the second marriage my father was not possessed of property. At that time he was living in a rented house for which he was paying rent at Kaldemulla. Sometime after the second marriage, my father went to India and there he joined an European gentleman and put up buildings on contract. He made money as a result of the building contracts. The Respondent Millie Agnes was a young girl at the time.

30

Q. What happened at that time? A. My step-sister the respondent, was preparing to elope with one Joseph Mel.

I am aware of it personally. My father got the Police to place guards and my mother saved the respondent from eloping by keeping her in the house of a relative and looking after her.

The respondent eventually got married to Mr. J.F.L. de Silva in 1933 or 1934. The respondent was given a dowry when she got married. She was given a land in Diganwela 60 acres in extent and Cash

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Examination  
- continued.

Rs.25,000/-. She was also given jewellery. In all she was given a dowry worth about 1½ lakhs. The Kaldemulla Property, consisting of house and land, was given to her reserving a life interest for my father. At the time my sister got married I was about 12 years old. At that time I also was given something. The land at Kaldemulla and Laxapathiya were given to me reserving a life interest for my mother, and also Pinnagolla Estate in extent about 42 acres reserving a life interest for my mother. These were given to me. The property given to me was worth about Rs.60,000/-. That was about 1933 or 1934. After that I got married against the wishes of my parents in 1940. I obtained permission of Court and got married against the wishes of my parents to Mr. Peiris, my husband. At that time I was 18 years old. I have four children by my marriage aged 13, 11, 9, 7. My step-sister also has four children. My husband is a brother-in-law of a maternal uncle of mine.

Q. Why were they opposed to your marriage?

A. My father was not willing to give me in marriage to Mr. Peiris as I was possessed of property and my husband's employment was not equal to the wealth I was having.

He was a clerk under Messrs. Julius & Creasy whereas Mr. Silva who was married to my step-sister was an architect. I got married in 1940 and resided in Korawalwella. Then my father left my mother and went to live at Matale, in one of his estates.

Q. Why did he leave your mother behind?

A. My father suspected my mother of having given assistance to me to marry Mr. Peiris.

My mother was then living at Kaldemulla. Then my sister, the respondent, sent a letter of demand wanting the mother to quit the house as it belonged to her. That was one of the houses given to her as dowry. Then my father was informed. He requested her to move into a house belonging to me in Laxapathiya and live there with me and my husband. My mother did that. I came back from Korawalwella to Laxapathiya and lived with my husband and mother. I lived with my mother and husband in the house at Laxapathiya that had been given to me by my father. During that time my father sent a message to me that my sister was blessed with a child and requested me to go and



see her. I went with my husband to see her. We were received by her. We saw the baby and came back.

Q. Did your father stay at Matale all the time?

A. He used to come to Kaldemulla and later came to live in Nawinna.

10 He used to come periodically to Moratuwa. Kaldemulla, Laxapathiya and Korawalawella are hamlets roundabout Moratuwa. He used to pay occasional visits to his home in Kaldemulla. He lived in Nawinna for about six months during which time I also visited him. My father got angry with me when he went away. Later on we made up and my father met me in the office of M.C.F. Peiris, Broker, and he bought a pearl set of jewellery for me. I still have that with me. After living in Nawinna for six months my father went back to Matale and he continued to reside there. My mother was living in Laxapathiya and father was living in  
20 Matale.

Q. What happened then between your father and mother? A. When my father visited Kaldemulla from Matale, my mother used to go there to meet him as he was not visiting her at Laxapathiya and quarrels used to ensue there.

Q. What happened as a result of that? A. My father was ready to write out an agreement.

30 There was notarial agreement 591 of 16.8.41 by which my father undertook to pay a sum of Rs.2000/- to my mother and Rs.25/-- per mensem also to my mother. I produce it Pl.

(Lunch)

Sgd. V. Siva Supramaniam.  
A.D.J.

After Lunch.

Mr. Navaratnarajah moves to file an additional List of witnesses. He states he has given notice of the list to the petitioner.

40 Proctor for the petitioner also files an additional list of witnesses, copy of which is handed to the Proctor for the other side.

I accept both lists.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.

Examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Examination  
- continued.

Evelyn Letitia Peiris. Sworn, recalled.  
Examination-in-chief continued.

After that my father was living in Matale. Thereafter my mother learned that my father had taken a woman from Laxapathy and was keeping her as his mistress at Matale. Then my mother filed an action for divorce in the District Court of Colombo.

I know the retired Headman, Fernando. He knew my father. My father sent word through that Headman after the divorce action was filed not to proceed with the action that he would perform certain things. That Village Headman was an intimate friend of my father for a long time. That Headman intervened. The Headman informed that the maintenance of Rs.25/- that was being paid to my mother would be increased to Rs.50/- per mensem. (Sir Lalitha states that the headman will be called as a witness.) And that some property would be given in favour of the children and he will leave a last will leaving the property to be owned by me and my stepsister, the respondent. At that time I had my jewellery in a box with my sister. My father sent a letter to the headman to enable me to get the jewellery. I got the jewellery.

10

20

After the divorce case was settled my father continued to live at Matale. Later my mother learned that some of my father's relatives and my sister, the respondent, had taken one Marina Fonseka to live as his mistress.

30

My father lived in Matale with Marina Fonseka from 1945 to 1951. During this time my sister used to go to Matale with her children during school holidays and stay there. And my father used to come once a month to Kaldamulla. On one occasion when he came to Kaldamulla he had gone with the retired village headman, Fernando, to meet Proctor A.V. Fernando, to get the names of my children so that my father may give the Estate at Matale, Nawgala Estate, where he was living. He had also promised to give Rs.10,000 to the Home for the Aged. But these things were not done. Neither was the property written in favour of my children nor was the Rs.10,000 given to the Home for the Aged.

40

Thereafter as these promises had not been

fulfilled my mother went to the retired headman, Fernando, and asked him why he was not fulfilling his promises. As the result of the intervention of the headman, the headman showed me a letter which had been sent to him by my father and promising to deposit some money for my children with the Public Trustee.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.

Examination  
- continued.

10 (Mr. Navaratnarajah wishes the documents referred to to be marked at this stage. Sir Lalitha states he will mark the letter).

I produce that letter marked P2.

Thereafter in 1951 my father came to live at Kaldamulla in the house which belonged to my sister. That is the house where he lived before.

20 When my father was at Matale my sister used to go to Matale and spend some time there with her children. My stepsister's husband was not alive at the time. After my father came to live at Kaldamulla there was a meeting. I was not present at that meeting.

My father returned about 1951 to Kaldamulla to reside there. He was residing in a house close to my house. So I frequently went to see my father. Also my children visited him.

During this time my father was kind and affectionate to me.

He wrote to me. (Shown letter P3 of 7.10.52) This is one of my father's letters to me. My father affectionately addressed me as Dulcie.

30 (Shown letter P4 of 18.11.52) This is a letter which had been written by Satan and signed by my father.

(Shown letter P5 of 11.11.52) This is another letter written by Sathan and signed by my father.

Q. Was there trouble at that time between you and your sister? A. My sister was angry with me.

(Shown a letter P6, undated) This is written and signed by my father.

40 (Shown letter P7 undated) This was also sent to me by my father. P7 is written and signed by my father. Darby is my nephew.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Examination  
- continued.

I got on well with my father. I visited him with my children.

Q. Do you know that your father had made another Will? A. Yes.

Q. That is the Will for which you are asking probate, No.474 of 4.6.51? A. Yes.

Q. That is the Will you say executed by your father, attested by Proctor Tudugala? A. Yes.

Q. In 1952 there was another agreement that your father entered into with your mother? A. Yes. 10

I produce that agreement No.583 of 18.11.52. P8.

Q. On this agreement your father paid another Rs.5,000 to your mother? A. Yes.

Q. What else happened? A. He also gave me a sum of Rs.15,000.

Q. What happened with that money? A. I lent it on a mortgage.

I produce copy of that mortgage bond No.586 of 29.10.52 marked P9. I draw the attention of Court to the fact that the attestation clause states that the consideration of Rs.15,000 was upon three cheques drawn on the Bank of Ceylon by S. William Fernando in my favour. 20

I know the Rev. Wickremanayake. I am a Christian. He was the High Priest of Moratuwa.

Q. Do you know whether your father saw him?

A. The priest and Mr. A.V. Fernando came to the Church at Kadalana for the collection of subscription. They went to my father's place and spoke to him. (Sir Lalitha states he is calling Rev. Wickremanayake) 30

Q. What did Rev. Wickremanayake tell you?

A. He had asked my father what he was going to do with his property. My father told him that he was leaving them by will for both daughters: myself and the respondent.

I know the Nilammahara Buddhist Priest. My father took treatment from the Nilammahara Priest.

The Nilammahara priest is one of my witnesses. He treated my father in his last stages.

Q. The retired headman, did he say anything to you?

A. He also told me that my father was leaving the property by a last will to both of us.

Q. What happened between you and your sister?

A. In the meanwhile my father asked me to make up with my sister.

10 I went to meet her with my husband. My sister chased me out. My sister was living at Melbourne Avenue, Colombo, at that time.

Q. What do you know about that property?

A. That is a property worth about Rs.125,000. In the same way that my father gave cash to me he gave this property to my sister.

Q. Do you know whether there was any necessity to give that property to your sister if that first will was existing? (Mr. Navaratnarajah objects to the question)

20 My father went to Wattedgama to buy some town property. My father went with my sister and his nephew A.W. Peiris, M.C.F. Peiris, broker, and Simon Perera his manager. That property was worth about 4 or 5 lakhs.

Q. Did your father to your knowledge have cash with him? A. Yes.

30 He had about 60 or 70 thousand Rupees in cash which he had received from Mr. Vincent Corea who paid him the money. My father did not eventually purchase this property. My father kept this money in an iron safe in his house at Kaldamulla. My father also kept his deeds and documents and chain and other valuable articles in the safe.

By December 1953 my father was ill. His condition became worse. My sister and I used to visit my father. My father one day said to me, "If you can try and get me cured. Both you and your sister do not quarrel. God will bless you."

40 My sister was in Colombo. When my father was ill my sister had come to where my father was living at Kaldamulla and lived there. Along with my

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.  
Examination  
- continued.

sister came A.W. Peiris and my sister's son Lala. Sathan brought me a letter on 20.2.54 (shown letter P10 dated 20.2.54). This is the letter I received. This is not written by my father. But it purports to be sent by my father.

Q. What did you do when you got this letter?  
A. Then and there I said, "This is not written by my father. It is not his handwriting."

I went and complained to the Headman. The headman held an inquiry into my complaint. 10

(Sir Lalitha states he is calling that headman)

Eventually I learned that without the knowledge of my father my sister had this letter written and sent to me.

Q. In short, to put you off? A. Yes. To prevent my visiting my father.

Without informing me my father was removed that evening to the Central Hospital Colombo. He had been taken there at about 7 p.m. My father sent word to me by his driver John of his being in that hospital. The following morning I went there with my husband. Before my father was operated on I saw him and spoke to him. My father was operated on at about 4.30 p.m. After my father was operated on my sister did not allow me to see him. My father died on 22.2.54 at noon. 20

My sister was living with my father.

Q. Who was in control of the house when your father was ill? A. All the keys were with my sister. 30

Q. The keys of the safe? A. Yes.

The corpse was taken to the Kaldemulla house. The following day my sister's son Lala put the car into the garage and took both the key of the car as well as of the garage. My mother attended the funeral. My mother was unable to use the car. She was refused the key when she asked for the car. She got things attended to by a hiring car. Inspector Caldera, Proctor Bertram Fernando and the Police came at about 11 p.m. and took away the iron safe and the car giving a receipt to my mother. This safe was brought to Court and eventually opened 40

in Court. When the safe was opened in Court there was cash Rs.800/- and also some Pro-notes.

Q. What did you think of the sum of money and the documents that were found? What did you do about them? A. I think our last will also may have been in the safe and must have been hidden away by my sister.

I draw the attention of Court to the terms of the Last Will "A" No.454 of 13.5.50.

10 Q. According to that Last Will your sister Millie Agnes is the Executrix and the sole devisee of all the real and personal, movable and immovable property of your father? A. Yes.

Q. There is the further statement in that Last Will that he has already made provisions "for my second daughter Evelyn Letitia Peiris" that is yourself? A. Yes.

Q. This Will is attested by Mr. Felix de Silva? A. Yes.

20 Q. Was he to your knowledge your father's notary or Proctor? A. No.

Q. Mr. Felix de Silva was whose proctor and Notary to your knowledge? A. To my knowledge he was my sister's Proctor.

I draw attention to the contents of the second Will that was made by my father No.474 of 2.6.51. I produce the Protocol of that Will as P11.

30 Q. According to that Will there is provision for the payment of funeral, religious and testamentary expenses and certain bequests? A. Yes.

Q. There is a bequest of Rs.5,000 to his widow, your mother? A. Yes.

Q. There is a bequest of Rs.2,000 to the Deaf and Blind School at Ratmalana? A. Yes.

Q. There is a bequest of Rs.1,000 to his driver John? A. Yes.

Q. Who had served him most faithfully for a long period? A. Yes.

40 John was my father's driver for about 20 years between 2 periods. He was my father's last driver.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Examination  
- continued.

Q. After these bequests the property is left to his two daughters, your sister Millie Agnes and to yourself in equal shares? A. Yes.

Q. And your sister is appointed executrix of that Will? A. Yes.

Q. You also draw the attention of Court to the fact that application in this case was made in the first instance for an order absolute? A. Yes.

Q. You refer to journal-entry of 26.2.54. There was no respondent to that application, and there was no reference in the petition or the affidavit to the existence of the next of kin, either your mother or you? A. Yes. 10

Q. You draw the attention of Court to the fact that an order nisi was issued by the Court? A. Yes.

Q. Thereafter another application was made by the Petitioner? A. Yes.

Q. That was an application made on 14.5.54? A. Yes. 20

Q. That was also an application for an order absolute in the first instance? A. Yes.

Q. In the meantime what were you and your husband trying to do? A. We were trying to search or find out the Last Will of ours.

Q. You have already told the Court that you had been given information that your father made a second Last Will? A. Yes.

Q. What did your husband and you do? A. Through my father's driver we were making inquiries from all persons and places with which my father had been associated inclusive of the Proctor to find out where that Last Will was. 30

Finally my husband told me that the Last Will was with Proctor Tudugalla.

(Sir Lalitha states he is calling witness' husband)

On 8.7.54 I filed papers in Court.  
(Shown Protocol P11). The signature in Sinhalese 40



is that of my father. I know my father's signature.

Q. Have you been receiving letters from your father? A. Yes.

Q. You are quite conversant with his signature?  
A. I can easily identify my father's writing.

The original of P11 could not be traced.

Cross-examined

10 I know Victor Fernando, the retired village headman since my childhood. He was a good friend of my father. He was not a friend of mine. My husband came to know Victor Fernando only after he married me in 1941. I married on 19.2.1940.

Q. When did you elope with your husband?

A. About a month before marriage.

Q. You made an application to Court to marry your husband? A. Yes.

Consent was given by Court and I married my husband.

20 Q. Your husband knew Victor Fernando from that date onwards? A. Yes, and when he was living there he came to know that he was a village headman known to my father and he also began knowing him.

Q. Was Victor Fernando a good friend of your husband? A. No.

Q. On how many occasions did Victor Fernando speak to you about your father executing a Last Will?

30 A. I cannot say how many times. After or during the time the divorce case was settled he told me, and also when he occasionally came there he told me, "Child do not be worried. Your father has left a last will."

Q. Is it correct that Victor Fernando spoke to you about this last Will for the first time during the pendency of the divorce proceedings between your father and your mother? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Examination  
- continued.

Cross-  
examination.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.

Cross-  
Examination  
- continued.

Q. What did he tell you then about the last will?  
A. He told me that my father had told him that he will be leaving a last will leaving the properties between me and my sister.

Q. At the time you were disturbed as to what your father was going to do with his property?  
A. Yes, before my father told me he was going to leave the property to me and my sister I was disturbed as to what he was going to do with his wealth.

10

Q. During the pendency of the divorce proceedings you were thoroughly worried as to what your father was going to do with his property? A. No. I was not so much disturbed.

Q. Were you disturbed at that time? A. No.

Q. Do you understand English? A. Yes. I prefer to give evidence in Sinhalese.

Q. Victor Fernando was aware at that time that you were disturbed about what your father was going to do with his property? A. No.

20

Q. Had you asked Victor Fernando to find out from your father during the pendency of the divorce proceedings as to what he proposed to do with his property? A. No.

Q. Did you get the impression at that time that your father had already executed the will?  
A. I very well knew that my father was going to write a last will.

Q. Did you get the impression that he had already written a last will? A. He had promised to leave a last will. He may have executed a last will.

30

Q. He may have executed a last will during the pendency of the divorce proceedings; a last will by which he was leaving his property to you and your sister equally? A. Yes.

Q. Didn't you ask Victor Fernando to find out from your father as to whether he had already executed the last will? A. No.

Q. When was the next occasion on which Victor Fernando spoke to you about this will, as far as you can recall? A. After my father's death.

40

Q. How long after your father's death? A. On the day of the death of my father Victor Fernando sent me a message.

Q. Sent you a message to the effect that your father had left a last will leaving his properties to you and your sister? A. That my father had left a last will leaving the property to both of us.

In the District Court of Colombo

Petitioner's Evidence

No. 27

Q. And also the sum of Rs.5,000 to be given to your mother? A. He did not inform me the terms of the last will.

Mrs. E.L.Peiris.

Cross-examination - continued.

10 Q. It is correct to say therefore that Victor Fernando spoke to you about this last will only on 2 occasions? A. Yes.

Q. Only twice ? A. On 2 or 3 occasions.

Victor Fernando spoke to me on 2 or 3 occasions.

Q. One occasion was during the pendency of the divorce case proceedings. Were the other two occasions after the death of your father? A. Before and after.

20 One occasion was prior to the death of my father.

Q. How long prior to the death of your father did Victor Fernando speak to you about this will? that is on the second occasion? A. He told me when my father was ill.

Q. That is during the month of January or February 1953? A. I have not made a mental note of the date. I remember his telling me.

Q. Did you make a mental note when your father fell ill for the last time? A. Yes. In 1953.

30 By December he became worse. Before that he was ill now and then. My father was always a sickly man.

Q. Was it during December 1953 that the village headman spoke to you about this will for the 2nd time? A. I cannot remember.

The village headman spoke to me for the second time about this will when my father was ill. That was during the illness which preceded his death.

40 Q. That must be during the month of December 1953 or Jan. 1954? A. May be during that time.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

On that occasion he said that my father in his last will has left the properties to both of us.

Q. That was the first occasion that you heard about your father's having in fact executed a last will?

A. No. Before that also he had told me.

Q. Before that occasion also Victor Fernando had told you that your father had executed a last will?

A. Yes.

I cannot remember when this was. I cannot remember how long it was before my father's death. I cannot say whether it was 2 or 3 or 4 years before his death.

10

Q. Your mother then was aware of the existence of this alleged last will by which your father had devised the property to you and your sister?

A. Yes.

Q. Before his death? A. Yes.

Q. When did you consult any proctor in regard to your position after your father's death?

20

A. I did not consult any proctor regarding my position after my father's death.

Q. Did your mother consult any proctor in regard to her position after your father's death?

A. Yes.

Q. On 2.3.54 your mother filed certain papers in Court? A. Yes, in 1954 she filed some papers, but I do not know the date.

Q. On 2.3.54, i.e. after your father's death did your mother file any papers in Court? A. Yes. She put in a motion in order to open the iron safe.

30

Q. Was your mother on the date of death of your father aware that the deceased had left his properties to you and your sister by last will?

A. Yes. My mother had known that my father had left a last will leaving the properties for both daughters.

Q. That is, that he had left all the property to both daughters? A. Yes, that he was giving all his property to both daughters.

40

(Court - Q. The question that Counsel asked you

was, when your mother filed papers was she aware of the fact that your father had left a last will leaving the property to you and your sister?  
A. Yes.)

In the  
District Court  
of Colombo

Q. She was aware that your father had devised all his property both to you and your sister? A. Yes.

Petitioner's  
Evidence

Q. You had told her that? A. Yes.

No. 27

10 She had become aware from the headman as well as from Mr. A.V. Fernando. She had also become aware from Rev. Abeynaike and Rev. Wickremanayake.

Mrs. E.L.Periis.

Q. The village headman had told your mother directly that your father had executed a last will leaving the property to you and your sister? A. Yes.

Cross-  
examination  
- continued.

Q. How long before your father's death was that information given by the village headman to your mother? A. I cannot remember the dates.

20 Q. How long before? A. My mother frequently used to go to Kaldamulla, and sometimes to the village headman's house. Whenever a talk ensued the headman must have told her.

I cannot say whether it was 2 or 3 or 4 years before my father's death.

Q. Apart from the village headman's having told you on 2 or 3 occasions the village headman had told your mother on several occasions about your father's having left a last Will leaving the property to you and your sister? A. Yes.

30 I cannot say, I do not remember, on how many occasions the village headman told my mother. I cannot remember whether it was once or 10 times.

Q. Do you tell us that Rev. Wickremanayake had told your mother that the deceased had executed a last will leaving the property to you and your sister?  
A. Yes, to me, to my mother and my husband.

Q. On how many occasions had he told you that?  
A. Once.

40 Q. Or on more than one occasion? A. After my father's death Rev. Wickremanayake once told me that my father had told him that he had executed a last will leaving his property to me and my sister.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.  
Cross-  
examination  
- continued.

Q. That was the first occasion on which Rev. Wickremanayake spoke to you or to your mother about this last will? A. He may have told my husband earlier. But it was after my father's death that he met me and my mother and told us about this will.

It was soon after my father's death. I cannot remember the date.

Q. You are not able to tell us whether Rev. Wickremanayake in fact told your husband anything about this will before your father's death? A. Yes, he may have told. I cannot remember.

10

My father had a Humber Car. The car was claimed by Agnes de Silva as her property under the will.

Q. That is, even before the funeral this car was claimed by Agnes de Silva? A. Yes.

Q. And an application was made to Court in connection with that car soon after the death of your father? A. I am not aware of any application.

20

The car and the safe were taken possession of by the police. The police brought the safe and the car to Court.

Q. You were present, your husband was present, your mother was present? A. I did not attend Court that day. My husband and my mother were in Court.

Q. They were both aware that under the will which was mentioned to you by Victor Fernando that that car was devised both to you and your sister? A. The headman did not inform us that the car had been left to me and my sister.

30

The headman told me that my father had devised all his property to me and my sister. This car was part of my father's property.

Q. You knew well at the time of your father's death that this car was devised under the will spoken to by Victor Fernando both to you and your sister? A. Yes, if my father had left a last will devising all his wealth to me and my sister the car also must belong between us.

40

Q. You told us that Victor Fernando told you twice and your mother a number of times both during your father's lifetime and on the date of your father's death that your father had executed a last will leaving all the property to you and your sister?  
A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

Q. So that you knew that this car belonged both to you and your sister under this last will?  
A. Yes.

10 Q. Did you at any time make a claim about this car in the Court or in the police station? A. No.

My mother made no such claim. I did not make a claim in regard to the safe. An application was made to have the iron safe opened. Neither did my mother make any claim in regard to the safe either before the police or in Court.

20 (Shown P10). The top portion is in the handwriting of one person. I do not know whose handwriting that is. My father had a manager called Simon Appuhamy. I cannot say whether this is Simon's handwriting. (Mr. Navaratnarajah sidelines the bottom of P10). My father has not written this. This is not my father's writing. This is not written by the person who wrote the top portion of P10.

I do not know the name of the Village Headman to whom I complained. I know the man. I know him as Ralahamy. I do not know his name. From the time he was appointed headman I knew him.

(Further hearing to-morrow).

30 Sgd. V. Siva Supramaniam.  
A.D.J.

20.9.55.

Appearances as before.

Errors in previous day's proceedings corrected, of consent.

Mrs. Evelyn Letitia Peiris - Recalled - Sworn

Cross-examination continued:

40 The wedding of Agnes de Silva was celebrated by my father on a very grand scale. A big reception was held at the house at Kaldemulla. My father was not a fairly proud man. My father started life in a small way.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

Q. Your father was very happy that he was getting a son-in-law a man who had been to England and had qualified as an architect? A. Although he was an architect he took Rs.3000/- from my father for his wedding expenses.

Q. Question repeated. A. I do not know.

Q. In fact on 17/1/34 your father dowried her valuable properties? A. Yes.

Those properties gifted to her were subject to a life interest in his favour. 10

(Mr. Navaratnarajah marks Deed 1274 dated 17.1.34 R1, Deed 1275 dated 17.1.34 R2)

Q. You and your mother knew what properties were being gifted to the respondent your sister? A. Yes.

Q. Were you and your mother happy that your father had gifted those properties to the respondent? A. Yes.

Q. Were you angry about it? A. No anger at all.

Q. Or did you and your mother take the view that your father was more attached to this sister of yours who had lost her mother while she was young? A. No. He was affectionate to me. 20

After the respondent's marriage she was living with her husband in Arthur's Place, Bambalapitiya. I do not know whether the rental of that house was being paid by my father.

Q. Are you surprised to hear that? A. I do not know it at all.

Certain deeds were executed by my father in my favour on 2.10.34. I was 12 years old at that time. I was attending school. Prince of Wales College. I left that College in 1938. I passed the 8th standard. In 1934 I was a girl of 12 years old. Two deeds were executed in my favour. 30

(Mr. Navaratnarajah marks deed 1757 dated 2.10.34 R3, deed 1758 dated 2.10.34 R4)

Q. By these two deeds he had gifted to you all the properties that stood in his name as on that date? A. Not all the properties. 40



Q. Were there any properties in his name on 2.10.34 after the execution of R3 and R4 in your favour?

A. Yes.

In the  
District Court  
of Colombo

He had the estate at Matale. It is Naugala Estate. He had one land at Madampe. That is all. He bought lands later.

Petitioner's  
Evidence

No. 27

Q. On 2.10.34 after the execution of R3 and R4 you say that he had Naugala Estate and the land at Madampe? A. I cannot remember so clearly but I think he may have had these two lands after the execution of R3 and R4.

10

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

Q. You know that Naugala Estate was bought by him in 1940? A. I do not know that.

Q. Do you know that the land at Madampe was gifted to the respondent by the deeds 1274 and 1275? A. I did not know.

Q. I put it to you that after the execution of these two deeds that he gifted to you all the properties that he had by the deeds 1757 and 1758 on 2.10.34? A. No.

20

Q. Can you give us any reason why your father should have thought of gifting these properties to you when you were just 12 years old? A. Yes.

Q. That is, your mother compelled him to execute those deeds? A. No.

Q. He did it of his own free will? A. No.

Q. Then why? A. When my sister was expecting a baby my sister's husband requested my father to make a settlement of the properties. Then he wrote out two deeds in the name of my sister reserving a life interest for himself and two other deeds in my favour reserving a life interest in my mother.

30

Q. You know the deeds in favour of your sister were executed in January 1934? A. I do not know the date.

(Shown R1 and R2) The date is correct.

Q. The respondent's marriage took place on 1.1.34? A. Yes.

40

Q. 16 days after the marriage the dowry deeds were

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris,

Cross-  
examination  
- continued.

executed by your father? A. Yes, that is how I was informed by my father and mother.

Q. The deeds were executed in your favour on 2.10.34? A. Yes.

Q. Nearly 10 months after the marriage? A. Yes.

Q. And you say those deeds were executed because your sister's husband wanted that to be done?

A. It was my brother-in-law who advised my father to execute.

Q. And to give your mother a life interest over those properties? A. No. That was done by my father. 10

Q. Or is it that it was your mother who compelled your father to execute those deeds in your favour reserving the life interest in her favour?

A. No. My father executed the deeds as he wanted to do so.

Q. You spoke of a deed of separation between your mother and father? A. Yes.

Q. That deed of separation was executed on 16.8.41. A. May be. 20

Q. She was living with you at the time when the deed of separation was executed? A. Yes.

Q. How long prior to that date had your mother come to live with you? A. I cannot remember.

Q. Roughly about 1½ years earlier? A. I cannot say.

Q. Tell us how long roughly? A. I cannot say.

Whether it is one month or 1½ years I cannot say. 30

Q. Is it true that prior to the date of that deed of separation your mother constantly harrassed your father when he came from Matale to Kaldemulla? A. No.

Q. Your father from 1940 onwards was living at Matale in Naugala Estate? A. He lived at Matale as well as at Nawinna.

He lived in Nawinna for about six months and thereafter he lived at Naugala Estate. I cannot remember whether he was living at Naugala Estate at the time agreement P1 was executed. 40.

Q. Between 1940 and the date of this agreement he used to come to Kaldemulla roughly about twice a month? A. Now and then he used to come.

In the  
District Court  
of Colombo

Q. On those occasions, is it true that your mother went to Kaldemulla and harrassed him, abused and scolded him? A. No.

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

10 Q. The view you took was that whenever your mother met your father she dealt with your father kindly and affectionately? A. No. My mother was finding fault with my father for his not coming to Iaxapathiya to visit her.

I said that on one occasion my father met me at M.C.P. Peiris' office and gave me a pearl necklace.

Q. How long was that after your elopement? A. It was in 1941.

Q. Prior to the date of this agreement or subsequent to the date of this agreement? A. It may be after the agreement.

20 Q. How long after? A. I cannot remember.

Q. Your mother filed a divorce action against your father? A. Yes.

Q. Was it before the divorce action was filed or after? A. Before.

30 (Shown Pl) This agreement provides for the payment of two sums of money Rs.500/- and Rs.1500/- to my mother and also a payment of Rs.25/- as monthly allowance to my mother. This agreement further provides that the Rs.1500/- is to be returned by my mother to the father if she molested or obstructed him. This agreement also provides that the monthly allowance of Rs.25/- would cease if my mother molested or obstructed my father.

Q. Your father took the view that prior to the date of this agreement your mother had been molesting him? A. My mother did not go to fight or quarrel or create a breach of the peace with my father but my mother used to go and meet him.

40 Q. And according to you entreat him to visit her? A. My mother used to tell my father that she could not live separated and that both must live together.

Q. Are you aware that your father took the view rightly or wrongly that your mother was molesting him prior to the date of this agreement? A. No.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.

Cross-  
examination  
- continued.

My mother has lived with me continuously from 1940 or 1941 up to date.

Q. Did your husband and you maintain and support her? A. No. She has sufficient money for her living.

Q. Did you or your husband support her in any way since the time she came to live with you?

A. She is helping us. There is no help from us to her.

Q. You recall the time when your mother filed a divorce action against your father? A. Yes. 10

Q. That was roughly about 2 years after the execution of Pl? A. May be.

That action was filed in the District Court of Colombo. I do not know that the plaint was settled by Mr. Adv. Kingsley Herath.

Q. Your husband and you assisted her in that action? A. There was no one else to help her.

Q. Question repeated? A. Yes.

My husband has been a clerk in Julius & Creasy for a number of years. I do not know for how long he was at Julius & Creasy. Whether it is 10 or 15 years I cannot say. My father at the time the action was filed was living at Naugala Estate. 20

Q. The action was filed on 23.11.43? A. May be.

Q. At that time your father was 72 or 73 years old? A. I do not know.

Q. When he died he was 82 or 83 years old? A. May be. 30

Q. In November 1943 your father must have been 72 or 73 years old? A. I do not know.

Q. Can't you tell us roughly how old your father was when this action was filed? A. I think he was about 60.

He was not a sickly man at that time. I do not know of Maria Aponso.

(Mr. Navaratnarajah marks the Plaint in the divorce case as R5)

Q. Your mother had filed a divorce action against your father on the ground that he had committed adultery with one Maria Aponso? A. I do not know the name of the woman, but the divorce action was filed on the ground of adultery.

Q. Did you or your husband think that that charge of adultery had been well founded? A. Yes.

Q. Answer was filed in that case? A. May be.

(Mr. Navaratnarajah moves to mark the answer filed in that case.

Sir Lalitha Rajapaksa has no objection.

Mr. Navaratnarajah marks it R6)

The case was settled.

Q. The case was settled on a date it came up for trial? A. I cannot remember.

Q. Lists of witnesses had been filed on both sides? A. I cannot remember them now.

(Mr. Navaratnarajah marks the decree R7)

Q. R7 provided for the dismissal of your mother's action? A. It was not dismissed. I was informed that that case was settled. I do not know what the settlement was.

Q. Do you know that the decree provided a clause that your mother should not molest your father? A. Yes.

Q. Your father was furious that a charge of adultery had been made against him? A. I do not know.

Q. Did your father make any complaints against you or your mother after 1944? A. I cannot remember.

Q. Do you know whether such complaints have been made in fact? A. No. No complaint had been made. I said that in October 1952 a payment of Rs.5000/- was made to my mother.

Q. Prior to that was there any violent quarrel between your father and your mother? A. No.

Q. Had your father on 8.9.52 made a complaint against your mother to the Mount Lavinia Police? A. I do not know.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

10

20

30

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

Q. How is it that your father suddenly gave a sum of Rs.5000/- to your mother on 17.10.52? A. It is his wish.

(At this stage, Sir Lalita Rajapaksa states that he is instructed to bring to my notice that the respondent who was in Court had left Court and is seen talking to Simon Perera who is on the list of respondent's witnesses.

Mr. Navaratnarajah states that he is instructed by his proctor to state that the respondent left Court in order to answer a call of nature)

10

Cross-examination (continued)

Q. Did your mother ask your father for that sum of money? A. No.

Q. At that time you say that payment was made by your father voluntarily? A. Yes.

Q. Because, according to you, he was well disposed towards your mother at that time? A. May be.

20

Q. Your father gave you Rs.15,000/- by three cheques all dated 29.10.52? A. Yes.

Q. Why? A. As I had not been given a dowry he gave me that Rs.15,000/-.

Q. Did he give that money because your mother had asked your father repeatedly to give you that money? A. No.

Q. That payment was made to you voluntarily? A. Yes.

Q. As far as you recall, your father, your mother and yourself were on good terms for at least three months prior to the date of these payments?

30

A. From the start my father was quite good with me. My mother did not go to his place. She was with me.

Q. Your father was never displeased that you and your husband had assisted your mother in the divorce case? A. Not to my knowledge.

Q. Your father was keen that the Rs.15,000/- given to you should be invested on a mortgage? A. Yes.

40

Q. You had earlier sold some property of yours to pay the debts of your husband? A. I had sold

it not to pay my husband's debts. I cannot remember the year when I sold the property.

Q. How long after your elopement? A. About 6 or 7 years afterwards I think.

(Shown P4) It is addressed to me by my father.

Q. In this he complains that you are bothering him too much? A. It is not so.

Q. In November 1952 your father was living in Kaldemulla? A. Yes.

10 Q. There was Marina Fonseka looking after him at that time? A. She was there with my father as well as with him when he was at Matale.

Q. She had been with him really from 1942 onwards? A. I cannot remember the date, but she had been with my father.

(Shown the signature of the deceased on a document)  
This is my father's signature.

(Mr. Navaratnarajah marks it R8)

20 Q. R8 is an agreement entered into between your father and Marina Fonseka? A. Yes.

Q. The date of the Agreement is 11.2.42? A. Yes.

Q. Will you admit now that Marina Fonseka was looking after your father from February 1942 onwards? A. I do not know. It is in the agreement, but I do not know it personally.

Q. When did you for the first time come to know that Marina Fonseka was looking after your father? A. After the divorce case.

Q. That is, after 1944? A. May be.

30 Q. Marina Fonseka was very attached to your father? A. How do I know that.

Q. Have you ever talked to her? A. No.

Q. Why did not you talk to her? Were you angry? A. There was no necessity.

Q. Naugala Estate was sold by your father in July 1952? A. May be.

Q. And it was after the sale of Naugala Estate that he came to reside at Kaldemulla? A. May be.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

Q. Is it so or is it that you do not know?

A. It may be or it may not be.

Q. In fact, you do not know exactly when Naugala Estate was sold? A. No.

Q. I put it to you that you and your mother knew well that this property was sold in July 1952 for about Rs.40,000? A. No.

I know that it has been sold, but I do not know the price. I did not know the price till it was mentioned now.

10

Q. When did you come to know for the first time that Naugala Estate had been sold? A. Shortly after it was sold.

Q. Your father never called at Laxapathiya at any time? A. No.

Q. Do you know whether your father bought any properties in his name after 1940? A. I did not come to know.

Q. The only property you knew was owned by him after 1940 was Naugala Estate? A. I forgot to say that I knew that after 1940 my father had bought the house property at Melbourne Avenue.

20

Q. As far as you were aware your father only owned Naugala Estate and the house property at Melbourne Avenue after 1940? A. Yes. He had another land at Etheliyagoda. I do not know the name of the land but I know he had a land there. He also had another land at Madampe.

My sister and her husband was living in Arthur's Place. I did not know whether the rent was paid by my father or anybody else.

30

Q. She was living in that house from 1934-1936? A. I do not know for what period of time but I knew she was living in that house. Thereafter she was residing in Alfred House Gardens.

Q. She was there from 1936-1952? A. I do not know the number of years.

I do not know by whom the rent for that house was paid.

Q. From there she moved into a house at Melbourne Avenue which was bought by your father? A. May be.

40

Q. You do not know that personally? A. No.



Q. Do you know whether any structural alterations were effected to the house at Melbourne Avenue after your father had purchased it? A. I do not know.

In the  
District Court  
of Colombo

Q. In fact you heard about the purchase of the house at Melbourne Avenue only after his death? A. No, before.

Petitioner's  
Evidence

Q. Your sister's husband died in 1942? A. May be.

No. 27

Q. When your sister was about 29 years old? A. May be.

10 I attended the funeral. My father was there. My sister informed us by telegram of the death and my husband, my mother and I attended the funeral. I do not know whether my father was doing everything in connection with that funeral.

Mrs. E.L. Peiris.

Cross-  
examination  
- continued.

Q. At that time the eldest child of your sister was only 7 years old? A. May be. I do not know, but it may be so.

Q. How old was the youngest child? A. I cannot say.

20 Q. You cannot say whether the youngest child was 2 years or 5 years? A. I cannot remember.

Q. Your father was very sorry for your sister? A. May be.

Q. Do you know whether your sister's husband's estate was administered? A. I do not know.

Q. Have you heard of Mr. Felix de Silva? A. No. I do not know him. It is Mr. Felix de Silva who had executed the last will in favour of my sister. I know that fact.

30 Q. When did you come to know of the existence of that will attested by Mr. Felix de Silva? A. After my sister had produced the will in Court.

Q. How long after your father's death did you come to know of the will attested by Mr. Felix de Silva?

A. About 2 or 3 months afterwards.

My father died on 22/2/54.

Q. 3 or 4 months would be roughly May 1954?

A. I do not know the date.

40 Q. It was only 2 or 3 months later you came to know of the existence of the will attested by Mr. Felix de Silva? A. Until that Last Will was produced in Court I did not come to know of it.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.

Cross-  
examination  
- continued.

Q. You told us that Victor Fernando had spoken to you during the pendency of the divorce case about the last will executed by your father?

A. During the pendency of the divorce case the Headman told me that my father had told him that he will execute a document so that his estate may go to the two daughters equally and it was on that condition that the divorce case was settled.  
(Shown a document) This is my father's signature.

(Mr. Navaratnarajah marks it R9 which is last will 268 dated 1.2.40 attested by Aelian Samarasinghe)

10

Q. This is a will executed by your father?

A. It appears to be so.

According to this, it is attested by Mr. Aelian Samarasinghe. I come to know of it now for the first time.

Q. Neither Victor Fernando nor anyone of those Rev. Gentlemen were aware of the existence of the last will? A. No.

20

Q. By the last will your father had devised all his property to your sister? A. Yes.

Q. Do you know whether your father had made any arrangements with Raymonds for his funeral? A. Yes.

Q. During your father's lifetime? A. Yes.

Q. When was that agreement entered into between your father and Raymonds? A. I do not know that. I have heard about it.

Q. When did you hear that? A. I cannot remember.

30

Q. Was it before his death or after his death? A. Before his death.

Q. How long before his death? A. I cannot remember.

(Shown R10) this is my father's signature. It is dated 14.3.46. The lady referred to in R10 is my sister, the respondent, A.W. Peiris referred to in R10 is my father's sister's son.

(Shown R10A and R10b) Both are signed by my father. 40

(Shown a document R11) Q. Is this your father's signature? A. I am doubtful.

(Shown another document R12) This appears to be like my father's signature.

(Shown R11) The signature looks like my father's.

In the  
District Court  
of Colombo

Q. Do you understand what R11 contains? A. Yes.  
I read R11.

Petitioner's  
Evidence

Dulcie referred to in R11 is myself. Austin referred to is my husband.

No. 27

10 Q. Do you know whether your father had any correspondence with Raymonds in regard to the agreement he had entered into with them for his funeral?  
A. No.

Mrs. E.L. Peiris.  
Cross-  
examination  
- continued.

Q. You have read the will attested by Mr. Felix de Silva? A. No.

Q. You do not know what provisions are contained in that will? A. I know, but I did not read the will.

Q. Do you know that in the will reference is made by your father to the agreement he had entered into with Messrs. Raymond & Co? A. Yes.

20 Q. You had heard some time before your father's death that your father had entered into such an agreement with Raymonds? A. Yes.

Q. You nor your husband knew at the time of your father's death whether that agreement was in force or not? A. No.

Q. The will attested by Mr. Felix de Silva is dated 13.5.50? A. I do not know the date.

30 (Shown P2) This document was produced by me. It had been sent to the headman and he brought it home and gave it to me. He gave it to me at the time he got the letter.

Q. The date of this letter is really 22.5.50?  
A. Yes.

Q. That is, about nine days after the execution of the will attested by Mr. Felix de Silva? A. I was not aware of the will having been attested.

Q. Your father never told you about that Will?  
A. No.

40 Q. By this letter P2 your father undertook to deposit some money to the credit of your children?  
A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L.Peiris.

Cross-  
examination  
- continued.

Q. P2 was handed to you in May 1950 by the headman?

A. I cannot remember the date. He gave it to me at the time he received the letter.

I kept that letter safe.

Q. Because by that letter your father had given an undertaking in writing that he would deposit moneys to the credit of your children? A. Yes.

Q. Did the village headman, at the time he handed the letter to you, also tell you that your father would be writing a will devising his property to you and your sister? A. I cannot remember. 10

Q. Did you or your mother at any time after you received P2 ask your father to deposit that money to the credit of your children? A. No.

I had been writing to my father explaining my difficulties and my father had sent this letter to me.

Q. Question repeated? A. No.

Q. In September 1952 did you or your mother raise any difficulties with him in regard to this money which he had promised by P2? A. No. 20

Q. After the receipt of this letter P2 the first time your father gave any money to you was in November 1952? A. Yes.

Q. After that he had made no payments to you? A. No.

Q. Nor did he in any way help you financially after that? A. I did not ask him and he did not give me.

Is it that you did not need his help or that you were angry with him? A. I was not angry. 30

(Shown a document) This is in the writing of your father? A. I am doubtful.

(Shown P7) This is my father's handwriting.

(Shown P6) This is my father's handwriting.

Q. Look at this document again along with the other two documents and see whether it is your father's handwriting? A. I cannot say.

Q. In April 1952 will it be wrong to say that your father had property worth about five lakhs? A. He may have had. 40

Q. Was he anxious to gift that property to the children of your sister? A. I do not know.

In the  
District Court  
of Colombo

Q. You told us your father told you he had executed a will devising his property to you and your sister? A. No. My father did not tell me he had executed a will but he had told me that he had taken such steps so that his estate may go to both of us.

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.  
Cross-  
examination  
- continued.

10 Q. When did he tell you that? How long before his death? A. It was after he came to Kaldemulla in 1951 on occasions when I happened to go to see him.

Q. I put it to you he came to Kaldemulla in July 1952 after the sale of Naugala Estate? A. I cannot remember the dates correctly. It may be so. He came to Kaldemulla after the sale of Naugala Estate.

20 Q. Is it correct to say that you were always aware that the will attested by Mr. Tudugala was with your father in his safe? A. No.

Q. You remember Dr. Anthonis was called in by your sister to attend on your father? A. Yes.

Q. Dr. Anthonis is a good Surgeon? A. He was a good friend of my brother-in-law.

Q. On Dr. Anthonis' advice your father had to be taken to the nursing home in Colombo? A. Yes.

Q. Your father was taken by your sister in a car along with A.W. Peiris and her son to the nursing home? A. I do not know.

30 Q. Were you and your husband near about the house at Kaldemulla when your father was going in the car with your sister and others to the nursing home? A. No.

Q. Do you know that Dr. Anthonis' car just preceded the car in which your father was travelling? A. I did not see it.

40 Q. It would be incorrect to say that when Dr. Anthonis' car was passing and when your sister's car was going along with your father you and your husband and your other friends raised all sorts of shouts and hurled abuse? A. I am not aware and I did not go there.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.  
Cross-  
examination  
- continued.

Q. You were not in the house of the deceased on the day he was removed to the nursing home?

A. No, because I had been sent a letter in the morning not to go there; that my father was well and not to go there. P10 is that letter. This letter was received by me in the morning.

Q. According to you, you and your mother were well aware that your father had left a will by which he had left his property to you and your sister?

A. Myself and my mother were aware that he had left a document. I do not know whether it is a will or anything else - so that his properties may be inherited by me and my sister in equal shares. 10

Q. Did you tell us yesterday that you and your mother were aware prior to your father's death that he had left a last will by which he had devised his property to you and your sister?

A. When I was told I believed that he may have left a last will.

Q. Did you tell us yesterday that Victor Fernando had told you and your mother that your father had executed a last will leaving all the property to you and your sister? A. I did not say it was a last will. 20

Q. Did Victor Fernando at any time tell you that your father had left a last will? A. He did not use the expression "last will". I have put down three Rev. Gentlemen in the list of witnesses.

Q. Did anyone of those Rev. Gentlemen tell you or your mother at any time that your father had left a last will? A. They did not use the expression "last will". They told me that my father had told them that he had made arrangements or taken necessary steps so that his properties may go to both the daughters. 30

Q. Neither Victor Fernando nor any one of those Rev. Gentlemen or Proctor A.V. Fernando ever tell you or your mother that your father had left a last Will? A. They did not use the expression "last will". My father died on the 22nd. The body was brought to the house at about 8 or 9 p.m. 40

Q. On the 23rd your father had a Humber car?

A. Yes.

Q. You used the Humber car on the 23rd? A. No.

Q. Did you claim the Humber car on the 23rd?  
A. No.

In the  
District Court  
of Colombo

Q. Did your mother claim it? A. No. She asked for the key of the car so that she may use it to make the necessary arrangements for the funeral.

Petitioner's  
Evidence

Q. You were asked yesterday whether your mother had claimed the car at the Police Station? A. Yes.

No. 27

Q. She made a statement to the Police? A. No.

Mrs. E.L. Peiris.

Cross-  
examination  
- continued.

10 Q. On that day did you act on the basis that there was a document left by your father by which he had devised all his property to you and your sister?  
A. I had the belief.

Q. Not that he had left a last will? A. From my father's saying that he will be making necessary arrangements so that these properties may go to both the daughters I believed that he would be leaving a last will to that effect.

20 Q. Did you and/or your mother on 23 February act on the basis that your father had left a last will by which all the properties were devised to you and your sister? A. We did not think of the last will at that time. We were only sorrowing over the death of my father.

Q. What was your mother sorrowing about?  
A. Wasn't my mother sorrowing over the death of her husband?

30 Q. Did your mother go to the Police Station on 24th February and claim a share of the car and iron safe? A. No. The funeral of my father was on the 24th in the evening.

Q. Was there any trouble between you and your mother on the one side and your sister on the other in regard to this car and in regard to the safe? A. No.

Q. On the date of your father's death and thereafter as well as before you were residing at Laxapathiya? A. Yes.

Q. Your mother was living with you? A. Yes.

40 Q. On the date of your father's death or thereafter were you worried about what your father had done to his property? A. No. I was not worried. The properties did not come to my mind at the time of my father's death.

In the  
District Court  
of Colombo

Petitioner's  
Evidence.

No. 27  
Mrs. E.L. Peiris.  
Cross-  
examination  
- continued.

Q. Nor as far as you are aware was your mother concerned about what your father had done with his properties? A. No.

Q. How long after your father's death did you interest yourself in the will left by your father?  
A. After the iron safe was opened.

Q. Did you or your mother ever expect that the will your father said he would be leaving behind would be in the iron safe? A. Yes.

Q. Even before his death you were under the impression that the will was in the iron safe? A. Yes. 10

Q. Did your mother at any time tell the Police or you tell the Police that this last will was in the iron safe? A. No. The Police was in the hands of my sister.

Q. You know very well that your mother had made certain statements to the Police on the basis that no will had been left by your father? A. No.

Q. Did your mother at any time make a statement to the Police concerning the safe or the car? A. No. 20  
The safe was opened in Court on 9.4.54. I was present in Court.

Q. On 9 April you did not find the document you were hoping to see in the safe? A. No.

Q. Can you give me the name of any Proctor with whom your father dealt during his lifetime?  
A. He did not have one Proctor. He went to a proctor whom he wanted at the time.

Q. Can you give me the name of any Proctor with whom he dealt? A. I do not know. 30

Q. When did you hear the name of Tudugala for the first time? A. I first of all came to know the name of Tudugala only after the last will in favour of myself and my sister was found.

Q. That was according to you when? A. After the iron safe was opened we were making a search and inquiries for this will for about 2½ - 3 months. Through the driver we came to know of this will being found with Mr. Tudugala. The driver is John.

Q. It was John who gave you the information that the will had been executed by Tudugala? A. John had been directing my husband to 1 or 2 Proctors saying that his master had been going to such and such a Proctor. 40



Q. Who were the Proctors to whom John had directed your husband? A. He had directed my husband to 2 or 3 Proctors at Moratuwa. I do not know the names. My husband had gone to Avissawella directed by John to a Proctor I think; I do not know. My husband had gone to Nawinna, Matale, to Mr. Wijesekera's Office and it was at Mr. Tudugala's Office this document was found.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 27

Mrs. E.L. Peiris.

Cross-  
examination  
- continued.

Re-examination.

10 Q. Have you ever met Tudugala before that date?  
A. No. It is only on that day I first came to know of the name.

Q. Did your husband tell you he was known to Tudugala when he was employed at Julius Creasy?  
A. No.

Re-examination:

20 I was asked a number of questions with regard to whether my father expressly told me that he left a last will. That expression "last Will" was not used. My father said that he had made the necessary arrangements or taken the necessary steps so that his estate would belong to both of us equally after his death.

Q. You have said that you got the impression that that would be by last will? A. Yes.

Q. Rev. Wickremanayake, did he convey the same impression to you? A. Yes.

Q. The retired headman? A. Yes.

Q. Did you know to whom the car had been bequeathed by your father? A. No.

30 Q. Did you know the contents of the last will?  
A. No. I got married in 1940, on 2 February. I ran away with my husband about a month before that. That would be early January 1940. My father was very angry that I ran away with Mr. Peiris. I was shown a last will made by my father attested by Mr. Aelian Samarasinghe of Colombo R9 dated 1.2.40. That would be about a month after I ran away with Mr. Peiris. I was shown R10 dated 14.3.46. Those are instructions to Raymonds. In 1946 my father was living in Matale. He had got angry with me and my mother and had gone to Matale. I was shown 40 document R8 signed by Marina Fonseka and my father dated 1942. It is stated in R8 that my father had been separated from my mother for about 2 years and finding it difficult to live alone he is desirous of having a suitable person to attend on him and to be a faithful companion to him. I draw the attention of Court to Clauses 1 and 3.

(Lunch).

50

Sgd. V. Siva Supramaniam  
A.D.J.

In the  
District Court  
of Colombo

20.9.55.

After Lunch.

Evelyn Letitia Peiris, Sworn, recalled.

Petitioner's  
Evidence

Re-examination continued:

No. 27

Mrs. E.L.Peiris.

Re-examination  
- continued.

(R10) put to witness) At this time my father was at Matale. He had got annoyed with my mother in 1940 and gone away. R11 is undated. I was questioned whether my mother used compulsion on my father. I draw the attention of Court to the document P8 dated 17.10.52 by which he agreed to pay Rs.50 per mensem to my mother and Rs.5,000. I draw attention to the second paragraph of page 2 of P8.

10

Sgd. V. Siva Supramaniam  
A.D.J.

No. 28

No. 28

A.V. Fernando.

A.V. FERNANDO

Examination.

A.V. FERNANDO. Sworn. Proctor S.C. & N.P.

I have been in practice for 32 years. I work now at Panadura. I also practice in Colombo. I am a J.F. U.M. and the President of the Mahajana Sabha for 14 years.

20

I knew the deceased William Fernando. He was a well-to-do man.

Q. Did you see him in connection with some donation to a chapel? A. Yes. Mr. Fernando himself was a Christian. The old gentleman donated Rs.1,500 for the chapel at Kadalana.

Q. Did he also make any other promises? A. He wanted to give Rs.10,000 to the Home for the Aged at Moratuwa. And he wanted to build a ward in his name but that fell through. It fell through because there was no space for a separate ward.

30

Q. Did the deceased come to see you in connection with writing a deed? A. Yes. He came with the retired Village Headman of Kaldemulla. He was the headman at the time if I am not mistaken. I am not sure.

Q. That was to execute a gift? A. Yes, in favour of the children of Mr. and Mrs. Peiris with the life interest to Mr. Peiris. That was of some property at Matale. They were fairly valuable

40

properties, about 100 acres. I knew that there were 2 daughters of the old gentleman. That is, the respondent and the petitioner.

In the  
District Court  
of Colombo

Q. Do you know whether there was any estranged feeling between them? A. Yes. They were not on terms.

Petitioner's  
Evidence

Q. Do you know that the old gentleman was being worried about it? A. Yes.

No. 28

A.V. Fernando.

Examination  
- continued.

10 Q. What did the old gentleman tell you in connection with the two daughters? A. One day he told me that he had made provision for his two daughters equally to take effect after his death.

Cross-examined.

Cross-  
examination.

I knew the deceased for a very long time, nearly 10 to 15 years. He was living in separation from his wife, I cannot say whether he was living in separation from his wife for a long time. He lived in separation till his death.

20 One daughter is Mrs. Peiris. Mrs. Peiris' marriage was not approved of by the old gentleman.

Q. In fact he never visited her after that marriage? A. That I cannot say. The donation of the chapel was somewhere in 1942. I am sorry, 1952. Victor Fernando and the deceased came to me in connection with the execution of a deed somewhere in 1949 or 1950.

Q. What was that Matale Estate? A. Nawagala Estate.

30 Q. Do you know that the deceased had made several complaints against the wife to the police? A. No.

Q. Did you know that the wife filed a divorce action against the deceased? A. I knew there was an action.

Q. The deceased was very fond of his daughter Mrs. Agnes de Silva? A. That I cannot say.

40 Q. The husband of Agnes de Silva died in 1942, do you know that? A. I cannot remember. I attended the funeral. I do not know who interested himself in the administration of that estate.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 28

A.V. Fernando.

Cross-  
examination.  
- continued.

The deceased said he had made provision for the two daughters equally to take effect from his death. That statement was made to me in 1952, that was after the donation of Rs.1,500. It was somewhere in 1952.

Q. Did you know at any time that he had gifted certain properties to this lady? A. No.

Q. Now did you know whether he had gifted other properties to the other daughters? A. No. I have done work for the deceased. The sale of the land at Lunawa for the Carlton Club; I cannot remember when it was; it must have been about 20 years ago. The remaining portion was transferred to his nephew; I forget his name; that is Peiris. That was after the transfer of the Carlton Club. I may have done some others. I cannot remember.

10

Q. Was Victor Fernando well known to you?

A. I knew him as the Village headman of Kaldemulla. I knew him from the time he was headman. In fact I have work with the headman in that area.

20

Re-examination.

Re-examined.

I verified from the Church Accounts and found that the donation was in August 1952. I was then Deed Warden of the Church. In this connection I went about with Rev. Wickremanayake. I went twice to see the old gentleman. Apart from going with Rev. Wickremanayake I saw the deceased by myself. The deceased made this statement to me subsequently when I saw him alone.

30

Q. That was after August 1952? A. Yes.

I am a very senior Proctor. I had no trouble in my Notarial practice. I am one of the leading Proctors of the Panadura Bar.

Sgd. V. Siva Supramaniam.

A.D.J.

No. 29

REV. B.M. WICKREMANAYAKEIn the  
District Court  
of ColomboREV. FR. B.M. WICKREMANAYAKE. Sworn. Incumbent  
of the Moratuwa Parish, Moratuwa.Petitioner's  
Evidence

I have been Incumbent of the Moratuwa Parish since 1949.

No.29

I got to know the deceased William Fernando in 1952. He was a fairly well-to-do person. He was a member of my Parish. I knew him also in connection with a donation to the Chapel. He donated Rs.1,500.

Rev. B.M.  
Wickremanayake  
Examination

10

Q. Did he make any other promise to the Church?  
A. To the Church at Laxapathiya. He promised a house behind the Church. That did not materialise.

20

Q. Did he want to build a ward or something like that?  
A. Yes, at the Moratuwa Home for the Aged. That did not materialise. He did not come to see me. I went to see him. He was not residing in the Parish. He came to reside in 1950. My first visit was by myself. Then I went with Mr. A.V. Fernando and another warden. He actually made the donation on 5.8.52.

Q. You came to know the deceased fairly well?  
A. I did not know him intimately. I got all my information through my assistant. I knew the deceased's two daughters. That is, the Respondent and the Petitioner.

30

Q. Were you aware of any particular feeling between the two sisters?  
A. My assistant reported to me. I was not aware directly. I came to know.

(Mr. Navaratnarajah objects to any hearsay evidence) (Objection upheld)

40.

Q. Did you speak to the old gentleman, the deceased?  
A. Yes. I spoke to the deceased about his daughter. About September or early October 1952 I spoke to him. When I went to see him he was not very well. I

In the  
District Court  
of Colombo

Petitioner's  
Evidence

took the opportunity of advising him to make his peace with God and man. I referred to the daughter, Mrs. Peiris. The conversation was in Sinhalese. He said with reference to that, (Sinhalese)

("All that I have made arrangements).

No.29

Q.Referring to any particular time? A. No.

Rev. B.M.  
Wickremanayake  
Examination  
continued

Q.Did he refer to the two daughters? A. I was speaking to him about the daughter with whom he was displeased.

10

Q.What else did you tell him? Did you speak to him about the uncertainty of life? A. Yes, that he was ill, that he should make his peace with God and man.

Q.Any reference to conscience? A. I put it to him that he should not leave anybody having any grievance against him when he was dead.

Q.Did you refer him to any justice? A. Well, I did not put it as justice. I said he should not leave anybody to have any grievance against him. This was in September or October 1952.

20

CROSS-EXAMINED

Cross-  
examination

Q.Did he tell you that in September or October 1952, he had occasion to make complaints to the police against his wife? A. No.

Q.Did you hear that he was living in separation from his wife and his daughter Mrs. Peiris? A. Yes.

Q.You knew from the deceased that he was living in separation? A. Not from the deceased. He was living in a house at Kaldemulla.

30

Q.He was being looked after by an old lady Marina Fonseka? A. I saw an old lady. Certainly not the wife. The old lady was living at Laxapathiya with her daughter Mrs. Peiris and her husband. The deceased was living in Matale till 1952. I do not know the exact date he came to Kaldemulla. I went to his house one or two weeks after he came to Kaldemulla because I had written to him at Matale asking him to inform me when he

came. He came about July 1952. I do not know whether he came to reside permanently; he was residing there. He was not residing there throughout 1952. To my knowledge he was there part of 1953.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.29

Rev. B.M.  
Wickremanayake

Cross-  
examination  
continued

Q. Did he tell you that he was having difficulties at that time in September and October with his wife and his daughter Mrs. Peiris?

A. He did not tell me.

10

Q. You knew that in September 1952 he was living apart from his wife? A. Yes.

Q. Did you try to find out the reason from him?

A. No. I did not ask him any reason.

Q. You knew on information received as to why it was the daughter Mrs. Peiris and the wife were living apart? A. I knew why the daughter was living apart.

20

Q. You thought it was your duty as the chief priest to bring about a reconciliation between father and daughter? A. Yes.

Q. And you did all you could in that direction?

A. Not more than I did on that particular day.

Q. Did he tell you that he had gifted any property to Mrs. Peiris? A. No.

Q. Did you discuss this matter with Mrs. Peiris?

A. No.

Q. Or with any one? A. No.

30

Q. The first person to whom you mentioned this conversation you had with the deceased was the petitioner's lawyer? A. No. Immediately after that I knew there was a certain amount of anxiety and I told the petitioner then not to worry as everything will be all right.

Q. In October 1952 there was some anxiety on the part of the petitioner as to how the father was going to deal with her?

A. I was informed there was anxiety.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.29

Rev. B.M.  
Wickremanayake

Cross-  
examination  
continued

No.30

Rev. D.D.  
Thero.

Examination

Q. And you told the petitioner not to worry?  
A. Yes. That was sometime about October 1952.

Q. At the time you mentioned this did they tell  
you that they had received any bequest from  
their father in cash? A. No.

REXN. Nil.

Sgd: V. Siva Supramaniam

A.D.J.

No.30

REV. D.D. THERO

10

Rev. D. Dhammaloka Thero. Affd. Nilammahara.

My tutor priest is the famous Nilammahara  
priest of Ceylon. He had a great reputation as a  
physician. After his death I have been doing the  
physician's job.

I treated William Fernando, deceased. That  
was actually his last illness. I treated him in  
1954.

At first he came to see me. I examined him  
and prescribed some medicine. Thereafter he sent  
his car to fetch me. I have gone to his house  
several times in his car to treat him.

20

Q. You came to know the man. Did you discuss  
matters with him? A. Yes.

Q. What did he tell you? A. I asked him the  
origin of his illness, how he became ill. He  
said that he had two children. On account of  
the absence of those two children and the sor-  
row that ensued thereon he had become ill.  
This is how he started. When he said that he  
had two children who were absent now and he  
was sorry, I asked him particulars about the  
children. He said they were two daughters. He  
said, "All what I have I have written in their  
favour. After that they have neglected me." I

30



asked him the reason why they neglected him. He said they were not united. I asked him whether he had a lot of wealth. He said he had. He said, "I have written all that wealth by a last will for those two daughters."

In the  
District Court  
of Colombo

Petitioner's  
Evidence

CROSS-EXAMINED

No.30

Rev. D. D.  
Thero.

Cross-  
examination

If my patients pay me I accept it. I treat both men and women.

10 Q. What do you do with the fees you get?  
A. It is not necessary for me to tell that here.

Q. Do the rules of the Vinaya permit you to treat ladies?  
A. What happens if I treat ladies?

(Question repeated) There is no prohibition by those rules. When I fall ill I go to Doctor Sivapragasam for treatment. I treated the deceased last in January 1954. I treated the deceased for about a month as far as I can remember. I have taken treatment from Dr. Sivapragasam on several occasions. I cannot remember the dates. I was summoned to the deceased's house to treat him. I wanted to know when the illness commenced. I wanted to know whether, if possible, the deceased could give me the causes of that disease. I discovered that the deceased was suffering from MOOLA VATHA (Pile trouble).

20  
30 Q. Was he suffering from pile trouble or an enlargement of the prostate gland?  
A. I do not know what the prostate gland is. On account of the MOOLA VATHA there was some damage to the two kidneys. I treated him for about a month. I asked the deceased for the cause of his disease on one of my visits to his house. I first met the deceased in my house at Nilammahara.

40 Q. On that occasion you did not want to ask him what causes led up to his illness?  
A. At that time there were several patients who had come for treatment. So I could not have spent much time with him. I tested his pulse and gave him a prescription. I cannot remember whether the deceased came with any one.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.30

Rev. D. D.  
Thero.

Cross-  
examination  
continued

I did not try to find out. He did not come alone. He came with two or 3 others.

Q. Any conversation you had would necessarily have been in the presence of those 2 or 3 persons?

A. At that time I examined him for his illness. I did not discuss with him. I gave him a prescription. The deceased did not come to Nilammahara again. About a week later I went to his house. The driver and another person took me there. I cannot remember who the other person was.

10

Q. Did you see this lady on that occasion (Respondent pointed out)?

A. On the first occasion Respondent was not there. As far as I could remember I think on my second visit or third visit to his house I saw this lady there.

Q. On which occasion was it you discussed with the deceased his family affairs? A. On my first visit to his house.

20

Q. No one else was present when you had any conversation with the deceased? A. There were another stout lady who was wearing a cloth and the driver.

Q. The stout lady is Marina Fonseka who looked after the deceased? A. I do not know who she is.

Q. You were interested to find out from the deceased something about his family history? A. Yes.

30

Q. Did he tell you that one of his children had eloped? A. No.

Q. Did he tell you that he was angry with one of the daughters, Mrs. Peiris? A. No.

Q. Did he tell you that he was angry with his wife? A. No.

Q. The impression you got from his conversation was that he was very friendly with his wife? A. I did not discuss with him at length. There was just a few words - 2 or 3 words.

40

Q. 2 or 3 words about the family history of the

deceased? A. Yes.

Q. Did you know at that time when you went to the house of the deceased whether his wife was living or dead? A. No. I had gone to that house for one month, for the whole month I had not been there on more than 3 occasions. On each occasion I spent 30 minutes with the deceased. On only one occasion I discussed the family history of the deceased.

10

Q. That was for a minute or 2 according to you?

A. About 5 minutes.

Q. Did he tell you at any time that he was living away from his children at Matale?

A. No he did not tell me all these things.

Q. Were you interested to find out whether he was a wealthy man or a poor man? A. I asked him whether he had a lot of property.

20

Q. So, you were interested in finding out whether he was a wealthy man or not? A. Yes.

Q. When you asked him that question he volunteered the information to you that he had left a last will? A. That he had finished writing out his properties by a last Will.

Q. Did he also tell you the provisions of the last Will? A. He only told me that he had written the properties between the two children in equal shares.

30

Q. Did he tell you that he had left some money to his wife also? A. There was no reason to find out details to that extent.

Q. This conversation about his wealth arose because you were anxious to know the cause of his illness? A. Yes.

40

Q. Is it your habit to ask other patients too whether they were wealthy or not? A. I do not ask all patients. I go and attend to the purpose for which I went and come away. I know what this case is about. His son-in-law Austin came and told me that his father-in-law was dead. I do not know

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 30

Rev. D. D.  
Thero.

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.30

Rev. D. D.  
Thero.

Cross-  
examination  
continued

exactly what this case is about.

Q. You were asked by Austin to come and give evidence in this case? A. No. I received a summons and I have come.

Q. You did not know why you were sent a summons in this case at all? A. I did not know. That is why I came to Court.

Q. You did not know by which side you were going to be called to give evidence? A. After I came to Court I became aware which party was calling me. 10

Q. You did not know on what matters you were going to be questioned in Court? A. I did not know. When I was asked details about the patient I was able to say this.

Q. That is, when in the witnessbox you were asked by learned Counsel for the petitioner about the details of the conversation that you came out with the story about the last will; is that what you say? A. Yes. This is not the first time I have come to Court in connexion with this case. I came to Court on an earlier occasion in connexion with this case. That was about a week ago. I cannot exactly remember. 20

Q. Were you paid your batta on that occasion?  
A. They will pay me. I have not been paid yet. If they give me I will accept it.

Q. It was only today when you were in the witnessbox you knew on what matters you were going to be questioned? A. Yes. I came to Court to give details about the patient. 30

Q. You knew from the summons that you were summoned to give details about the patient: Is that so? A. No. The summons served on me asked me to attend Court. So I came to Court.

Q. So, you did not know from the summons that you were going to be asked details about the deceased's illness. A. No.

Q. Before you got into the witnessbox today did anybody talk to you about the evidence you were 40

to give in this case? A. Mr. Austin told me that I had been summoned as there is a Testamentary case.

In the  
District Court  
of Colombo

Q. Did he tell you what evidence you were expected to give? A. I told Austin that I would give evidence regarding my treating the deceased.

Petitioner's  
Evidence

No.30

Q. Did he tell you that you could give evidence about the deceased's having made a last Will?

Rev. D. D.  
Thero.

10 A. Austin asked me, "Didn't the deceased tell you in this way?" Then I said, "Yes". This conversation with Austin took place after I came to Court. I think it was yesterday that Austin spoke to me for the first time regarding this matter. Yesterday was the first time I met Austin after the deceased's death. Prior to the deceased's death I had met Austin. It was from Austin that I heard about the deceased's death. Prior to the deceased's death I had never met Austin. (Petitioner pointed out) I have seen that lady in Court. I cannot remember whether Mr. Austin and his wife came to the Temple. On the occasion when Austin came to tell me about the death of the deceased I cannot say whether he was accompanied by his wife. I did not attend the deceased's funeral. When Austin told me that the deceased was dead I sympathised with him and sent him away. That is all that happened. I do not know the petitioner's mother.

20

30

Cross-  
examination  
continued

Q. Did you know that after your treatment the deceased was treated by some other doctor?

A. Austin told me that they had now taken to Western treatment.

Q. That is on the day he came to tell you about the death of his father in law? A. Yes. I did not know where Austin was living at that time. Now I know he lives at Moratuwa. Whether Austin was living in the house of the deceased or not I do not know. Even now I do not know where the petitioner is living, whether in the house of the deceased or anywhere else.

40

In the  
District Court  
of Colombo

RE-EXAMINED

Petitioner's  
Evidence

No.30

Rev. D. D.  
Thero

Re-examination

I have practised as a physician for 27 years.  
I have a very large practice. Several patients  
see me every day.

Q. Have you much time to devote to each patient  
when he comes to see you every day? A. No.  
I devote about 8 minutes to each patient who  
comes to see me. I have no time to discuss  
private affairs with my patients when they come  
to see me at my dispensary.

10

Q. On this occasion you were taken on a special  
visit all the way to Moratuwa? A. Yes.  
That is about 8 miles from my dispensary.

Q. Those are special visits? A. Yes.

Q. And you said you had time to discuss things at  
leisure with your patients? A. Yes.

Q. Was it on such an occasion you talked to the  
deceased? A. Yes. I wanted to find out  
the cause of his illness.

Q. Was the illness persistent or was it getting  
better? A. When the illness was subsiding  
for my treatment he was taken away to a doctor.

20

Q. Do you discuss the family history of your  
patients? A. If I find the leisure.

Q. This happened about half an hour every time you  
went to see this deceased at Moratuwa?

A. Yes. I asked him the cause of the illness.  
In the course of the conversation the deceased  
told me what I have already stated in Court.

Q. On how many days this year did you come to  
Court in connexion with this case?

A. Inclusive of today, on 2 or 3 occasions.

30

Q. Last year did you come to Court in connexion  
with this case? A. I cannot remember.

Q. Did the lawyers, including myself and my juni-  
ors speak to you in the Law Library?

A. The advocates discussed this case with me in  
the Law Library.

- Q. Did petitioner's counsel ask you what evidence you were going to give? A. Yes.
- Q. And did you tell them what evidence you were going to give? A. Yes, I told the counsel that I had come to speak about my having treated the patient. I have told the Court about the deceased's conversation with me. The deceased had a conversation with me before he died; that is before 1954. I met Austin Peiris.
- Q. Either Mr. Austin Peiris or Austin Peiris and his wife came to see you? A. Yes.
- Q. Did you tell them what you knew? (Mr. Navaratnarajah objects to the question.)
- Q. You have told the Court that your Lawyers asked you about the evidence you were going to give? A. Yes. I told the Lawyers what evidence I was going to give.
- Q. Do you know how the Lawyers came to know what evidence you were going to give? Did you tell anybody before you came to Court what evidence you were going to give?  
A. I cannot say.
- Q. Did you tell anyone what evidence you were going to give? Did you tell either Peiris or Mrs. Peiris or anybody? A. I had told the advocates. I took treatment from Dr. Sivapragasam.
- Q. Did you take treatment from other doctors as well? A. Yes. Whenever I fell ill I take treatment from doctors. I have been treated by Dr, Peiris and Dr. Seneviratne. Those are men who practise Western medicine.
- Q. Western doctors do they sometimes come and take treatment from you or your tutor priests. A. Yes. Even Lawyers have come to me for treatment. My tutor has treated several lawyers. (To Mr. Navaratnarajah with permission: Mental cases are my speciality). My tutor also was a specialist in mental cases. People with mental cases come to me specially, but several people are treated for other diseases. I can treat any disease of the body.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.30

Rev. D. D.  
Thero

Re-examination  
continued

Sgd: V.Siva Supramaniam

A.D.J.

(Further hearing on Friday 23.9.55).

In the  
District Court  
of Colombo

No.31

V.H.P.FERNANDO

Petitioner's  
Evidence

Trial resumed.

No.31

Same appearances.

V.H.P.Fernando  
Examination

Errors in previous days proceedings  
corrected, of consent.

Sir Lalitha calls:

V.H.P.Fernando. Sworn 55, businessman, Kaldamulla.

I am the retired village headman of Kaldamulla. I own properties now at Kaldamulla, Moratuwa, Lunawa and Teldeniya. I was village headman of Kaldamulla for 17 years. I retired from service in 1951. 10

I knew the deceased William Fernando. I knew him very well and was a good friend of his.

Q. What was the friendship with you like?

A. We were ordinary honest friends.

Q. I want to know the state of intimacy, whether he consulted you etc? A. Yes. We sought each others advice.

Q. Have you sometimes been writing out cheques for the old gentleman? A. Yes. He used to have signed cheques which I filled up. To my knowledge he was a well to do man. I remember the divorce proceedings of 1944. Mrs. Fernando filed a divorce action against Mr. Fernando. 20

Q. What happened then? Did Mr. Fernando see you?

A. Yes.

Q. What did he want you to do? A. He asked me to intervene and bring about a settlement somehow or other. He wanted my good offices in this matter. I knew Mrs. Fernando also. I intervened and brought about a settlement. At that time he was paying maintenance to Mrs. Fernando at the rate of Rs.25/- a month. I settled by making him to increase it to Rs.50/-. There was a jewellery box belonging to his second daughter, Mrs. Peiris, at Colpetty. He 30



agreed to give Mrs. Peiris a jewellery box which he said was at Colpetty. He also agreed to give possession of a land of his to Mrs. Peiris. He also said that whatever he possessed at the time of his death he would take steps to see that the property went to both the daughters in equal shares.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Examination  
continued

- 10 Q. Did he say it only at the time of the divorce  
action? A. After that Mrs. Peiris' mother  
used to go to Mr. Fernando on several occa-  
sions and worry him. On those occasions also  
he had sent for me and told me "Have I not  
promised to give whatever I have to my daugh-  
ters", "please ask Mrs. Peiris' mother not  
to come and worry me". And I have been go-  
ing and telling Mrs. Fernando this and warn-  
ing her not to worry him. What he said  
on those occasions was that he referred to  
his making arrangements for his two daughters  
20 to get his property equally. I retired as  
village headman in 1951.
- Q. The first occasion was during the divorce pro-  
ceedings: can you remember an occasion when  
he repeated this statement? A. After that  
as far as I could remember he said that about  
1950 when his wife had gone and worried him.  
This was before I retired.
- Q. The deceased used to talk to you about this?  
A. Yes.
- 30 Q. Even after 1950 did he tell you the same  
thing when occasion arose? A. I cannot  
remember. He may have told me even in 1950.  
But I cannot be certain.
- Q. Then what did you tell either Mrs. Peiris or  
Mrs. Fernando? A. I told both Mrs. Fer-  
nando and Mrs. Peiris not to trouble him, now  
he has come here to reside and if they went  
and troubled him he would leave this place  
and go away; he has said that whatever he  
40 has he will be giving these people. This  
was about 1950/51.
- Q. Prior to that did you go with Proctor A. V.  
Fernando anywhere? A. William Fernando  
and I one day went to Proctor Fernando's house.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Examination  
continued

This was about 1949 or 1950 -- shortly before he came to reside at Kaldamulla. He was anxious to give some money to the Home for the Aged and he had a land at Matale which also he wanted to gift to the children of Mrs. Peiris. So he went to get the names of the children. So he told this to Mr. Fernando. After speaking to Mr. Fernando along with him we went to Dr. K.J. de Silva. There we talked with Dr. Silva about giving Rs.10,000 or Rs.15,000/- to the Home for the Aged. Mr. William Fernando also told Dr. Silva that he had entrusted to Proctor Fernando to write the Matale land in the name of Mrs. Peiris' children. Later I came to know that neither the gift to the Church nor the transfer materialised.

10

Q. Did the late Mr. Fernando write to you sometimes? A. Yes. (Shown P2) This is a letter which the deceased had sent to me. On receipt of this letter I took it and went to Mrs. Peiris' house and showed it to her and her mother, and requested them to consent to what has been stated in the letter. Dulcie is the younger daughter, Mrs. Peiris. He refers to the fact of his giving some money. He wanted to give some money which was to be taken on the petitioner's children attaining age. I was requested to explain these matters to Mrs. Fernando to Mrs. Peiris, either by sending for them or by my going and seeing them. I went and spoke to them. As requested I sent a reply to this letter.

20

30

Q. The deceased was living at Matale during the divorce proceedings? A. Yes. He came to settle down at Kaldamulla in 1950 and did not return thereafter.

Q. Do you know whether the daughters visited him when he came to Kaldamulla? A. Yes.

Q. Petitioner also visited him? A. Yes.

Q. When you said that Mr. Fernando came down to live permanently in Kaldemulla in 1950, are you quite sure of the date or is it roughly about that time? A. That is as far as I can remember.

40

Q. Do you know how Mr. Fernando received his daughter Mrs. Peiris and her children?

A. I did not see that. I was not present in the house when they came. But he had told me that she had visited him.

Q. One day did you go with Mr. Fernando to Colombo in a car? A. Yes. I know Mrs. Silva I have seen her, but I have not spoken to her.

In the  
District Court  
of Colombo

Q. What happened when you were going? Did the deceased tell you anything?

Petitioner's  
Evidence

A. One day when I was going with Mr. Fernando by car the car was stopped near the house of the respondent on the Galle Road. He sent some money and eatables by an old man named John to Mrs. Silva's house. Then I told him, "You have stopped here; instead of stopping here as it is a short distance shall we go there? He said, "I do not go there. I am angry with the driver."

No.31

V.H.P.Fernando  
Examination  
continued

Q. Who is the driver? A. Driver Banda. I did not ask him why he said it. It is not usual for me to ask for details. He did not go to Mrs. Silva's house that day.

Q. He had a displeasure? A. Yes.

Q. Did Mrs. Peiris and Mrs. Fernando see you often? A. Yes.

Q. And you used to tell them what?

A. To live in peace, not to go to fight with him or trouble him, and get whatever he gives.

Q. Did they see you after the deceased's death also? A. Yes.

Q. And talk to you? A. Yes. I attended the deceased's funeral.

Q. You were a very close friend of his? A. Yes.

Q. You used to give them advice as you gave the father advice? A. I was not visiting Mrs. Fernando and Mrs. Peiris so frequently as I visited Mr. Fernando. After he came to reside at Kaldamulla, whenever I found the leisure I visited him. I had a closer association with the deceased than with Mrs. Peiris and Mrs. Fernando.

(Further hearing on 10,15 and 16 November)

Sgd: V.Siva Supramaniam.

A.D.J.

In the  
District Court  
of Colombo

Inquiry resumed.

Same appearances.

Petitioner's  
Evidence

V.H.P.Fernando. Sworn. recalled.

CROSS-EXAMINED

No.31

V.H.P.Fernando

Cross-  
examination

I came to know the deceased about 20 years ago. I do not know the time when Mrs. Silva married. I have known Mrs. Silva only by sight. I do not know the time when Mrs. Peiris married.

Q. So that you came to know the deceased after Mrs. Peiris married? A. Yes. I knew that the deceased had an estate. I do not know any details of that estate. I have not been to that estate. Later I learned that that estate had been sold. I learned that the estate was sold after the deceased came to live at Kaldemulla. 10

Q. That is after July 1952? A. I cannot remember the date. The deceased died, as far as I can remember, in February 1954. I cannot say how long before his death that estate was sold. The estate was sold about a year or two before his death. 20

Q. The deceased lived on the estate at Matale until it was sold? A. Yes, but he was visiting Kaldemulla once a month or once in 2 or 3 months. It may be that he was residing permanently on the estate until it was sold. I met the deceased when he visited Kaldemulla.

Q. At the time I came to know the deceased he was residing permanently on the estate at Matale? A. At the time I came to know him he was living at Kaldemulla and after a short time at Kaldemulla he went to the estate. At the time I came to know the deceased Mrs. Peiris was married. I did not attend Mrs. Peiris' wedding. I do not know whether her marriage had the approval of the deceased. 30

Q. Up to now you do not know whether the marriage of Mrs. Peiris had the approval of the deceased or not? A. I knew that Mrs. Peiris and the deceased got on well. (question repeated) Mrs. Peiris married without the consent of her 40

father. On the day she left the house I knew that she had gone without her father's consent and married. On the day Mrs. Peiris left the house I knew the deceased very well.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Cross-  
examination  
continued

10 Q. Do you tell us now then that you knew the deceased prior to the marriage of Mrs. Peiris?  
A. Yes. I knew the deceased from about 1933. I was appointed headman on 30 September 1933. As the deceased was a respectable citizen of the place I paid him a visit. I was fairly acquainted with the deceased from 1933. By and by we grew to be friends. Millie Nona is the deceased's elder daughter. I do not know when she married.

(Sir Lalitha states that the witness will not know the parties as Mrs. Peiris and Mrs. Silva and that they had better be referred to as Dulcie and Millie by which names they are known to the witness).

20 I know Dulcie. Dulcie is Mrs. Peiris, I know that Millie is married. At the time I came to know the deceased Millie was married. I knew that Millie's husband died. I do not know when he died. I could not attend his funeral. I do not know that there was a Testamentary case in connexion with the death of Millie's husband.

30 Q. Did the deceased tell you anything about it at any time? A. No. I did not know that Millie was dowried by the deceased. The deceased had mentioned to me that he had given Millie a dowry.

Q. In what connexion did he mention that matter?  
A. On one occasion I went with the deceased to an estate at Madampe, and he told me that he had given that estate as dowry to his daughter Millie. That was during the Hartal when he was afraid to go alone and he took me.

Q. Do you know whether the deceased had gifted any property to Dulcie? A. Yes.

40 Q. Who told you that? A. Dulcie's father told me. He told me about the time of her marriage.

Q. That is, did the deceased tell you that he

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Cross-  
examination  
continued

had gifted certain properties as dowry on the occasion of her marriage? A. He did not tell me like that. He told me that he had written some lands in her favour before the marriage.

Q. The deceased was very angry because of her marriage? A. For some time.

Q. He was angry with his wife also on account of that marriage? A. Yes.

Q. That was the reason why he left Kaldemulla and went to reside on his estate at Matale? 10

A. I cannot give the reason why the deceased left Kaldemulla; whether he went because he was angry over the marriage or for some other reason; but I know he went to the estate. At this time I was very friendly with the deceased. I asked him why he was leaving his ancestral residence and going to live at Matale. He said he did not like to stay there as it was worrysome and sorrowful to stay there, therefore he was going for a short time to the estate. 20

Q. Who was worrying him? A. The worry was because Dulcie went of her own accord and married. He was grieved over that.

Q. At the time the deceased left for Matale Dulcie and her mother were living at Laxapathiya?

A. First the deceased's wife lived at Kaldemulla and Dulcie lived with her husband at Korlawella. Later they came to Laxapathiya.

Q. At the time the deceased left for Matale was Dulcie or her mother living at Kaldemulla? 30

A. The deceased's wife lived at Kaldemulla at the time the deceased left for Matale.

Q. Did the deceased tell you round about that time that he had executed a will? A. No.

Q. Did he ever tell you at any time that he had executed a will? A. No.

Q. Did he ever discuss with you any matter relating to the execution of a will by him? A. No. He was telling me that he wanted to write these lands. 40

Q. On how many occasions had he told you that he was going to write these lands?

A. About 7, 8, 10 times.

Q. When was the last occasion on which he told you that? How long before his death?

A. About 6 months prior to his death he fell ill. At that time several people came to treat him. At that time he said, "I am not even free to die. I want my lands to be written." The incident took place in September or October 1953.

Q. Who were present at the time he made that statement? A. That woman who was in that house. That woman's name is Marina Fonseka. She was the only person present at that time. (Witness volunteers:) There was an agreement between the deceased and Marina Fonseka; the deceased promising to give her a sum of Rs. 1,000/-. The lady was worrying herself and telling the deceased that if he died without giving her money, as she had no place to go, she requested a reasonable amount or a plot of land. Then the deceased said, "I appreciate the assistance and help you have rendered to me. I will give you a sum of Rs.5,000."

Q. When was the first occasion on which he told you he was going to write lands? A. About 1944 the deceased's wife had filed a divorce action against him. It was about that time he first mentioned this matter to me.

Q. What was the occasion for him to tell you that on that occasion? A. On that occasion he told me that it will be a disgrace for him to go to Court and be questioned, and requested me to bring about an amicable settlement. I conveyed the deceased's desire for settlement to his wife. She laid down certain terms.

Q. What were the terms she mentioned to you? A. The deceased wanted me to convey certain terms to his wife. I conveyed those terms. Namely, that he was going to increase the payment of Rs. 25 to Rs.50, that he was going to give her Rs.2000/- that there was a jewellery

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Cross-  
examination  
continued

box in the elder daughter's house, that he would get that box for his younger daughter. I conveyed these things to the wife and tried to persuade her.

Q. The wife in the end allowed herself to be persuaded? A. He also told me that he will allow Dulcie to enjoy or have possession of an estate - I do not remember the name of that estate. I persuaded them and the case was settled in Court.

10

Q. The deceased was still annoyed about that divorce case? A. He was worried that the case had come up and he was ashamed to face the Court.

Q. You were asked when the first occasion was when he told you he was going to write these properties? A. Yes.

Q. From the answer you have given us now you have not mentioned anything about the deceased's having told you that he was going to write his properties? A. On that occasion when I was conveying the message regarding the terms of settlement of the divorce case, he also asked me to tell them that whatever property he had will be given to the two daughters.

20

Q. Thereafter did Dulcie or her mother ever ask you to go and talk to the deceased about what he was going to do with his properties? A. Yes, and I spoke to him.

Q. How did the deceased come to give you letter P2? A. I received this letter by post.

30

Q. By P2 the deceased made a promise that he would give moneys to Dulcie's children? A.Yes.

Q. That was the first time the deceased ever mentioned about moneys being given by him to Dulcie's children? A. No. He had told me earlier.

Q. Did you ask the deceased to give moneys to Dulcie's children? A. No.

Q. Did Dulcie ever make a request that her children should be given moneys? A. I do not know.

40



Q. Did Dulcie's mother ever make such a request?  
A. Not through me.

Q. Did you discuss the letter P2 with the deceased at any time? A. Yes.

Q. Did you ask him why he sent the letter P2?  
A. I did not ask him in that way.

Q. Did he tell you why he sent letter P2?  
A. No.

10 Q. Did he tell you the reason why he wrote letter P2? A. He said he wanted to give some money to his children. He did not tell me the reason why he wrote me that letter.

Q. Did he tell you that he had on 13.5.50 9 days before P2, executed a last will? A. No.  
I handed letter P2 to the deceased's wife.

Q. Did the deceased's wife or Dulcie at any time ask you to get the money promised in the letter P2 from the deceased? A. No.

20 Q. Do you know whether the deceased's wife had ever demanded from the deceased payment of these moneys? A. No.

30 Q. About 3 months after the estate was sold the deceased made certain payments to Dulcie's children? A. I know some payment was made, but I do not know in which month. I know that the deceased's wife was given Rs. 5,000/- and Rs. 15,000/- to Dulcie's children were given and that it is after a deed was written. I was not present when the payment was made. I learned of it a few days later.

Q. Information about that was given to you by Dulcie? A. No.

Q. Dulcie's mother? A. No. Dulcie or her mother did not mention these payments to me. I came to know of the payment later. I learned of the payment about a month after.

Q. Did the deceased tell you that sometime during the time the payment was made he had occasion to make a complaint to the Police against

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Cross-  
examination  
continued

his wife? A. Yes. I knew Rev. Wickremanayake by sight. I have not spoken to him.

Q. Did the deceased tell you at any time that Rev. Wickremanayake was trying to effect a reconciliation between himself and his daughter Dulcie? A. No.

Q. Do you know in fact whether people were endeavouring to bring about a reconciliation between the deceased and Dulcie in 1952 after he had come to reside permanently at Kaldemulla? A. I heard of attempt at reconciliation between deceased and his wife, but I was not aware of any enmity between the daughter and the deceased.

10

Q. According to you the deceased and his daughter Dulcie were always on the best of terms? A. Yes. There was affection and trust existing between the daughter and the deceased.

Q. Right from the time that you came to know the deceased till his death? A. No. After Dulcie left the house to get married there was displeasure between the deceased and his daughter for some time. Later they made up. The deceased sent me to bring about a settlement of the divorce case in 1944 and Dulcie took a lot of pains to bring about a settlement and advised her mother to settle the case. The deceased heard of this and appreciated her action very much.

20

Q. At the time you received P2 Dulcie and the father were on the best of terms? A. At this time Dulcie was on visiting terms with the father and there was nothing for me to say that there was a displeasure between them. But the mother was not visiting.

30

Q. Have you at any time heard of a will executed by the deceased leaving all his property to Millie? A. Never.

Q. Do you know of any will attested by Tudugala? A. No, except what I heard of after I came for this case. During the lifetime of the father Millie first resided in a house at Bambalapitiya. Recently she shifted to another house which I do not know.

40

Q. You do not know where Millie resided at or

about the time of her father's death?

A. I knew that she was living at Bambalapitiya, but I did not know the house. Whether the house was closer to Bambalapitiya Railway Station or Wellawatte Railway Station I did not know. I have never been to that house. I know Driver Banda well, but I have not talked to him. I have smiled and talked to him on one or two occasions when I met him. I was questioned by respondent's proctor as to what evidence I was going to give. I was not questioned about Banda. I did not therefore tell him whether I knew Banda or not. I was not questioned about Banda. I have seen Banda in Court. I have talked to him. The deceased had a car. I have not gone with the deceased in his last car. I have gone in all his other cars on a number of occasions.

10

20

Q. Did the deceased at any time tell you that the house in which Millie was living in Colombo was a house gifted by him to her? A. Yes. That is a house bought for some lakhs.

30

Q. The deceased as far as you knew was very attached to Millie? A. There was no displeasure. He was kind to her. He loved her. He was affectionate to her. I visited the deceased during his last illness. I spoke to the deceased. I had gone there on some days when Millie was there. On one occasion Millie was not there. There was a lot of excitement. Marina Fonseka was there always. The excitement I referred to occurred at the time he was going to be removed to hospital. I have not met in his house the Buddhist Priest who was brought to treat the deceased. I know that a priest was brought. I know Mr. Peiris.

40

Q. Did he talk to you about what the deceased had done with his property after the death of the deceased? A. No. Dulcie did not speak to me after his death. Dulcie's mother did not speak to me.

Q. Did any one speak to you after the death of the deceased on this subject? A. No, except that I was served with summons in this case and asked to give evidence. Until I was served with summons no one talked to me about what the deceased had done with his property.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Cross-  
examination  
continued

In the  
District Court  
of Colombo

RE-EXAMINED

Petitioner's  
Evidence

No.31

V.H.P.Fernando  
Re-examination

The deceased and I were very close friends.  
Q. He sought your advice? A. Yes.

Q. Do you know Mrs. Peiris as Dulcie or Mrs. Peiris? A. I knew her as Dulcie Nona. The deceased mentioned several times that he was going to write his lands. Some of the occasions were during the negotiations in the divorce case in 1944. Then he said that he was going to write some lands. He said, whatever he had he was going to write them in the names of the two children.

10

Q. How? A. In equal shares: in like manner for both. I remember the time the deceased returned from Matale to settle down at Kaldemulla. I spoke to him when he returned from Matale.

Q. What did he say then? A. He said, "Now I have come to reside here; tell my wife not to worry me; in a reasonable way whatever I have I will divide and write out." I was asked in cross-examination whether the deceased said that he had executed a last will. I said that he did not use the words "last will". He said he will write his property in the proper way. He never mentioned anything about a last will.

20

Q. He said he will write his property in a proper way; he never mentioned a last will? A. Yes.

Q. When did he say the children will get the property? A. For them to get the property after his death.

30

Q. In equal shares? A. Yes. Half and half between the two children.

Q. Is that what you communicated to Dulcie and the mother when they were worrying you? A. Yes. I said, "Do not go to worry your father. He is in a state of illhealth now". He told me to tell them not to worry him, that whatever he has he will write for them; not to write to him; if they try to worry him he will not stay there and have to leave the place. And I advised them.

40

Q. That after his death they were getting this?  
A. Yes.

Q. You were asked whether the deceased was affectionate towards Millie. How was he towards Dulcie? A. He had his affection for her as well, but he did not associate with her so much. The deceased was ill and treated by a priest.

Q. Where is that priest from?  
A. He is a Buddhist priest from a place beyond Pilliayandala. He is the priest who treats insanity. He is the Nilammahara priest. Marina Fonseka also worried the deceased. On that occasion he said he had so many worries, he must get rid of them to die.

Sgd: V. Siva Supramaniam

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.31

V.H.P.Fernando

Re-examination  
continued

No.32

MRS. N. C. FERNANDO

Mrs. Nancy Catherine Fernando. Sworn. 63, Widow of the deceased.

Laxapathiya.

I married the deceased in 1917. He had been married earlier and his wife had died. There was a child by that first marriage. That is Millie. Millie was about 7 years old when I married my husband.

Q. Was you husband well-to-do at the time you married him? A. No. I brought up Millie. When she was 8 years old I sent her to school at Laxapathiya. After she passed her 3rd standard and was about 10 years old I admitted her to Princess of Wales College. After marriage my husband went to India where he did building contract work. At first my husband was a Baas working under a Mr.Aitkins, an European. My husband earned money under Mr. Aitkins. Mr.Aitkins left for Europe leaving his property in India to my husband. My

No.32

Mrs. N.C.  
Fernando

Examination

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Examination  
continued

husband continued the business. Millie grew up and came of age. Then Millie was preparing to run away with one Joseph de Mel. I prevented that by protecting her at the relations and neighbour's house. After that her father got the house guarded by Police and prevented her running away and gave her in marriage to one Mr. Fritz Silva. Dulcie was born 4 years after my marriage - about 1921. I had two other children who died. Millie married Silva about 1934. On that occasion Millie was given a dowry of some estates and lands, jewellery and cash Rs.25,000. All was worth about 1½ lakhs. The property that was given to her was subject to the life interest of my husband. About that time some property was gifted to Dulcie. They were some lands at Laxapathiya and Kaldemulla and also 42 acres land at Uttubaddawa subject to the life interest in my favour. The lands given to Dulcie were worth about Rs. 60,000. These lands were given to Dulcie subject to my life interest.

10

20

Q. But you in fact enjoyed the life interest?

A. The life interest in the land at Udabaddawa was given to me after the divorce case. (Shown a letter dated 26.5.40 Pl2) This is a letter which was with me. This was given to me by my husband. When Dulcie came of age she ran away with Mr. Austin Peiris. At that time Dulcie was 18 years old. I did not know; until she ran away I was not aware that she was going to do that.

30

Q. Is it correct that you helped Dulcie to elope with Peiris? A. No. Even my husband suspected that I helped her to elope with Peiris. Would I give such assistance to my only daughter?

Q. It was done surreptitiously? A. Yes. About a month later she married Peiris by leave of Court. I was not in favour of that marriage. My husband and I were both against that marriage. My husband suspected me of helping my daughter. Then he went to Matale. I lived at Kaldemulla and Dulcie lived at Korallawella. At the time he left he even dismissed his servants. Only myself and my daughter were left in the house. Then Millie gave me notice to leave the house. I was living in the house that had been gifted to Millie. Then I wrote to my husband and he

40

wrote back directing me to live in a house belonging to me and to get down Dulcie and her husband and live with them. I accordingly went to the house at Laxapathiya in which I had a life interest. Dulcie and her husband joined me in that house. My husband lived at Matale. From Matale my husband came and lived at Nawinna for about 6 months. In 1941 there was the agreement P1 by which he agreed to pay me Rs.2,000 and Rs.25 per month. In 1944 I filed a divorce action against my husband that he was living in adultery with Maria Aponsu.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Examination  
continued

10 Q. Did the headman see you with regard to a settlement of that case? A. Yes. That is the last witness Victor Fernando. He was a good friend of my husband. There was a settlement of the divorce case. The settlement was that the Rs.25/- was to be increased to Rs.50/-, that he will write some lands to Dulcie's four children, that he will give her her jewellery box which was with Millie. Rs. 5,000 was a subsequent term of settlement. That was the time that possession of the life interest was given to me although it had been promised earlier on P12. At the time the settlement was spoken of by the headman he told me that my husband had promised to write his properties for both the daughters to get after his death. Later I learned that there was another woman living with my husband. That was Marina Fonseka. I spoke to the headman on various occasions. The headman once brought a letter which my husband had sent me (P2). After some time my husband returned to Kaldemulla. That was about 1951 or 1952.

20  
30  
40 Q. Did you speak to your husband? A. Yes. I went to Kaldemulla to a house in which he was living and invited him to go and live in the house in which I was living. It was then that this agreement was entered into; the agreement by which he promised to increase the Rs.25/- to Rs.50/-. I know Rev. Wickremanayake. I spoke to him.

Q. What did you ask him? A. He told me "Mrs. Fernando, do not fear, Mr. Fernando told me that whatever he has he has written to his 2 daughters".

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Examination  
continued

Q. Did you speak to the headman? A. Yes, and he told me on several occasions that at the time of his talk about the settlement of the divorce case that he was told that my husband would write his properties together to his 2 children after his death. Mr. A.V. Fernando Proctor also told me this. I never harrassed my husband, or abused him. I do not know that my husband has complained to the Police that I harrassed and abused him. My husband died in 1952. May be he died in 1954. Millie, her son and A. W. Peiris were living in the house when he got his last illness.

10

Q. Where were you living at that time? I was living at Laxapathiya at the time. Dulcie was visiting my house at that time.

Q. The deceased died and what happened after that? A. I went to my husband's house. When preparations were being made for his funeral, at about 11 p.m. Inspector Caldera, another Inspector and the Police came there with Proctor representing Millie.

20

Sgd: V. Siva Supramaniam.

A.D.J.

Interval.

After Lunch. Appearances as before.  
Mrs. Nancy Catherine Fernando - Recalled - Sworn:  
Examination-in-Chief contd.

The Inspector came and took away the iron safe and the car. My husband used to keep jewellery, cash and all deeds and valuable documents in the iron safe. I expected the money about 2 or 3 lakhs with which he was going to buy a land and also cash Rs.70,000 given to him by Mr. Vincent Corea to be in the iron safe and also the Last Will which I expected to see. I expected that because A.V.Fernando, Proctor, told me, the headman told me and the Reverend Gentleman told me, but it was not there. The safe was subsequently opened in Court. The last Will was not in it. Millie must have torn it off. There was only Rs.800/- cash and some promissory notes in the safe and it was a surprise

30

40



to me when only this was there when that iron safe which should have had large sums of money was opened. I am ashamed to say about my husband's moral character. He used to go to his estate and stay over for 4 or 5 days and there are things which I have seen also myself. He was not of good moral character. His death was also due to his bad character. I found fault with him often and we used to fall out and it ends there. We make up later.

10

CROSS-EXAMINED

Q. When did you discover your husband was not of a good moral character? A. Two years after he came from India Millie got married and after her marriage he started to go to various estates and stay over. It was then I discovered that he was not of good moral character.

20

Q. That was between 1934 and 1940 you knew that your husband was thoroughly immoral? A. Yes. I continued to live with him during the time 1934 to 1940. Between 1934 and 1940 my husband had amassed a lot of wealth.

Q. You were very anxious as to what he would do with his wealth? A. Yes. At that time I was worried about the wealth but after the settlement was effected in the divorce case I believed that he would be leaving the property between the two daughters.

30

Q. Between 1934 and 1940 you were very concerned as to what he would do with his wealth? A. Yes.

Q. You were even prepared to put up with his immoral character and live with him? A. Yes. In 1940 my daughter married Mr. Peiris. Mr. Peiris is not related to my husband. He is related to me.

40

Q. The deceased went to Matale because he thought you had aided and abetted that marriage? A. That is one reason, but it was Millie's husband who made him to go to Matale.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Examination  
continued

Cross-  
examination

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

Q. Did you treat Millie with kindness at any time?  
A. Yes. Until she got married I did not do any harm to her. When she married her father gave her a dowry. I was not annoyed about it. I was pleased that she was given a dowry, and I had been giving her sarees after sarees.

Q. Were you anxious as to what the deceased was going to do with his property after he went to Matale?  
A. I had a divorce case. During the time of that case I expected my husband to keep up to his promises.

10

Q. Question repeated?      A. Yes.

Q. What did you think he might do with his property?  
A. I thought about the property but he did not do anything.

Q. What did you fear your husband might do with his property?  
A. I did not fear as to what he would do with his property. The anxiety was there in my heart as to what he would do with the property.

20

Q. Till when did you have that anxiety?  
A. I got over that anxiety only during the divorce case. Victor Fernando told me that my husband would leave the properties to go to the two daughters after his death and it was on account of that that I agreed to the settlement of the divorce case.

Q. Did you understand that the deceased was going to execute a Will leaving all his property to his two daughters?  
A. I did not know anything about a last Will.

30

Q. Victor Fernando never told you at any time about the deceased executing a last Will?  
A. He said.

To Court:

Q. Using the words "Last Will"?  
A. Yes.

Victor Fernando told me that during the pendency of the divorce case. He told me before that and after that also. Victor Fernando did not speak to me about the last Will even before the divorce case. I believe that Victor Fernando told me about the last will during the pendency of the

40

divorce case.

Q. Thereafter you were not anxious as to what the deceased would do with his property?

A. Yes.

Q. You did not thereafter raise the question of what the deceased was going to do with his property with anyone? A. Yes. I have been to the house of Victor Fernando, but I cannot remember the number of times. I have been there several times.

10

Q. How long prior to your husband's death did you go to the house of Victor Fernando?

A. I went at the time my husband was ill.

Q. Why? A. To talk to Victor Fernando. I asked him about the property also. He said not to fear that my husband would do as he had promised. Whenever I happen to go past Victor Fernando's house on my way to my lands I would go to Victor Fernando's house. It would be roughly about once a month. Victor Fernando was not a friend of mine. He is not a friend of Dulcie. He was a good friend of my husband.

20

Q. Your visits to Victor Fernando were to find out what the deceased was going to do with his property? A. Yes, and he was also looking after his illness and also he used to attend to his work.

Q. Did you speak to Rev. Wickremanayake at any time about what the deceased was going to do with his property? A. I met Rev. Wickremanayake at a time when I went to Kadalana church to give a subscription. Apart from that I did not go to him. He came home one day. On that day Rev. Wickremanayake told me "don't fear Mrs. Fernando the properties have been left in equal shares between the two daughters. So Mr. Fernando has told me".

30

Q. That is, by a last will? A. The properties would go to his children after his death.

40

To Court:

Q. Did Rev. Wickremanayake tell you that the deceased had executed a last will?

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

A. Apart from his saying that my husband has left the properties to go to the two children after his death, he did not use the words "last will".)

The deceased had made a payment of Rs.5000 to me.

Q. Did Rev. Wickremanayake speak to you about this matter before the payment of the Rs.5000 to you or after the payment of Rs.5000 to you?

A. After. I cannot say how long after.

10

Q. Did the Nilammahara Priest also tell you that the deceased had left a last will? A. No.

I expected the last will to be in the safe. When the safe was opened in Court it was not there. I was surprised that it was not there. I thought that Millie must have torn it. I did not meet Victor Fernando after that. I cannot remember when the safe was opened. It was opened 2 or 3 months after the death of the deceased. After that I had met Mr. Victor Fernando in his house.

20

Q. You had gone to see him? A. No. I have lands in the area where his house is situated and I met him there. After the safe was opened I met Victor Fernando on two or three occasions.

Q. Did you tell him "you told me that the deceased would execute a last will, well, there is no last will"? A. I told him it was not in the safe. He said he could not believe it. After the safe was opened I have met Victor Fernando

on two or three occasions and on one occasion I told him that the Will was not in the safe. Victor Fernando told me that he could not believe it. He said Millie must have torn it.

30

Q. Victor Fernando also told you on that occasion that a will has to be attested by a Proctor?

A. He did not tell me those things.

Q. Did Victor Fernando tell you that some search should be made for that Will? A. No.

Q. On how many occasions did you speak to Victor Fernando about this Will after the safe was opened in Court? A. Because the Last Will was

not found in the safe when it was opened in Court we made a search for it. Apart from that I did

40

not tell Victor Fernando about it. I did not tell Victor Fernando that we were making a search for the Will.

In the  
District Court  
of Colombo

(To Court:

Petitioner's  
Evidence

No.32

Q. Did anyone search for this Will when it was found that it was not in the safe? A. Yes.

Q. Who made the search? A. My son-in-law. Through John my son-in-law searched for it.)

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

10

Q. Did you tell Victor Fernando that your son-in-law was searching for the Will? A. No.

Q. Your son-in-law discovered the Will in Proctor Tudugala's Office? A. I heard it being said in the house that it had been found after difficult search.

Q. But you did not know from where it was found? A. No.

20

Q. Nobody told you? A. My son-in-law told me that he went about searching for this Will to various Proctors and he found it with Mr. Tudugala. I did not meet Victor Fernando after I got that information.

Q. Do you say that after your son-in-law gave you the information you never met Victor Fernando? A. Yes.

30

Q. You did not even meet him in Court? A. I met him here, but I did not meet him elsewhere. I knew that my husband had an estate at Matale and I have been to that estate. That estate was sold.

Q. Apart from that estate do you know whether the deceased owned any other properties in 1952? A. Yes.

40

Q. What are the properties he owned? A. 32 acres at Madampe, 42 acres or so at Eheliyagoda. He also bought a 28 acre land recently. They were the only three lands left. Before that he had sold 7 or 8 lands. In 1952 July he came to reside in Kaldemulla after the Matale estate was sold.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

Q. The estate had been sold for about Rs.40,000/-?  
A. I do not know.

Q. Prior to 1952 the deceased had promised to give moneys to the children of Dulcie?

A. Yes, but he did not fulfil his promise. That promise was made in a letter that was sent to Victor Fernando.

Q. After the sale of the Matale property you demanded from the deceased that those moneys should be paid? A. No.

10

Q. Did you ask at any time Victor Fernando to get those moneys? A. No.

(Contents of R13 a complaint dated 8.9.52 put to witness)

That is correct. The child referred to there is Dulcie. (R13 read).

Q. Is this correct: "I received information to-day that she would come to my residence tomorrow and sacrifice her life .... "?

A. I am not aware of it.

20

Q. You did not know of any complaint made against you by your husband? A. No.

Q. As far as you were concerned, your conduct was such that no complaint to the Police was necessary? A. No.

Q. You dealt with him very nicely? A. Yes.

Q. Did the village headman warn you and your daughter Dulcie not to trouble your husband?

A. No.

Q. Did you go to see the deceased while he was ill during his last illness?

A. No, I went there after his death. Victor Fernando attended the funeral. Victor Fernando spoke to me on that occasion.

30

Q. And you and your daughter and others were guarding the safe after the death of the deceased?

A. Where?

Q. In the house of the deceased?

A. No. It was Millie who was in charge of everything there. How do I know?

In the  
District Court  
of Colombo

Q. After the death? A. When the body was taken out we also left the place. We did not remain there. I did not make a complaint to the Police.

Petitioner's  
Evidence

Q. Is your name Mrs. William Fernando?

No.32

A. I did not go and make a complaint.

Mrs. N C.  
Fernando

(Mr. Navaratnarajah marks the statement R14)

Cross-  
examination  
continued

10

The deceased died on 22.2.54. The Police came to the house of the deceased on the 23rd.

( To Court:

Q. Did you make a statement to the Police at any time?

A. No and I did not go to the Police station).

Q. Did the Police question you while you were at Nancy Villa, Kaldemulla? A. No.

20

Q. Do you know Inspector Caldera? A. No. Some Police officers came to the house. It was that day I met Inspector Caldera for the first time. I did not know him before. That was the day on which the safe was removed. I was present in the house when the safe was removed by the Police. Inspector Caldera did not question me. On the following day he came and asked me for a letter to the effect that he had taken those things. I did not give him that letter.

30

Q. Was your son-in-law present at the time Inspector Caldera spoke to you on the following day? A. I cannot remember.

Q. Was Peiris in the house at the time the safe was removed? A. Yes.

Q. Was Peiris present on the following day when Inspector Caldera came there? A. I cannot remember.

Q. Did Peiris ever advise you that you should not make any statement to the Police? A. No.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

Q. Did Peiris advise you that you should consult a lawyer immediately? A. No.

Q. Did you tell the Inspector that there was a last will in the safe? A. No.

Q. Did Caldera question you whether the deceased had left a last will or not? A. He did not ask me anything.

(Sir Lalitha Rajapaksa states that he hopes that Mr. Navaratnarajah will call Mr. Caldera and substantiate his question that he (Mr. Caldera) questioned the witness whether the deceased had left a last will or not.)

10

(Further Hearing on 15 and 16 November 1955).

Sgd: V.Siva Supramaniam

A.D.J.

Appearances as before.

Mrs. Nancy Catherine Fernando - Recalled - Sworn:

Cross-examination continued.

The deceased died on 22.2.54 but I do not know the time. I have given evidence in one or two cases. The deceased died in hospital. Neither my daughter Dulcie nor I were present at the time of death. The body was brought to Nancy Villa that very evening about 7.30 or 8 p.m. myself, my daughter and son-in-law arrived at Nancy Villa thereafter. The deceased had bought a Humber car a month prior to his death. That car was at Nancy Villa that night. There was a safe in the house. There were also articles of jewellery belonging to the deceased in the house.

20

30

Q. Did you claim the car that night. A. No.

Q. Did your daughter Dulcie or her husband Mr. Peiris claim it that night? A. No.

Q. On the following day, 23.2.54, did you or your daughter Dulcie or your son-in-law Mr. Peiris claim that car? A. No.



In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

10 Q. Did you or Dulcie or Mr. Peiris claim the safe or any of the articles of jewellery as your own on the 22nd or on the 23rd? A. No. The Police arrived at Nancy Villa on the 23rd midnight. The Police I refer to were Inspector Caldera and other Police officers. At the time of the arrival of these Police Officers my daughter Dulcie and my son-in-law Mr. Peiris and I were at Nancy Villa. The Police removed the car, the safe and certain articles of jewellery and cheque books to the Police Station.

Q. Now tell me whether there was any dispute in regard to the ownership of the car on the 22nd or 23rd February? A. Yes.

Q. Mrs. Millie de Silva, the eldest daughter, claimed the car as her own under the last Will? A. Yes.

Q. You claimed the car as the widow of the deceased? A. I did not at that time.

20 Q. Did your daughter Dulcie claim that car under any title whatsoever? A. No.

Q. Nor did your son-in-law? A. No.

Q. Can you tell us why Inspector Caldera and the Police Officers took the safe, the car and articles of jewellery to the Police Station on 23 February? A. He took them by force.

Q. Was there anyone who opposed the Inspector in the matter? A. I am the married wife. The others don't have more title than myself.

30 Q. You told the Inspector that you were claiming this car as the widow of the deceased? A. I did not. He took away the car forcibly. When he was about to take it away I told him "Inspector, don't take the car, give me a list of the articles which are there".

Q. Is it a list of the articles in the car? A. A list of the articles in the safe.

40 Q. You told the Inspector that you were the widow of the deceased? A. No. The Inspector told me "who are you, are you his married wife".

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

Q. The safe was sealed by the Inspector in Nancy Villa before removing it? A. I do not know whether he placed a seal or what. I did not see it.

Q. On the following day 24 February Inspector Caldera came to your house? A. No. He came to Nancy Villa. I was there at that time. I cannot say whether my son-in-law was there or not. Dulcie was there.

Q. Did anyone advise you after the Inspector's visit that you should consult a lawyer? A. No. 10

Q. Did you consult any lawyer after 24 February? A. On the 25th my Proctor and I went to the Mount Lavinia Police. My Proctor is Mr. Paul Pillai.

Q. Had he acted as your Proctor prior to that date? A. Yes.

Q. On the 25th did you make a statement at the Mount Lavinia Police Station? A. No.

Q. Did your Proctor make any statement? A. I do not know. 20

Q. Did you on any date after the deceased went to live in the Matale estate question the deceased as to what he was going to do with his property? A. No, but I had some suspicion with regard to what he may do.

Q. What was the suspicion you had? A. Suspicion with regard to what he may do with the properties, but during the time of the divorce case he made a promise to me.

Q. To you personally? A. No. He told Rev. Wickremanayake and the Headman, Victor Fernando. 30

Q. You signed the agreement in October 1952? A. I cannot remember the month. It was in 1951.

Q. The agreement was signed by you on the date Rs. 5000/- was paid to you? A. No. The payment of Rs.5000/- was made to me after the agreement was signed. Because the deceased was keeping Marina Fonseka as his mistress I was

given Rs. 5000/-

Q. How long after the agreement was signed?

A. After he came to the native place. That was in 1951 or 1952.

Q. The agreement was signed after he came from Matale to Kaldemulla to reside permanently?

A. Yes.

Q. Having regard to the date on which the agreement was signed, how long thereafter was the Rs.5000/- paid to you? A. 4 or 5 months.

Q. Was the payment of Rs.5000/- with reference to the agreement? A. No.

Q. You said the Rs.5000/- was paid to you because he was keeping Marina Fonseka as his mistress? A. Yes. He gave the money in order that I may be placed and he may keep Marina Fonseka as his mistress.

Q. That is, if the Rs.5000/- was not paid to you you could have filed another divorce case on the ground that he was living with Marina Fonseka? A. No. If he had not given me the Rs.5000/- I would have renewed that divorce case which had been taken out of the roll.

Q. Which had been filed by you as far back as 1944? A. Yes. Because of the fear he had that I would renew the divorce case from time to time he was giving me money. He was trying to please me by giving money and he promised to write the properties to both daughters for each to get half.

Q. Was that promise made to you personally? A. No.

Q. At or about the time the Rs.5000/- was paid to you a sum of Rs.15,000/- was paid to your daughter Dulcie by the deceased? A. Yes, and he also bought a house and garden for Millie, the Bambalapitiya house. I do not know when Bambalapitiya house was bought. I do not know whether it was bought in 1951.

Q. The payment of Rs.15,000 was made to your

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

10

20

30

40

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Cross-  
examination  
continued

daughter to keep you in good humour?

A. No. That was given to her as she had not been given a dowry.

Q. The village headman Victor Fernando gave you a letter sent to him by the deceased dated 22. 5. 50? A. Yes.

Q. Did you hear about that time that the deceased had executed a Will? A. No.

Q. Had you or your daughter prior to the date of that letter asked the deceased for financial assistance? A. No. In the letter P2 the deceased had undertaken within six months from that date to give certain moneys to Dulcie. The moneys were in fact not paid by the deceased within six months.

10

Q. Did you or your daughter Dulcie or anyone question the village headman about it? A. No. John was the driver employed under the deceased. After the date of death of the deceased John was working under my son-in-law Mr. Peiris. Mr. Peiris paid John Rs.100/- as salary. John is still working under my son-in-law.

20

Q. When did the search for the Will commence? A. After Millie filed the action and we found that the Last Will was not there - the Will should have been in the safe - a search was made.

Q. John was told about the fact of the missing Will? A. No.

Q. Was John to your knowledge told by anyone about the missing Will? A. No. John took my son-in-law round to various Proctors.

30

Q. Can you tell us whether you know the name of the Proctors your son-in-law visited in the connection? A. I cannot.

RE-EXAMINED

Re-examination

I was asked about what Victor Fernando told me about the deceased having promised to leave the property to the two daughters equally. I remember the time my husband returned from Matale to take up residence in Kaldemulla. It was either

40

in 1951 or 1952. After the deceased returned to Kaldemulla, Victor Fernando, the headman, told me on several occasions that the deceased had made that promise to him. The deceased died on 22.2.54 and the corpse was brought to Nancy Villa. I received a telegram from Millie about the death of my husband. I went to the funeral house. I went there at about 7 p.m. on the 22nd. The corpse was there at that time. I made necessary preparations for the funeral. Peiris and Dulcie also went with me.

Q. What were the necessary preparations you made? A. I took out the deceased's car and used it for that purpose till 4 p.m. on the 23rd. I made use of this Humber Hawk car to make the necessary arrangements for the funeral.

Q. On the morning of the same day did anyone come there? A. A Proctor came and gave some letters to Millie and left. I used the car till 4 p.m. that day. After that Millie got the car put into the garage, locked it and took the key. I asked Millie to give the car for my use but she did not. She refused to give the car. After that 2 or 3 police officers and that Proctor came there and were there. This was the funeral house and the corpse was still there. Some constables came to the house in the evening. In the meantime there were several people coming to see the corpse. They were coming and going and at the time the police officers and the Proctor came there, there were about 10 or 12 people there. The police officers came in the evening. At about 11 p.m. Inspector Caldera and some Police officers again came there. Inspector Caldera and the Police officers came in a car or so. Inspector Caldera was getting ready to take by force the iron safe and the car. Inspector Caldera did not speak to me. I told him "please examine the things in the iron safe and give me a signed list." The Inspector asked me "who are you, are you his married wife, are you the woman he was keeping as his mistress" and spoke to me roughly. After that he said "If you speak to me too much I will take you and your son-in-law to the police". In that way time went on and it was nearly dawning. The Inspector took the safe and the car to the police

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando

Re-examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando  
Re-examination  
continued

station and also the deceased's watch chain, waist chain, rings etc. which were given to him by Millie. I wanted to dress the corpse with the watch chain, waist chain, rings etc. I was not allowed to do that. I protested to the Inspector. My son-in-law was also close by and he said "what are you gentleman doing, do your duty and go away". Inspector Caldera did not ask me to make a statement. I did not make any statement to him. He did not speak to me. He took away these things on the 23rd night towards dawn of the 24th. I do not know whether on the 24th morning Inspector Caldera made an application to the Magistrate, Colombo South. That early morning I made a complaint to the Village Headman at about 6 a.m. He recorded my complaint. My complaint was about the removal of the iron safe. That morning about 11 o'clock Inspector Caldera came to see me. He did not ask for a statement from me. He brought a document to the effect that he took away the things with my consent and asked me to sign it. I did not sign it. I told him "do you think after your having insulted me yesterday that I would be prepared to give you a writing". I never made a statement to Inspector Caldera nor did I sign any such statement.

(R14 read to witness) I did not say so. I did not make that statement. The statements in R14 are untrue.

I was asked whether I threatened to commit suicide in the house of my deceased husband. I was asked whether I knew that my husband had made a complaint to the Police against me. (R13 read to witness) Now Dulcie is 31 years old. I married in 1917. Dulcie was born four years later, in 1921. My daughter is not Dulcie Charlotte Perera. She is Evelyn Letitia Peiris. The father should have known her name. Her home name or pet name is Dulcie. I never threatened to go and kill myself at the deceased's house. I never stayed at 396 Station Road, Angulana. The number of my house is 37.

Q. It is said that your house is behind the Methodist Church Laxapathiya?

A. There is no Methodist Church there. The Church is close to my house is the Church of England. That is the Anglican Church. I belong to the Anglican Church. My husband is a member of the Anglican Church.

10

20

30

40

Q. So do you think your husband could have ever made such a statement to the police? A. I cannot believe it. The whole police force was in the hands of Millie that night. Millie showed the power she could wield with her wealth. My husband never referred to my daughter as Dulcie Charlotte Perera. My daughter has not got the name Charlotte at all. Charlotte is my name. I am Nancy Catherine Charlotte Fernando. I refused to sign a statement and give it to Inspector Caldera. He came on the 24th and gave me a paper written in red ink dated 24.2.55. I produce it Pl3.

10

Sgd: V. Siva Supramaniam.  
A.D.J.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.32

Mrs. N. C.  
Fernando  
Re-examination  
continued

No.33

D.A.J. TUDUGALA

No.33

D.A.J.Tudugala  
Examination

D.A.J.Tudugala - Affd - Proctor S.C. & N.P.,  
Colombo.

20

I am a Proctor for the last 27 years. I practise in the Colombo Courts. I was a member of the Urban Council, Kolonnawa, for 12 years. I was Chairman for 5 years. I am related to the Lake House Wijewardena of Sedawatte. I knew the deceased William Fernando. I first met him about the beginning of 1950. He met me at my house at Sedawatte with a client of mine John Perera in connection with a transaction of a debt which John Perera had to pay William Fernando. My office is at 29 Belmont Street. Mr. Wijesekera's office adjoins my office. After that I have been meeting the deceased a number of times in my office. I spoke to him on those occasions. I came to know him well. On one of those occasions he came to see Mr. Wijesekera and he asked me whether Mr. Wijesekera had come. I told him that he had not come. This was roughly about 9.30 or 10 in the morning. Having waited for Mr. Wijesekera he told me he wanted to make a Will. I told him to wait till Mr. Wijesekera comes. He was in a hurry. He told me he wanted to get it done. Then he gave me instructions, but before taking

30

40

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Examination  
continued

instructions I told him that if Mr. Wijesekera comes he must explain to him. He gave me instructions in the morning. He wanted the Will written that day itself. I took a piece of paper and noted the instructions. I told him to come later, some time in the afternoon. Then he came at about 12.30 or 1 p.m. I had the Will ready. It is a typewritten Will. I had two copies ready. He came over and I explained to him. He said everything is all right. I told him to get two witnesses who are known to me and to him. I asked him whether he knew any witnesses. Then he suggested the name of Proctor Vethecan. He brought Mr. Vethecan to the office. I asked him to get another witness. While we were waiting Proctor Dewapuraratne passed that way. I clapped and called Mr. Dewapuraratne. I asked Mr. Dewapuraratne whether he knew the testator. He said he knew the deceased. I explained the contents of the Will again in their presence. Then the Testator signed the Will. After that I think Mr. Dewapuraratne signed it and thereafter Mr. Vethecan. (Shown P11). This is the Will. This was signed by the deceased in my presence and in the presence of the two witnesses, who are both Proctors of this Court. Mr. Vethecan is dead. The signature of the attesting witnesses were put in there in my immediate presence. P11 is the Protocol of the Will. After getting the signatures of the witnesses the deceased wanted the Will immediately. I told him I cannot give it immediately and that I must go through it and write out the attestation. I asked him to come at about 4 or 4.30 and that it would be ready. He came over at about 4.30 and I gave him one of the originals. The other original which was the protocol was in my custody. The deceased was well and of sound mind at the time.

10

20

30

I have attested nearly 600 deeds now.

40

(To Court :- I became a Notary at the  
outset.)

I was involved in politics for more than 12 years. During that time I had little practice. I know Mr. Vethecan well. I know how he signs. I have seen Mr. Vethecan signing. His signature differs. Even this he has signed with



difficulty. He signs letter by letter. He was some what nervous at that time. The deceased was in a hurry that day. I think I was paid a fee of about Rs.100/-. I cannot remember. Pl1 is dated 4.6.51. I met the deceased thereafter once at the Colombo Kachcheri. I could not speak to him because he was busy. We exchanged smiles. I cannot remember whether I met him after that. In 1954 a person came to me and made an enquiry. He came to my office in Hultsdorf about May 1954. He asked me whether I had attested a Last Will of one William Fernando. I did not know the person who came and spoke to me. I told him I cannot tell him without referring to my protocols. I told him that my protocols are at home and even the register of deeds is kept at home. I told I must refer to them and let him know. He gave me particulars. He gave me the names of the two daughters. On the following day he came to my place and asked me. Before that I had referred to my protocols and I found that the information he gave was correct. On the following day he came to see me in the morning. He wanted a copy of the Will. I refused to give him a copy. I told him "I do not know you and I have no right to give you a copy of the Will". Then he was insisting. I refused. He came again 2 or 3 days later and told me he would pay me a good fee if I gave him a copy of the Will. Because he was coming so many times I asked him whether the testator was dead. He told me no. I told him if the testator is living, get it from him, the original is with him. He said he cannot get the original it is missing. I refused to give a copy. Later on he came again and I asked him whether the testator was dead. He told me that the testator was dead. He wanted a copy of the Will. Even then I refused. I said it is not right for me to divulge the secrets. He told me he was the son-in-law of the testator. Now I know he is Peiris. I did not give him a copy even then. I told him I must inquire who you are. He asked me to inquire from any of the Proctors who come from Moratuwa. He mentioned the names of Mr. Paul Pillai, Mr. Hermon Perera. He mentioned a few names. I found that he was the son-in-law of the testator and that the testator was dead. Then I gave him

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Examination  
continued

Cross-  
examination

a copy. I swore an affidavit on 24.6.54 (Pl4). I swear to the correctness of that. Even then I did not know that any testamentary proceedings had been started. On the 25th when I was reading the Daily News I saw the Order Nisi. Peiris never told me that Testamentary proceedings had been instituted. I took the paper and came to Hultsdorf and inquired from Mr. Paul Pillai. I found that already testamentary proceedings had been taken. I did politics for 12 years. I am not interested in Mrs. Millie Silva or Letitia Peiris. I belong to a community different from that of these two ladies. At one time insolvency papers were filed against me. I settled with the creditors and the proceedings were annulled.

10

Cross-examined :

The insolvency proceedings were filed by one A. Kalyanisundaram Chettiar. The adjudication was in terms of section 12 of the Insolvency Ordinance. I was examined in that case.

20

Q. Was the evidence you gave on that occasion true or not? A. True. Mr. Sansoni heard that case. He refused a certificate. The certificate was refused in 1944 or 1945. Thereafter I settled with my creditors. I filed an appeal from the order but did not prosecute the appeal. I settled with the creditors paying them the full amount. I do not know a lady by the name of Mrs. Jayalath. Now I recall.

Q. A lady to whom you had given a letter promising to marry her? A. I never gave a letter. I cannot recall.

30

Q. The letter I put it to you was dated 16.5.39? A. May be. I borrowed moneys from her thereafter to the tune of about Rs.1935. She filed action against me for the recovery of that money. Judgment was entered against me. The money was paid by me after the certificate was refused.

Q. And you did not marry her? A. No. Mrs. Jayalath was a widow at the time I came to know her. I came to know her, but I cannot remember the year. She was living in Ganpaha. I went to see her. I may have taken presents for her. I cannot remember whether she gave me

40

presents in return. I was not engaged to her for 2 or 3 years.

Q. Did you say in the evidence you gave in the Insolvency Case 5569 on 26.2.43 that you were engaged to Mrs. Jayalath for a period of two to three years? A. If it is there it is correct.

10 I know one D. P. Kannangara, a creditor of mine. He obtained judgment against me. The judgment was unsatisfied by me. I cannot remember whether I was arrested on a warrant and brought to Court. I may have been arrested on a warrant.

(To Court:

Q. Why do you say "may have been"?

A. I may have been arrested.)

Q. Still you have a doubt? A. Yes.

(Mr. Navaratnarajah marks as R15a an extract from the evidence given by the witness in Insolvency Case 5569 on 26.2.43.)

20 Q. Did you say this: "D.P.Kannangara had me arrested on a warrant in 1934"? A. If it is there it is correct.

Q. In 1934 you were the Vice Chairman of the Urban Council? A. Yes.

Q. Did you say this: "I came to Court and disclosed a life interest in the Hill Street property"? A. That is correct.

30 Q. "I said that it was a life interest that I was getting and that the income was Rs.40/- from that property"? A. Yes.

Q. That is, you told the court when you were brought up on a warrant of arrest that you had a life interest in the Hill Street property which was yielding you an income of Rs.40/-? A. Yes.

Q. And you were discharged? A. Yes.

Q. With a direction to the creditor to seize the life interest of yours and have it sold? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

Q. Did you at any time have any life interest in this Hill Street property? A. I had.

Q. What is the nature of the interest you had in the Hill Street property? A. Out of the income I was given Rs.40/-. I cannot remember the numbers of those houses. Those houses belonged to my mother. She died in 1933 leaving behind a last will. That last will was admitted to probate. I was not one of the devisees under that will. This property had been devised to my brothers absolutely. I know what life interest means.

10

Q. Did you have any life interest in these properties at any time? A. I had.

(To Court:

There was no reference to the life interest in the Last Will.)

Q. What is the life interest you are talking about? A. My brothers were giving me Rs.40 a month.

20

Q. Why? A. That was the understanding between my brothers and my mother.

Q. Do you tell us today that you had a life interest over those properties? A. Yes.

Q. Did you say this in Court (R15b) "In 1934 I did not have any life interest over the Hill Street property"? A. I cannot remember.

Q. Could you have made that statement truthfully in the Insolvency case? A. I cannot remember. As I was getting Rs.40/- I stated that. I did not say that I had no life interest in the property. I cannot remember.

30

Q. Did you say this (R15c) "In evidence I said that I had a life interest in the Hill Street property"? A. Yes.

Q. "I gave the numbers also"? A. Yes.

Q. "I mentioned the Coronation buildings"? A. Yes.

Q. "On a search of the encumbrances my name was not disclosed"? A. I may have said.

Q. "At the time I made the statement I knew that I was not legally entitled to the Coronation building"? A. I may have said.

Q. If you had stated that it was a false statement? A. It was not a false statement.

10 Q. You knew very well that if a debtor disclosed property the creditors could not have arrested the debtor without seizing the property?

A. Yes. Austin Peiris met me for the first time in my office, 29 Belmont Street. Mr. Wijesekera has his office in those premises. On the day Peiris came to me he gave me his name. On the first occasion he told me that William Fernando was his father in law. He asked me whether William Fernando had left a last will.

20 Q. Did he tell you roughly the date on which the Will might have been executed? A. No.

Q. But he was quite certain that the Will was with you? A. Not quite certain.

30 Q. Did you tell him "why do you want to know whether William Fernando had left a last will or not"? A. Yes, I asked him. He told me that he inquired from a number of Proctors and they said they had no will; then he thought of inquiring from me also because I was in the same office as Mr. Wijesekera. I asked him why he wanted to know whether a Will had been executed by William Fernando. He told me his driver told him that the testator used to come to the office. I asked him why he wanted to know whether William Fernando had left a last will. He told me that the Will is missing.

Q. Did you ask him why he wanted to know whether William Fernando had left a Will. A. He wanted to file testamentary proceedings.

(To Court:

40 Q. You asked him? A. Yes.

Q. On this first occasion?  
A. No, later.)

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

I asked Mr. Peiris why he wanted to know whether William Fernando had left a Will. He told me he was the son-in-law of the testator. At that time I did not know there was a will. I wanted to refer to my protocols and find out. I had not known Austin Peiris. He tells me he is a son-in-law of a certain person. I do not know whether he is an imposter or not. He asked about the last will of a gentleman. I did not know whether that gentleman was living or dead. I assumed that that person was living at that time.

10

Q. Why didn't you ask him to go and ask his father-in-law? A. I did not know that there was a last Will.

Q. You wanted to refer to the protocol for a number of years to find it out? A. Yes.

Q. Didn't it strike you to refer him to his father-in-law? A. No.

Q. Didn't it strike you to ask him whether the man was living or dead? A. No. I asked him why he wanted a copy of the will. He did not tell me he wanted to file testamentary proceedings. He told me he was the son-in-law of William Fernando.

20

Q. At the time he came you were about 30 years in practice? A. About 27 or 28.

Q. When Austin Peiris spoke to you for the first time about this Will you were 28 or 30 years in practice? A. Yes.

30

Q. Were you satisfied with the answer given by Peiris to your question why he wanted the last will? A. Yes.

Q. Satisfied with what reply?  
A. That he was the son-in-law.

Q. Did you ask him for any further particulars?  
A. I asked him the names of the daughters. I asked for the full names of the two daughters. I was asked by Austin Peiris to give him information whether William Fernando had left a last will or not. I was quite willing to make a search for that Will. I was not prepared to give

40

him information in regard to whether there was such a Will or not.

Q. On the first occasion when Austin Peiris asked you for information about the last will you had made up your mind not to give information?  
A. Yes.

Q. Still you asked him to give the names of the two daughters? A. Yes.

Q. How did you know that Will Fernando had only two daughters and not 10 daughters?  
A. Austin Peiris told me. I asked Austin Peiris for particulars to refer to my protocols.

Q. Did Austin Peiris tell you that the two daughters had been benefited under the will?  
A. He did not tell me.

Q. Then what was the purpose in finding out whether he had daughters or boys?  
A. To refer to the protocol and find out.

(To Court :-

Q. Unless he told you that property had been left to the two daughters how was it going to assist you?

A. To assist me that there was such a will. I wanted to know whether there was a Will in favour of the daughters.)

Q. What Austin Peiris asked you on that first occasion was whether there was a will attested by you in favour of two daughters, whose names he gave you? A. Yes.

Q. Not the question simpliciter whether William Fernando had left a last Will or not?  
A. I thought I might have attested Wills for a number of S. William Fernandos.

Q. Did you ask Austin Peiris what "S" stood for?  
A. Yes. I thought there would be a number of persons with that name for whom I had attested Wills.

Q. If you had made up your mind on that date

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

10

20

30

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

not to give him information about the existence or non-existence of the Will, why did you ask for information about the names of the daughters?  
A. To find out whether the information was correct. I told Court earlier that I had made up my mind not to divulge whether I had attested a Will for S. William Fernando or not.

Q. If that were so, why did you ask for information about his daughters?

(At this stage, Sir Lalitha Rajapaksa wishes to make a submission. 10

Mr. Navaratnarajah wants the witness to leave Court.

The witness leaves Court.

Sir Lalitha Rajapaksa submits that the witness has been questioned about three times on the same matter and he had given a reply. It may be that although he had decided not to give any information about the Will he wanted to refer whether he had executed a Will out of curiosity or for some other reason. 20

The witness is now recalled and the cross-examination is continued.)

Cross-examination Continued:

Q. Is it true to say that you had made up your mind not to give information to Austin Peiris about the existence or non-existence of a Will on the first occasion Austin Peiris spoke to you?

A. No. 30

Q. Did you say earlier in the evidence that you had made up your mind on the first occasion when Austin Peiris made the request that you were not going to give him information about the existence or non-existence of a Will? A. No.

Q. Question repeated? A. I did not say. I may have been misunderstood. I wanted to refer to my protocols and find out whether what he says is true.

Q. Out of curiosity? A. Yes. 40

Q. You were about 15 yards away when Counsel made



his submissions?

A. I did not hear anything of what Counsel said.

(Sir Lalitha Rajapaksa points out that before he made his submissions he had made a request that the witness (should be asked to go away from where he was standing in the verandah and the witness had moved off.)

10

Mr. Navaratnarajah states that although the witness had moved off and was out of sight so far as Sir Lalitha was concerned, he was still within hearing distance as he was on another portion of the verandah.)

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

Cross-examination continued

20

Q. On the first occasion when Austin Peiris came to you and asked for this Will had you made up your mind whether you were going to give him information or not? A. If he had the right I would have given it to him.

Q. In what circumstances would you have regarded yourself as having the right to give the information? A. When a person asks for a certified copy I must first inquire whether he has the right to ask for it.

He did not ask me for a certified copy.

30

Q. Had you made up your mind to give him information about the existence or non-existence of the Will? A. To make up my mind I must first know whether there was a Will. I wanted to find out whether there was a Will.

Q. If there was a protocol with you, in what circumstances would you have given him information? A. Supposing the testator was dead.

Q. Did you ask him on the first occasion "is the testator living or dead"? A. No.

(Lunch)

Sgd: V.Siva Supramaniam

A.D.J.

In the  
District Court  
of Colombo

15908/T

15.11.55

After Lunch.

Petitioner's  
Evidence

D.A.J. Tudugala. Affd. recalled.

Cross-examination continued

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

After the discussion I had with Austin Peiris on the first occasion he came to see me I had made up my mind to give him information of the existence or non-existence of the Will if he had a right to that information.

Q. What rights in your view would have made him entitled to that information? 10

A. First if the Testator was dead; secondly if he was an heir - if he was an heir or son-in-law then I would have given him the information.

Q. Is it correct that you told him on the first occasion after this discussion that your register of deeds was in your house at Sedawatta?

A. Yes. The protocols were also there. I told him that I will search my protocols and register of deeds. And I asked him to come the following day. I send returns to the Registrar of Lands called monthly lists and weekly list. In those lists I give information about the documents attested by me. In regard to documents relating to lands I give the name of the land, name of the grantor and grantee and other particulars in the deeds are given. In regard to Last Wills I give the date of attesting the will and the place where the will was executed and the number. I give no other particulars. The name of the executant is not given. Names of witnesses are not given. I keep a register of deeds. 20 30

Q. In that register of deeds do you put down in regard to a will the number of the will?

A. Yes.

Q. The place where the will was attested? A. Yes.

Q. Date of attestation? A. Yes.

Those are all the particulars. Even in the register I do not mention the name of the executant. Neither in my register nor in the weekly 40

lists or monthly lists sent to the Registrar of Lands is information given as to who the executant or the witnesses to the will are.

In the  
District Court  
of Colombo

Q. The register of deeds would not have enabled you to find out whether you had attested the Will of William Fernando? A. Yes. Only the protocol would have helped me. The reference to the register of wills was necessary when you take the number and refer to the protocol. I looked at the register of deeds and protocols on the following day. I looked at it in the morning on the following day. I discovered that there was a protocol of a will of S. William Fernando attested by me. I have an instructions book, but it is not very systematic. I have a book, but it is not properly entered. That book is in Court.

Petitioner's  
Evidence

No.33

D.A.J. Tudugala

Cross-  
examination  
continued

(Witness hands over to Counsel all the instructions books which he has brought)

(Shown a book marked R16) The date on this book is 20.8.55. This is an instruction book. In this I have entered searches I made at the land registry and names of witnesses. This contains notes of searches, I made from 20.8.55 to 4.11.55.

(Shown R17) This is a similar book. This also contains search notes for the period 27.7.54 to 12.8.55. There are no instructions. Some instructions are entered and some are not entered. In the case of some deeds I have entered the instructions in this book.

Q. Will you point out to me the instructions?  
A. (Witness points out page 12) These are instructions relating to a deed of gift. Other instructions relating to a deed appear at page 24. Page 31 contains certain instructions. I do not have a book for the period 12.8.54 to 20.8.54. The instructions book prior to the date 27.7.54 is missing. So many books are missing.

(Shown R18) This is the instruction and search book for the period 7.7.48 to 30.6.50.

(Shown R19) This is the book for the period 22.6.50 to 6.7.52.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

Q. Is there any reference to this will in R19?

A. I do not think there is.

Q. Do you recall having taken down instructions from W.S.Fernando? A. Yes.

Q. Do you recall in what document you took those instructions? A. In a piece of paper. I have no doubt of that. I did not take down them in R19. The instructions that William Fernando gave me in regard to the will will not appear in R19 because the book is not kept in one place; it is kept at home and in the office. The books are not kept in one place. Sometimes they are at home and sometimes they are in office. Sometimes I take them to the land registry where I make searches and then I take them home. The reason why I did not take down the deceased's instructions in R19 was that R19 was not available in the office when the deceased came to me. I have attested about 20 to 25 last wills. Between the years 1947 and 1954, without reference to my register, I cannot say how many last wills I have attested. I attested the will of Don Simon Wijewickrema Samarakoon.

10

20

Q. That will was alleged to have been attested by you on 13.6.54? A. May be.

(Shown a certified copy of Will No. 541 dated 13.6.54 attested by the witness marked R20) Yes. The instructions in regard to this will are also not in any exercise book. This was also taken down on a piece of paper because at the time the instructions were given to me the book was not available to me. This will is also challenged as a forgery. I appreciate it is a very serious charge to be made against a notary. I hear that R20 was sent to the Government Handwriting expert. I know that it was sent. Mr. Austin Peiris came to me on the day after he saw me for the first time. He came at about 8 or 9 a.m.

30

Q. Have you any doubt whether it was between 8 or 9 a.m. or in the afternoon?

40

A. I have not made any entry in any book.

Q. You cannot say whether it was in the morning or in the evening? A. May be in the morning.

My recollection is that it was in the morning.

Q. Tell us what happened on that occasion between you and Mr. Peiris?

A. He asked me whether I referred to the protocols. By that time I had referred to my protocols. Q. What was your reply? A. Yes.

Q. Did you tell him anything further? A. Yes. I told him the particulars he gave me were correct.

10 Q. That is you gave him information that a last will of S.W. Fernando had been attested by you? A. Yes. I gave him that information.

Q. At the time you gave him that information you had no proof that Austin Peiris was the son-in-law of William Fernando or that William Fernando was alive or dead? A. Yes. I did not change my mind regarding giving him the information.

20 Q. You told us earlier that on the first day you had made up your mind to give him information regarding the existence or non-existence of a will if he had a right to it? A. Yes. In my view he would have had a right to the information if he was a son-in-law of William Fernando or an heir and provided William Fernando was dead. I told him the particulars he had given me were correct. I told him that there was a will of William Fernando attested by me.

30 Q. By which the two daughters of William Fernando were beneficiaries? A. Yes. That was the only information I gave him, that the particulars he gave me were correct. I did not tell him of the contents of the will. I did not tell him about the provisions made for the widow. I only told him that the particulars he gave me were correct.

40 Q. You know it is a very serious thing for a notary to give information about wills to third parties? A. Yes. That is why I did not tell him.

Q. It is equally a serious thing to give

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

information to any one that a particular person has made a will? A. Yes.

Q. It is also very much more serious to give information not only of the fact that a person has made a will but to give information of the contents of the will? A. Yes.

Q. Did you realise that in telling Austin Peiris that William Fernando had left a last will attested by you by which the two daughters were benefitted you were doing what was wrong? 10

A. I realised it. What I told him was that William Fernando had attested a will. He being an heir I thought it was right to give him the information. I did not realise that what I did was wrong.

Q. You thought that in giving the information to Austin Peiris, whom you did not know in fact that he was a son-in-law of William Fernando, in regard to a will of William Fernando attested by you, that what you did was all right? A. Yes. 20

Q. Did you accept his word that he was the son-in-law? A. I did not. Austin Peiris told me that he was the son-in-law of William Fernando. He told me this on the first occasion also. That is all he told me. He made no other request. The interview ended in that way. On the second occasion he met me he asked for a copy of my protocol. I am sure he asked me. He told me he was the son-in-law and therefore he wanted a copy of the protocol. He told me he was a son-in-law and he wanted to know the particulars of the will. I did not ask him whether William Fernando was alive or dead. It did not strike me to ask him this. I made investigations to see whether Austin Peiris was the son-in-law or not. He came repeatedly. On the 2nd day I had decided to investigate Austin Peiris' claim. He asked me to inquire regarding him from certain Proctors coming from Moratuwa. This was on the second visit. On the second day he mentioned Mr. Paul Pillai, Mr. Wijesekera and Mr. Herman Perera. 30 40

Q. Weren't you curious to find out why he wanted a copy of the protocol on the second occasion?

A. I was curious. To satisfy my curiosity I asked him why he wanted the copy of the protocol.

I told him that his father in law had the original. I had given the original of the will to the father in law. I told him to go and ask his father in law for the original will.

In the  
District Court  
of Colombo

---

Petitioner's  
Evidence

---

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

10 Q. When you told Austin Peiris to ask his father in law for the original of the will what did he say? A. He told me that the original was not to be found. Austin Peiris did not tell me that the father in law had misplaced the original. I did not ask him whether he had asked his father in law.

Q. Did you get the impression that William Fernando himself had lost the original? A. No. When Austin Peiris told me that the will had been lost I thought that either William Fernando must be dead or that the original must be lost.

Q. Must have been lost by whom? A. Original was not to be found.

20 Q. Did you ask him then whether William Fernando is dead? A. I asked him whether William Fernando was living or dead. He said that William Fernando was living.

Q. Then I take it you would have told Austin Peiris, "Go and ask William Fernando about this Will? A. Yes.

30 Q. What reply did Austin Peiris give you? A. That he cannot get it from him. I did not get the impression that Austin Peiris and William Fernando were not on good terms. I did not ask him why he could not get the original from William Fernando. It did not strike me to ask him this.

Q. Finally what did you tell Austin Peiris in regard to his request for a copy of the will on the second occasion? A. That was I think on the third occasion. On the second occasion it ended there.

40 Q. It ended with your telling him to go and get a copy of the last will from William Fernando? A. Yes. He came again about 2 or 3 days later. On the third occasion he came in the

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

morning. On the third occasion he came and asked for a copy of the will. I told him I had no right to give a certified copy of the will without knowing who he was and without knowing whether William Fernando was alive or dead. Even on the third occasion when Austin Peiris came I was not aware whether William Fernando was dead or not.

Q. Had you questioned Austin Peiris on the first occasion and or on the second occasion when he came to see you about whether William Fernando was living or dead? A. No. Only on the third occasion.

10

Q. Did you tell us that on the second occasion you had questioned him about whether William Fernando was living or dead? A. I think on the third occasion I asked him.

Q. Your evidence that you had questioned him on the second occasion is not true? A. I cannot recollect. On the third occasion I told Peiris that I had no proof that he was a son-in-law and also that I had no proof that William Fernando was dead or alive and therefore I could not give him a copy of the will. On the third occasion he told me that he was dead. Then he asked for a certified copy. Even then I did not want to give him a certified copy without verifying who he was, that he was actually a son in law of William Fernando. On the third occasion I told Austin Peiris that I will have to verify whether he was a son-in-law or not. I did not ask him to come on any particular day. I told him I will have to verify and let him know. I was going to verify by inquiring from the Proctors he mentioned. I inquired only from Mr. Paul Pillai. I inquired from him whether William Fernando had a son-in-law called Austin Peiris. I did not ask him for a description of Austin Peiris. Thereafter I was satisfied that Austin Peiris was William Fernando's son-in-law. By 1954 I was 29 years in practice. It did not strike me that somebody might have impersonated Austin Peiris. On the third occasion I asked Austin Peiris to come and see me on a day later. He came a few days later.

20

30

40

Q. That was to give you time to satisfy yourself



that this person was really the son-in-law of William Fernando? A. Yes. Then he came on a fourth occasion. On that occasion I was satisfied that he was a son-in-law, that William Fernando was dead and that I had every right to give him a certified copy. I told him I will give him a certified copy. I gave him a certified copy and charged him Rs.100/- On the second occasion he said that he will give me a good fee if I gave him a copy of the will. I did not think that he was trying to bribe me, but that he was very anxious to know. On the second occasion I did not know that William Fernando was dead. I did not know whether Peiris was in fact the son-in-law or not of William Fernando, and I was not prepared to give him a copy of the will on that day. I told him why I was not going to give him a copy. A copy could not be given in the absence of proof of the fact that Austin Peiris was a son-in-law and that William Fernando was dead. Despite that he offered me a good fee of Rs.100/- to give him a copy of the will. It did not strike me that he was trying to bribe me, but that he was keen on getting a copy. I did not ask him why he suppressed the fact that Fernando was dead until he came on the third occasion. I asked him later; not on the third occasion, why he did not tell me earlier that William Fernando was dead. That was on the fourth occasion. I asked him why he suppressed the fact of the death from me not on the fourth occasion, but subsequently. That was after my affidavit was filed in this case. Austin Peiris told me that if he told me that he was living I would have charged him a big fee. He told me he was living. He said that if he told me that he was living he would have had to give me a big fee because he was not entitled to a copy. If he was alive I would not have given a copy. By saying that he was alive he was preventing me from giving him a copy.

Q. Is that the reason for his not telling you that he was dead?

A. What he told me was that if he told me that he was alive I would not have given him a copy. I did not know that Mr. Austin Peiris was employed at Messrs. Julius & Creasy for a number of years. I heard it later after the case was filed. I heard of this after these testamentary papers

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

were filed; that is after my affidavit was filed. I came to know that he was employed at Julius & Creasy as a clerk. I am certain I asked Austin Peiris why he suppressed from me the fact, on the first and second occasion he saw me, of the death of William Fernando.

Q. Tell us what reply he gave?

A. He did not want to tell me that he was dead. I asked him this question after my affidavit was filed in the case. I put this question to him in my office. He came to my office after this affidavit had been filed. He came to see me regarding this Will. On the fourth occasion he came to see me he obtained a copy of the Will. Thereafter he obtained an affidavit from me and an affidavit from the other witnesses I helped him to get the affidavit from the witness Dewapuraratne. My affidavit and the witness' affidavit were filed in this case with a petition by Mrs. Peiris. Thereafter I raised the question with Austin Peiris why he suppressed from me the fact of the death of William Fernando on the first and second occasion. I put this question to him in my office. That is, Austin Peiris came to see me in my office after my affidavit was filed in this case. Austin Peiris came to my office the day after I gave my affidavit. When I saw the order nisi in the papers on the following day I was searching for him. Searching for him to find out why he had suppressed from me the fact that William Fernando was dead on the first and second occasions he saw me. Fortunately he dropped in at my office. I questioned him and he replied that if he told me that William Fernando was dead that I would not have given him a copy.

10

20

30

Q. That if he had told you that William Fernando was dead that you would not have given him a copy?

A. That is so. That I would have asked him to get the original. I was not satisfied with that reply of Austin Peiris. I questioned him further and he said that the original was not to be found.

40

Q. Were you satisfied with the explanation he gave you that he suppressed from you the fact of William Fernando's death because he believed that if he told you that William Fernando was

dead you would not have given him a copy of the Will?

A. Yes. When I read the order nisi I came to know of a Will of William Fernando attested by Mr. Felix Silva. I asked Austin Peiris why he suppressed from me the fact that there was an earlier Will of William Fernando.

Q. That was one of the matters which troubled you? A. Yes.

10 Q. You knew at the time that you read the order nisi that the provisions of the Will attested by Felix Silva were different from those of the Will attested by you? A. Yes.

Q. Who gave you that information?

A. I referred to the record. When I saw the order nisi in the papers I referred to the record. I was not a proctor appearing for any of the parties.

20 Q. Did you think it right for you to call and examine a record in which you were not Proctor for any one of the parties? A. I can refer to any record. I have a right to see the record. I wanted to find out whether the provisions contained in my Will were different from the provisions in the Will attested by Felix Silva.

30 Q. Why were you interested to find out whether the provisions contained in the Will attested by Felix Silva were different from those contained in the Will attested by you?  
A. I was curious to find out because I had attested the Will. I wanted to know what had happened. The date of the Will attested by me is 4.6.51. The date of the Will attested by Mr. Felix Silva is 13.5.50. The date of the Will attested by Mr. Silva was given in the order nisi. I knew that the Will attested by me was subsequent to the Will attested by Mr. Felix Silva.

40 Q. Why were you interested to find out whether the provisions of the Will attested by Mr. Silva were different from those attested by you?  
A. Naturally I was interested.

Q. Is it curiosity? A. I was anxious to find out.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

Q. I asked you whether you were curious to find out and your reply is that you were anxious?  
A. Yes.

Q. Assuming the provisions contained in the Will attested by you were different from the provisions of the Will attested by Mr. Felix Silva, how would that interest you? A. Because I knew the testator and I attested the Will.

Q. Or did it strike you that if the provisions in your Will were different from the provisions in the Will attested by Mr. Silva a charge might have been made against you that your Will was a forgery? A. How can that be?

10

Q. Can you tell us why you were anxious to find out about the provisions contained in Mr. Silva's Will? A. I wanted to find out the provisions in that Will and the difference. In the Will attested by Mr. Silva Mrs. Millie de Silva was the sole beneficiary. In that Will there was a direction to the executrix that the terms of the agreement he had entered into with Messrs. A.F. Raymond & Co. should be carried out. I also noticed that both his widow and Mrs. Peiris were not in any way benefitted by that Will.

20

Q. You were therefore keen to meet Peiris and get information about various matters?  
A. Yes.

Q. One matter was in regard to the reason why the deceased had in the Will attested by you benefitted both daughters? A. I cannot follow the question.

30

Q. One matter you wanted to know from Austin Peiris was the reason for the deceased's changing the provisions of the Will?

A. That I asked the testator. The testator told me that he had made a number of Wills. He did not tell me and I did not ask him the contents of those Wills. I did not ask the testator why he was changing the provisions of the earlier will. I did not say that I asked the testator why he was changing the provisions of the earlier Will. He told me that he had made three or four earlier wills. I only asked him why he was making provisions of only Rs.5,000

40

for the wife. I suggested that the proper person who should be made executrix was the wife. That is all, and he gave me the reason. He told me that he was not on good terms with the wife, that he was married twice and that was the second wife. I saw the order nisi on the 25 June. I did not thereafter rush down to the Court to see what the provisions of that Will were.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

10 Q. You went to the Court no sooner you read the order nisi? A. No. I looked at the record about 2 days thereafter. I cannot remember, it was later, I looked into the record a few days after I saw the order nisi. The order nisi appeared on the 25th. I saw Austin Peiris on the same day. At the time I saw him I did not know any of the provisions of the Will attested by Mr. Felix Silva.

20 Q. Did you ask him then what are the provisions contained in the Will attested by Felix Silva? A. I asked him. And he told me what the provisions were.

Q. Did you think he was giving you a true account of the provisions? A. I thought so.

Q. Still you thought it necessary to look in the record a few days later? A. Yes.

Q. Merely to satisfy yourself what the provisions in the Will attested by Mr. Felix Silva were? A. Yes.

30 Q. Did you ask Austin Peiris when you met him on 25 June why he had suppressed from you the fact that a testamentary case had been filed by Mrs. Millie Silva?

A. I did not follow the question. Austin Peiris saw me on four or five occasions before he obtained from me the affidavit. On the fourth occasion I gave him a copy of the Will. Before that he came with Mr. Devapuraratne to see the Will. Before preparing the affidavit he wanted to see the Will.

40

Q. Is it correct to say that Austin Peiris saw you in connexion with this Will about five or six times before 25.6.54? A. May be.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

Q. Not on one occasion did he tell you about a testamentary case filed by Mrs. Millie Silva?

A. Yes. I knew about the testamentary case only when I read the order nisi. I was annoyed that he had suppressed from me this fact. I was annoyed because he had told me a lie. He told me a lie when he said that no case was filed. I did not ask him whether a testamentary case had been filed. He had not mentioned that fact and I was annoyed.

10

Q. Why did you take the view that he should have mentioned to you the fact that a testamentary case was filed in which another Will was being proved? A. That was necessary for my information.

Q. How was that going to help you to find out whether you had attested a Will of William Fernando or whether you were to give him a copy of that Will? A. That would have made me know that he had made another Will. Austin Peiris came to me on four occasions to get a copy of the last Will. I was trying to make up my mind as to whether I should give him a copy or not. I satisfied myself that he was a son in law, and in regard to the death of the deceased and then I gave him a copy of the Will.

20

Q. How would the information regarding the testamentary case have helped you in the matter of your giving him a copy of the Will or not?

A. That would have informed me that this Will would have been brought up, this being the later Will. This Will revokes all previous Wills.

30

Q. How would the fact of a testamentary case having been filed in respect of an earlier Will have helped you in regard to the matter of your giving a copy of the last Will attested by you?

A. I would have then known that there would have been a contest.

Q. And the possibility of a contest would have been a matter which you would have taken into consideration in giving him copy of the Will or not? A. Yes.

40

(To Court:-

Q. Is it so? A. Yes.

Q. Would the fact that there would have been a contest have affected the question of your giving a copy of the Will? A. Yes.)

10 On 25.6.54 when I met Austin Peiris I asked him why he suppressed from me the fact that a testamentary case had been filed in respect of the Will attested by Felix Silva. He said that if he told me that a testamentary case had been filed I would have charged more.

Q. He told you that if you had been told of the existence of a testamentary case you would have charged a higher fee for the copy? A. Yes.

Q. Did you accept that explanation? A. Yes.

20 Q. You tell us that if you had known of a testamentary case in respect of an earlier Will you would have charged a higher fee for the copy of the subsequent Will? A. Yes.

Q. Why would you have charged a higher fee?  
A. I would have had to give evidence like this. It is normal for people to execute a number of Wills. The testator told me that he had executed two or three Wills.

30 Q. When he executed this Will you did not think that there would be a contest? A. Yes, because he was making a natural Will. I did not find out the provisions for the earlier Will.

Q. If you know that there was a testamentary case in respect of an earlier Will why should you think that there would be a contest?  
A. There must be a contest.

Q. If there was an earlier Will there must necessarily be a contest in respect of subsequent Wills? A. Because a testamentary case had already been filed in respect of an earlier Will.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

Q. Didn't it strike you that the testamentary case might have been filed in ignorance of the existence of this Will? A. It did not strike me.

Q. When you read about the testamentary case in the Daily News you thought that there was going to be a contest in regard to your Will? A. Yes.

Q. Although at that time you did not know whether the provisions of the Will attested by Mr. Felix Silva corresponded almost word for word with the provisions of the Will attested by you? A. I did not know.

10

Q. You thought there would be a contest and that is why you wanted to see the record in the testamentary case? A. Yes.

Q. And that was the reason why you wanted to question Austin Peiris too? A. Yes.

Q. To find out from him what the nature of the contest was? A. I wanted to find out what had happened to the original of this Will.

20

Q. Not to find out whether there was going to be a contest or not? A. There would be a contest.

Q. You did not ask Austin Peiris or any one else whether there would be a contest? A. He told me there was a contest. Mr. Peiris told me that there was a contest. He told me later. I was wondering whether this protocol would be accepted.

30

Q. Before Austin Peiris told you that the Will be contested did you think that the Will would be contested? A. I thought that the Will would be contested.

Q. Because your Will was subsequent to the Will of Mr. Felix Silva? A. Yes. That was the only reason. I did not suggest to Peiris that it would be best to get a handwriting expert. What is the use of a handwriting expert because the signature is genuine.

40



Q. Still you thought there would be a contest?  
 A. There is a contest. Austin Peiris is really looking after this case. He did not come to see me several times regarding the evidence I was going to give in this matter. I went to my lawyers and made a statement. Austin Peiris did not ask me what evidence I was going to give. He was present when I made my statement to Mrs. Peiris' lawyers.

In the  
 District Court  
 of Colombo

Petitioner's  
 Evidence

No.33

D.A.J.Tudugala

Cross-  
 examination  
 continued

10 Q. Do you know now whether a handwriting expert has been put down in the list of witnesses by Mrs. Peiris? A. I heard of it. I heard of it from Peiris. Peiris told me that he had got a handwriting expert to examine the signature of the deceased on my Will. Peiris told me of this sometime ago; that was when these consultations were going on. I know that Mrs. Peiris filed papers in this case somewhere on 8.7.54. And that the matter came up for  
 20 inquiry some time in September 1954.

Q. Was it between July 1954 and September 1954 that Austin Peiris told you that he was getting the signature on the Will examined by a handwriting expert? A. At the first consultation.

Q. He told you that it was Mr. MacIntyre who was examining the signature of the deceased on the Will? A. Yes.

Q. Did he also tell you that Mr. Mac Intyre had examined the signature and made a report?  
 30 A. I did not know that. He told me that Mr. MacIntyre had examined the signature on the consultation date. I do not remember the date. The first date of inquiry was somewhere in September 1954. Peiris told me that Mr. Mac Intyre had examined the signature of the deceased on the Will at the first consultation. I cannot remember when the first consultation was. The protocol was with me. The protocol was produced in Court. I did not hand it to Peiris to  
 40 be examined by Mac Intyre. Notice was served on me by the Proctor of Mrs. Millie Silva calling upon me to produce the protocol in Court.

Q. The notice served on you was made returnable for 23.9.54? A. May be.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

Q. The record says so? A. Yes.

(List of witnesses dated 20.9.54 filed by Mrs. Peiris marked R21)

(Shown R21) Item No.17 is E.T. Mac Intyre, Nelson Place, Colombo.

Q. Having regard to the date of R21, namely 20.9.54, can you tell us whether Mac Intyre had examined the signature of the deceased on the protocol before 20.9.54?

A. No. He did not examine.

10

FURTHER HEARING TOMORROW.

Sgd: V. Siva Supramaniam.

A.D.J.

15908/T

16.11.55

Trial resumed.

Same appearances.

Errors in previous day's proceedings corrected, of consent.

D.A.J.Tudugala. Affd. recalled.

Cross-examination continued:

20

Q. If at the time the copy of the Will was asked for by Mr. Peiris you had known of the existence of a Will attested by Mr. Felix Silva what would have been the fee you would have called for from Mr. Peiris for the copy of the Will?

A. I would have charged the same fee. That is Rs.100.

Q. Although you told us that when you came to know of the existence of Mr. Felix Silva's Will you knew there would be a contest?

30

A. Yes. I might explain that. I knew there would be a contest for this reason, if the original was produced then that would be accepted. That would be the proper Will. The copy of the protocol would not be accepted as the original.

Q. The contest that you thought would arise was because you took the view that the protocol would

not be accepted by Court?

A. The protocol was my copy.

Q. The protocol would not be accepted by the Court as the original Will?

A. I thought so.

Q. You did not expect the contest to involve the question of the genuineness of the signature of the deceased?

A. That is a genuine signature.

10 Q. You did not expect that the contest would involve the genuineness or otherwise of the signature? A. I did not.

Q. If at the time Austin Peiris asked you for a copy of the Will you knew that a testamentary case had already been filed in respect of the estate of the deceased, what would have been the fee you would have called for for the copy?

A. I do not understand the question.

20 Q. If you knew that a testamentary case had already been filed in respect of an earlier Will what fee would you have called for from Mr. Peiris for a copy of your Will? A. I would have charged the same fee.

Q. Did you tell us yesterday that you would have charged a higher fee in those circumstances? (Witness' evidence on this point yesterday read to him) A. If it is there it is correct.

30 Q. You were asked yesterday this question you tell us that if you had known of the testamentary case in respect of an earlier Will you would have charged a higher fee for a copy of the subsequent Will, and your reply was, yes. Was that a truthful reply? A. That was a truthful reply. I want to explain. I would have charged a higher fee because he cannot get a copy of that Will from anywhere else.

40 Q. You were again asked why you would have charged a higher fee and the reply you gave, was I would have had to give evidence like this. Was that a truthful reply? A. It is a truthful reply.

Q. What you tell us today is that you would have charged a higher fee because Austin Peiris could

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

not have obtained a copy of this Will from any-  
where else? A. Yes.

Q. That is a higher fee than Rs.100/-? A. Yes.

Q. You said yesterday you would have charged a  
higher fee: what was the fee you had in mind  
yesterday? A. I would have charged about 3  
or 5 hundred Rupees because he was a wealthy man  
also.

Q. In what circumstances would you have called  
for that higher fee of 3 or 5 hundred Rupees?  
A. I cannot understand the question.

10

Q. Would you have called for that fee of 3 or 5  
hundred Rupees if you had known of the existence  
of a testamentary case at the time the copy of  
the Will was asked for? A. Yes.

Q. Why would you have called for that higher fee  
of 3 or 5 hundred Rupees if you knew of the  
existence of a testamentary case?  
A. Because you cannot get a copy from anywhere.

Q. The demand for the higher fee had no reference  
then whatsoever to the existence or nonexistence  
of a testamentary case in respect of the estate  
of the deceased? A. No.

20

Q. Did you tell Austin Peiris at any time from  
whom you were going to verify whether Austin  
Peiris was a son in law of the deceased?  
A. I did not. He mentioned certain names.  
I questioned Mr. Paul Pillai. I did not question  
anyone else.

Q. Roughly how long before you gave the copy of  
the last Will did you question Mr. Paul Pillai?  
A. I questioned before giving the last Will. I  
cannot remember when.

30

Q. As a result of the conversation you had with  
Mr. Paul Pillai on that date you did not become  
aware of the existence of the testamentary case?  
A. No. My office is at No.29 Belmont Street for  
the last 10 or 15 years. I cannot give the exact  
date I went there.

Q. You remember in 1932 you were sued for office rent? A. I had given over the office to Wijesekera. Yes. That was the same office, 29 Belmont Street. Judgment was entered against me. I was not ejected from the premises. At that time I was Chairman of the U.C. and I did not want to have the office. I was never ejected. I occupied the front portion.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

10 Q. Is it correct to say that possession of that front portion that was occupied by you was taken delivery of by the Plaintiff in that case?  
A. No. Never.

Q. Plaintiff never stepped into that portion occupied by you?

A. He comes to collect rent.

(Mr. Navaratnarajah marks as R15d extract of the evidence of this witness in the Insolvency proceedings.)

20 (R15d put to the witness) Q. Did you say this: About 1932 I was sued for office rent and ejection? A. If it is there it is correct. It happened more than 10 years ago.

Q. Have you been ejected a number of times from any premises? A. Never.

Q. The question of your ejection from your office or not is not a matter you can forget?  
A. I was not ejected.

30 Q. Did you say this: About 1932 I was sued for office rent and ejection? A. It happened so many years ago. I cannot remember. If it is there it is correct.

Q. Did you say this: When I started practice I had books of account? A. I may have said it. In the Insolvency case I was asked about books of account. I had no proper books of account to produce.

Q. Did you have books of account, proper or not proper? A. Whatever I had I produced.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

Q. Did you give an explanation for not having produced books for a number of years?

A. I cannot remember.

Q. Did you tell the Court that you had removed the books to another office?

(Sir Lalitha wants to see R15d.

Mr. Navaratnarajah states that he has not finished with the document yet.

Sir Lalitha wants to see the document in order to know what is happening and before wrong impression are created. Mr. Navaratnarajah sidelines in blue the extract marked R15d. It is handed over to Sir Lalitha who states that Mr. Navaratnarajah has included in R15d further passages than that originally put to the witness. The extract states that he was sued for office rent and ejection. There is nothing to say that he was ejected and his books thrown out. He asks the Court to initial the document.

10

The document is initialled by Court)

20

Q. Did you tell the Court that you had removed your books to another office?

A. If it is there it is correct.

Q. Books of account are very important matter?

A. Yes. I passed out as a Proctor in 1926.

Q. Did you in the Insolvency case say you passed out as a Proctor in 1923? A. 1926. I cannot remember whether I said I passed out in 1923.

This happened many years ago. I maintained books of account after I passed out. They were not kept properly or regularly. I cannot remember until when I kept these books. I cannot remember when I stopped keeping these books, whether it was five or 10 years ago. I do not keep books of account. From the very start I never kept books of account.

30

Q. Your position then is from the time you became a proctor you did not keep books of account?

A. I did not keep proper books of account.

Q. Whether you kept books of account either proper or improper?

40

A. Now and then I kept books of account. At the start I kept books of account now and then for about 2 or 3 years. That would be till about

1928. By "now and then I kept books of account" I meant that some times I enter in my books and sometimes I do not.

In the  
District Court  
of Colombo

Q. For the two years you kept books of account you made certain entries in the books of account and omitted to make other entries?

Petitioner's  
Evidence

A. Yes.

No.33

Q. That is the books of account for the period 1926/1928? A. May be.

D.A.J.Tudugala

10 Q. Do you remember the time you were adjudicated an Insolvent? A. I cannot remember the exact year. I cannot remember when I ceased to keep books of account. These books were kept in my office and at home. Sometimes I removed the books from my office.

Cross-  
examination  
continued

Q. Did you have occasion to remove your books from your office to any other place than your house? A. No.

20 Q. Did you have occasion to remove your books from your house to any other place than your office at Belmont St.? A. I kept the books in my office and in my house. I may have removed them to my house.

Q. Did you have occasion at any time to remove your books of account from your house to any other place than your office? A. I cannot understand the question.

30 Q. Did you take your account books, apart from your taking them to your office or your house, to any other place? A. At that time I had my office at No.116 Hulftsdorp St. when I passed out. I cannot remember till when I was at 116 Hulftsdorp St. The action for ejectment was in respect of 116 Hulftsdorp St.

Q. Did you tell me earlier that the action was in respect of 29 Belmont St.?

40 A. I was asked whether it was in respect of 29 Belmont St. and I said, No. I was sharing No.116 with Mr. Jayasekera. I paid half the rent and Mr. Jayasekera paid half. As he did not pay I left.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

Q. Did you say: When I started practice I had books of account?

A. Yes. That is a correct statement.

Q. Did you say: I had them till about 1932?

A. If it is there it is correct. This happened about 20 years ago. I cannot remember.

Q. You told us a few minutes earlier that you kept books of account only for 2 years from 1926 to 1928?

A. May be. I said so.

10

Q. In the Insolvency Case did you say: I had them (books of account) till about 1932?

A. If it is there it must be correct. If it is there it is true.

Q. Did you say: I was sued for office rent and ejection?

A. I was never sued. If it is there it must be a mistake.

Q. Did you also say: I was sued for office rent and ejection and my books were thrown out? A. If it is there it is correct.

20

My books were thrown out of No.116 and not from this office. Mr. Jayasekera was ejected. My books were thrown out by the landlord. The books were thrown out by the Fiscal.

Q. You admit you were ejected from No.116 Hulftsdorp St.?

A. I was ejected as a subtenant.

Q. Did you say; I came that night and put them into another office?

A. If it is there it is correct.

30

Q. Did you put your books into another office at any time?

A. Yes. I took the books from No.116 and put them into No.29 Belmont St.



Q. Before you were ejected from No.116?  
A. Yes.

Q. That is, you put the books into 29 Belmont St. before you were ejected from No.116?  
A. I was unaware that the writ was out because Jayasekera was the tenant to whom I paid rent.

Q. Is it correct to say that you took the books of account out from No.116 and put them into No.29 Belmont St. before you were ejected?  
A. If it is there it is correct.

Q. Did you say this: The books were there for about a week?  
A. I cannot remember.

(Shown R15d) If it is there it is correct. Could not have been there for a week. This was a statement made more than 20 years ago. If it is there it is correct.

Q. Did you say: After two weeks the books were missing?  
A. That is so.

Q. "I knew that I would be ejected and I was trying to avoid it"?  
A. I knew that Mr. Jayasekera was being sued.  
(Question repeated) If it is here it is correct.

Q. Is it a true statement that you knew you would be ejected?  
A. I knew of the case against Jayasekera. If I knew that I would be ejected I would have removed earlier.

Q. Did you say this: I took time saying that I would pay a portion. Action was stayed for some time. When possession was taken my room door was not locked. There was a clerk in charge of the office when the Fiscal came and had me ejected. My clerk told me on that day he would come.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

10

20

30

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala

Cross-  
examination  
continued

Q. The account books were from 1926 to 1938. These contained the names of all the creditors, and the amounts I spent". Is that statement true?

A. If it is here it is true. I cannot now say whether it is true. This happened 20 years ago.

Q. You cannot say whether you kept accounts from 1926 or 1928 or 1938?

A. I cannot. My books were thrown out.

10

Q. You came to 29 Belmont St. when you were ejected from No.116?

A. I later came to No.29.

Q. Did you tell us earlier that you shifted from No.116 to No.29?

A. Yes.

Q. Did you tell us that you shifted from No.116 to No.29?

A. Yes.

Q. That was roughly in 1939 or 1940?

20

A. I cannot remember the date.

Q. Before the Insolvency case?

A. I cannot remember the date. I cannot say whether it was before or after.

Q. At the time you came into occupation of 29 Belmont St. who were the others who were using that office?

A. At that time I was alone. I occupied the whole office. The rent was Rs.22/50. I occupied that office alone till I became the chairman of the U.C. I cannot remember whether it was before or after the Insolvency case. I

30

became Chairman of the U.C. a number of times. I was also vice-Chairman. I think from 1936 I was Chairman.

In the District Court of Colombo

Q. Is it correct to say that you were Chairman from 1938 to 1941?

Petitioner's Evidence

A. Before that I acted as Chairman.

No.33

(Question repeated) Yes.

D.A.J.Tudugala

Q. In 1938 you gave up 29 Belmont St.?

Cross-examination continued

A. Earlier.

10 Q. Before 1938 you quitted No.29?

A. I gave a part of it to Mr. Wijesekera. I had the other part. From 1939 Mr. Wijesekera and I were in occupation of 29 Belmont St. Mr. Wijesekera practised in Colombo and at Moratuwa. He has an office in Moratuwa. He lives at Moratuwa. He must be having an office. He has an office at Moratuwa. I cannot say since when he has an office at Moratuwa. Mr. Wijesekera has a fair practice in Colombo. He had a common clerk who did work for him and others. His name was Thambiah. I cannot remember from when he had that clerk. Thambiah was clerk for me as well. Thambiah was common clerk for both of us for a number of years. I cannot remember till when he was my clerk. He is not my clerk now. I am today at 29 Belmont St. Mr. Wijesekera is also there. My present clerk is John Perera. Mr. Wijesekera has a separate clerk by name Perera. I do not know his exact name.

20

30 Q. Since when was Perera a clerk under Mr. Wijesekera? roughly how many years?

A. I cannot say. Whether it was 3 or 4 years I cannot say. John Perera has been my clerk for a long time - a number of years.

Q. Roughly how many years? A. May be 5

In the  
District Court  
of Colombo

years. May be 15 years. I do not know  
who was Wijesekera's clerk in 1951. John  
Perera was my clerk in 1951.

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

Q. Did the deceased know Perera the clerk of  
Wijesekera?

A. I do not know.

Q. Did the deceased know John Perera your  
clerk?

A. I do not think he knew him.

Q. Did you at any time take the view that Mr.  
Wijesekera was a regular proctor of the  
deceased?

10

A. I do not think so. I referred to a John  
Perera in examination in chief. That John  
Perera was a timber Merchant, a saw mill owner.  
The other is my clerk. My clerk John Perera  
lives close to my place at Sedawatta. Roughly  
he comes to work at about 9. He does work  
for others also. I do not know at what time  
he leaves my office. John Perera also worked  
for Proctor D.P. Rupasinghe and some other  
Proctors whose names I do not know.

20

Q. John Perera your clerk never met the de-  
ceased in your office?

A. I do not think. I do not know. He comes  
to office if there is any work. He also goes  
to Rupasinghe's office and if there is any  
work he does that. If there is no work he  
comes here.

I typed the last Will.

30

Q. John Perera was not there at the time the

deceased came there?

A. He is not a typist.

(Question repeated) He was not there.

On the 4th June John Perera was never there.

Q. Neither was the clerk of Wijesekera there on 4th June?

A. No.

10

Q. So that on the 4th June you were the only occupant of the office when the deceased came?

A. Yes.

Q. And no one was there at any time the deceased was in your office?

A. Clients come and go.

Q. At the time that the deceased was there on the 4th June 1951 no one else was there but yourself?

A. Yes.

20

Mr. Wijesekera did not come to office that day

Q. You knew that he had an office at Moratuwa

In the  
District Court  
of Colombo

---

Petitioner's  
Evidence

---

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No.33

D.A.J.Tudugala  
Cross-  
examination  
continued

on that date?

A. I know he lives at Moratuwa.

(Question repeated) Yes.

Wijesekera also practices in the Pana-  
dura and Gampaha Courts. Deceased is a man  
from Moratuwa. I did not know how long the  
deceased knew Wijesekera. Whether the deceas-  
ed came to know Wijesekera in 1951 or there-  
after I cannot say. Wijesekera was known to  
the deceased on 4.6.51. Wijesekera may  
have been known to the deceased prior to  
4.6.51.

10

Q. You are not certain?

A. I am certain.

Q. Have you brought your register to Court?

A. I have brought everything.

(Shown the register) In 1951 there is Will  
No.474. That is the Will in question. The  
date is 4 June. (Mr. Navaratnarajah moves to  
mark a certified copy of the Register as the  
witness states that he requires the original  
register for the purpose of his notarial  
work).

20

In 1951 only one Will was attested.  
I do not attest Wills every day; only once  
in a way. In 1952 I have not attested any  
Wills. In 1953 there was no Will attested  
by me. In 1950 there was a last Will at-  
tested by me on 3 February. That Will was  
attested at Dehiwala.

30

Q. Is it wrong for me to ask you whether the person who executed that will is living or dead?

A. I do not know that. I can produce that will. Another will was attested by me on the 27.3.50. Thereafter there is no will in the year 1950.

Q. Is it correct to say between 13.5.50 and 22.2.54 according to your register of deeds you had attested only one will and that is on 4.6.51? A. That is correct.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

10 (Mr. Navaratnarajah marks in evidence certified copy from the register of deeds of this witness for the period 1.1.50 to 28.2.54 as R22.)

I have very little work as a notary. I do not keep a fee book. Here and there I enter in an exercise book. For the period 1.4.54 to 31.3.55 my professional income had been about Rs.400/- a month. I do not pay income tax. During the year 1953/1954 my income was roughly about Rs.400/-, Rs.450/-, Rs.500/- a month. Some months it is much bigger. For 1952/53 my income varied.

20

Q. Did you send a return to the Income Tax Department regarding your income for the year 1952/53?

A. After they stopped sending me return forms I did not make a return. They stopped sending me return forms about 6 or 7 years ago. That was long after the Insolvency case. In 1951, 1952, 1953, 1954 and 1955 they sent me forms to fill up. I know what income is assessable for tax. If my income was over the assessable limit if they sent me forms I would have made a return. My income was not above the taxable limit in these years. (Shown R20) This was attested by me on 13.6.54. In 1954 the only will attested by me was on 13.6.54. R20 relates to the will of Simon Wijesekera Samarakoon. I do not know when he died. I do not keep a record of deaths. I swore an affidavit in connexion with R20.

30

(Mr. Navaratnarajah marks as R20a this witness' affidavit). This was filed by me in connexion with R20. In this I state that that the deceased died on 22.11.54. Under R20 the executor was the Public Trustee. It is the Public Trustee who challenged R20 as a forgery. The Public Trustee as executor is claiming probate of a Will No.3911 dated 10.2.50 attested by S.R. Amarasekera. In R20 the deceased has made one or two devises to

40

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

charity. R20 contains certain bequests to charity.

Q. According to you it is a natural will?

A. Those are the instructions he gave me.

Q. In your view is R20 a natural will?

(Sir Lalitha objects to the question. I uphold the objection)

The case in regard to R20 is still pending.

The Notaries Ordinance gives directions as to how instruments have to be attested. I am familiar with those provisions. (The witness is referred to Sec.30 (9) of the Notaries Ordinance) I am familiar with this provision.

10

Q. According to this provision a notary should not attest any deed or instrument unless the person executing the same is known to him? A. Yes.

Q. Or if the person executing the will is not known to him two of the attesting witnesses must be known to him? A. That is so. Deceased was a wealthy man. I came to know the deceased in the beginning of 1950; I cannot remember the month. It was early part of 1950. John Perera the timber merchant was sued by a number of people. He was not sued by the deceased, I appeared for John Perera in a number of cases and I attested a number of deeds for him. (Witness refers to his register). I have been looking at this book from 1955 backwards. The first deed I can point to is that dated 18.10.48. The consideration was Rs.1,500/-. Between 18.10.48 and today (I did not go through very carefully) I have not been able to discover any deed attested by me for John Perera.

20

30

John Perera was indebted to the deceased. The deceased came to me with John Perera to my place at Sedawatta.

Q. Had they gone to your office before they came to your house? A. No. John Perera lives close to my house. Deceased went to John Perera's house and came with John Perera to my house.

Q. Why? A. John Perera wanted me to get time for him from the deceased. He wanted about 2

40



10 weeks time, for a loan of Rs.2,500/- which John Perera owed the deceased, I think the exact amount was about Rs.3,000/-. John Perera brought the deceased to my house in order that I may tell the deceased to give him 2 weeks time: to tell him that I will raise a loan for John Perera and settle this. I was to raise a loan for John Perera on a property or a pro-note. And I was to ask deceased to give John Perera 2 weeks time. 20 Otherwise deceased would have filed action against John Perera. John Perera wanted me to say all this to the deceased in order that the deceased might not file action for a period of 2 weeks. Prior to his visiting me with the deceased John Perera saw me earlier and asked me to say that I will try to get a loan. On that occasion John Perera told me on what security the loan was to be raised. He said a postdated cheque or a promissory note; failing that on a property. Before I obtained that loan for John Perera he obtained the money and paid it. John Perera paid the money to the deceased in about 10 or 12 days. I cannot say how John Perera raised the loan. He told me he got the money. John Perera is dead. He died last year.

30 Q. Did you know on the occasion the deceased came to your house at Sedawatta where the deceased was living? A. He told me everything. He told me that he was a wealthy man; worth lakhs and lakhs; that he was known as the Indian Mudalali; that he was a businessman. That is all I can remember.

Q. On the day the deceased came to your house did you know where deceased was living? A. He told me that also. He said he was living at Kaldemulla close to Moratuwa.

40 Q. Didn't he tell you he was residing at Matale? A. Formerly he was residing at Matale. I cannot remember for how many years he told me he resided at Matale. When he came on that occasion he told me that he had come from Matale to reside at Kaldemulla.

Q. Did you regard the deceased as a good prospective client of yours on that occasion? A. I knew he was a client of Mr. Wijesekera.

Q. On the day that he came to your house at Sedawatta you knew that he was a client of Mr. Wijesekera? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

Q. For how many years? A. I do not know for how many years. He told me that he knew Mr. Wijesekera. I did not ask him how he came to know Mr. Wijesekera.

Q. How did you know he was a client of Mr. Wijesekera? A. Coming from Moratuwa and that he knew Wijesekera I inferred he was Wijesekera's client. I was questioned earlier as to whether the deceased was known to Mr. Wijesekera prior to 4.6.51 and I answered, May be.

10

Q. Did you get any other particulars of the deceased on the first day he came to see you other than those you have mentioned? A. No.

Q. Had the deceased come to 29 Belmont St. prior to his coming to your house at Sedawatta? A. I cannot say. The first time I saw the deceased was in my house. This man must have come to Colombo on that day and he must have come to see John Perera, and Sedawatta is close to Colombo.

Q. The evidence in the case is that the deceased came to reside at Moratuwa from Matale in July 1952. Is there any reason why he should have made a false statement to you that he was residing at Moratuwa and not at Matale? A. Deceased did not tell me. John Perera told me.

20

Q. Did you tell us earlier that the deceased told you that he was living permanently at Moratuwa? A. I did not.

Q. Did you tell us earlier that the deceased told you on that occasion that he had lived at Matale and that he had come to reside at Moratuwa some days before he came to see you? A. John Perera told me. I said what John Perera told me.

30

Q. Did you tell the Court that the deceased told you that he was residing at Moratuwa permanently? A. I did not tell the Court that. I said that John Perera told me.

Q. Did you tell us earlier that the deceased had told you that he was living at Moratuwa? A. I said that John Perera told me, and not the deceased.

40

Q. The deceased did not contradict John Perera's statement as to his residence? A. I did not ask that question in the presence of the deceased because I knew.

Q. You asked John Perera where deceased resided on the first occasion John Perera came to you alone?

A. He told me everything previously, prior to the date on which the deceased came. On the date on which he came with the deceased there was no talk about the deceased.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

10

Q. You tell us then that on the occasion that the deceased came with John Perera to your house there was no discussion as to the residence of the deceased? A. No.

Q. There was no talk about the wealth of the deceased? A. I did not question him. There was no discussion.

Cross-  
examination  
- continued.

Q. All the information about the deceased that you gave earlier in your answers were given to you by John Perera prior to the date on which he came to see you with the deceased? A. That is so.

20

Q. You came to know for the first time today that John Perera's information about the residence of the deceased in 1950 was incorrect? A. I did not verify.

(Question repeated) I did not know whether it was correct or not.

Q. You came to know for the first time from the question of cross-examining Counsel that the information given to you by John Perera in regard to the residence of the deceased in 1950 was incorrect? A. Yes. I met the deceased thereafter when he came to the office to see Mr. Wijesekera.

30

Q. How many times after his visit to your house and the date of execution of this will did he come to your office? A. I cannot remember. I do not enter his visits. May be once or a hundred times I do not know. I cannot remember whether it was once or a hundred times. I cannot say how many times he came.

Q. Do you still abide by your earlier answer? A. What I say is I cannot remember.

40

Q. Neither can you say why he came to your office? A. Mostly to see Wijesekera.

Q. On other occasions? A. He saw Mr. Wijesekera. Between 1950 and 1951 I was under the impression that deceased resided at Moratuwa. Mr. Wijesekera also resided at Moratuwa.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

Q. Did it strike you as strange that the deceased should come all the way to Colombo to see Wijesekera when he could have seen him in his house?  
A. It did not strike me.

Q. To your knowledge had your clerk John Perera met the deceased? A. I do not think so. He does the work and goes. He does not remain. I cannot say whether Wijesekera's clerk met the deceased. Mr. Wijesekera's table is separated from my table by a door. On 4.6.51 I knew the deceased as a client of Wijesekera. The deceased came to my office at about 10 a.m. My recollection is that it was in the morning. He asked me whether Mr. Wijesekera had come. He could not have found that out without asking me. That was not the first occasion deceased talked to me after his visit to Sedawatta. He had talked to me a number of times in my office at 29 Belmont St. He did not talk to me anywhere else. I told the deceased that Wijesekera had not come. Whether Wijesekera would come for the day or not I did not know. Wijesekera practised both in Colombo and in the Panadura Courts. The deceased did not ask me when Wijesekera was expected. The deceased did not ask me whether Wijesekera was expected that day or not.

10

20

Q. Did you tell him that you cannot say whether Wijesekera would come or not? A. I asked him to sit down till Wijesekera came. Wijesekera comes some days and some days he did not come. When I asked the deceased to sit down he sat down. Deceased waited there for about 10 or 15 minutes. During that 10 or 15 minutes I do not know whether any one saw the deceased in my company. People were coming and going. I cannot remember whether any one saw the deceased in my company that morning. I did not ask the deceased what he was going to do; whether he was going to wait for Wijesekera or come on some other day. Having waited for some time the deceased came and sat near my desk and told me that he wanted to attest a Will. During the 10 minutes deceased was seated in Mr. Wijesekera's room. Then he walked into my room and told me that he wanted me to attest his Will. Then I told him that it was not proper for me to do it as he was Wijesekera's client. I suggested that he should have it done by Mr. Wijesekera. I did not ask the deceased to go and see Wijesekera in his house at Moratuwa. I did not know where Wijesekera was. I did not ask the deceased to go and see Wijesekera at the Panadura Courts.

30

40

50

Q. You were reluctant to execute this will, but you did not suggest that he should go and meet Mr. Wijesekera? A. I did not ask him. I took down instructions. I took down the instructions so that I could explain to Mr. Wijesekera why I was doing this. I was not keen to attest the will at all; it was other people's work.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J.Tudugala.

Cross-  
examination  
- continued.

10 Q. But still you allowed yourself to be persuaded by the deceased? A. He wanted me to do it and I did it. He did not tell me why he wanted it done that day. He said he wanted it done that day. I did not ask him why he could not wait a day or two and have it attested by Mr. Wijesekera. I knew that two witnesses were necessary. Deceased came by car. His driver was there.

Q. His driver could have been one of the witnesses?  
A. Driver could not have been a good witness.

20 Q. Why do you say the driver would not have been a good witness? A. The driver would not have been a good witness because he was a beneficiary under the will. Even if he was not a beneficiary he would not have been a good witness.

Q. Why? A. Specially in the case of a Will you must get good witnesses.

Q. Why do you say even if John Perera was not a beneficiary he would not have been a good witness?  
A. He was a servant.

Q. No other reason? A. No. I knew that witnesses to a will will have to give evidence.

30 Q. Did it strike you that John would not be a good witness in the witness box? A. No. The office adjoining No.29 Belmont St. on the right on 4.6.51 was occupied by Proctor Seneviratne. There are a number of Proctors all throughout, Messrs. Jayasekera & Jayasekera, Mr. Devapuraratne. Mr. Devapuraratne does not stay in Kuruwe St. His office is at Belmont St.

40 Q. Mr. Devapuraratne never enjoyed a good practice in these Courts? A. He has a fairly good practice.

Q. Better than your practice? A. I cannot answer that question. Proctor Merrill Pereira,

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

John Cadaramanpulle are at Belmont St. Mr. Vethecan lived close by at the time. I saw Mr. Vethecan signing a number of documents in my presence.

Q. What documents? A. There are occasions when a proctor has to certify the signature of another proctor and I have gone to him. He has attested my deeds. The deed of gift given by my uncle to me was attested by him. That was about 6 or 7 years ago. Prior to 4.6.51 I cannot say on how many occasions I saw Mr. Vethecan signing documents. May be several. The impression I get was that Mr. Vethecan's signature varied, that he signed with difficulty, that he was nervous. By nervous I mean that when he signed he shivered. He signed letter by letter. Mr. Vethecan died in 1953 I think. Mr. Vethecan was not alive in 1954. I cannot remember whether he was alive in 1954. I was away at Anuradhapura at the time of his funeral.

10

Interval.

Sgd. V. Siva Supramaniam.  
A.D.J.

20

After Lunch. Appearances as before.

D.A.J. Tudugalle - Recalled - Affirmed.

Cross-examination Continued.

I referred to one Mr. Seneviratne. I did not speak to Mr. Seneviratne about signing the Will as a witness.

Q. Did you ask Proctor Seneviratne to sign the Will? A. Never.

30

Q. I am referring to Proctor A.H. Seneviratne. Do you know him? A. I know him;

Q. Did you ask him to be a witness to the Will? A. Never.

Q. You have given evidence in regard to an earlier Will of yours in Court? A. Long ago. I think about 10 years ago.

Q. That Will was challenged on the ground that it was a forgery? A. That Will was proved.

Q. Your evidence was accepted? A. My evidence was accepted.

40

Q. Any case in which your evidence in regard to a Will was not accepted? A. Never. The only Wills that have been challenged are the Will which is the subject matter of this case and R20. Those are two Wills I have executed between the years 1950 and 1955.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

Q. How long did the deceased take to give you instructions in regard to the Will? A. About 10 minutes.

D.A.J. Tudugala.

10 Q. Roughly by about 10.30 in the morning? A. Yes.

Q. According to you, he wanted the Will signed that day? A. That day itself.

Cross-  
examination  
- continued.

Q. You asked him to come at 12 o'clock? A. Yes.

Q. You knew that witnesses were necessary? A. Yes.

Q. Did you tell him after he gave you instructions "Bring two witnesses to sign the Will"? A. Yes.

Q. You told him that he should bring two witnesses after he gave you instructions? A. No. After I prepared the Will.

20 Q. You knew soon after he gave you instructions that he wanted the Will signed that day? A. Yes.

Q. You knew also that witnesses are necessary? A. I knew it.

Q. And you asked the deceased to go away and come back at 12 o'clock? A. Yes.

Q. Did you tell the deceased at the time when he left your office after giving instructions "bring two witnesses"? A. I did not tell him. It was not necessary.

30 Q. Why was it not necessary? A. I knew the testator.

Q. What you thought was you would get two witnesses to sign the Will because you knew the testator? A. I knew it would be better if I can get witnesses who are known to the testator also.

Q. At that stage when he left the office after giving you instructions you did not ask him to bring two witnesses? A. No. I said it was not necessary because the testator was known to me.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

Q. Why didn't you think it necessary at that stage?  
A. It was not necessary because I knew the testa-  
tor.

Q. Did you think you could get two witnesses on  
your own? A. Yes.

Q. And it was not necessary that those witnesses  
should be known to the testator? A. Yes.

Q. You knew the deceased was returning at 12  
o'clock to sign the Will? A. Yes.

Q. Had you between 10.30 and 12 secured the attend- 10  
ance of two witnesses to sign the Will? A. No.

Q. Why didn't you make any arrangements between  
10.30 and 12? A. It was not necessary. My  
Clerk John Perera was either in my office or in  
somebody else's office. He was doing piece work.  
He goes from office to office.

Q. You did not think of John Perera as being a  
suitable witness? A. No.

Q. Why? A. I did not want to get him as a wit- 20  
ness. He goes from office to office.

Q. You thought him not a suitable witness?  
A. Not only that. You cannot get at him: once he  
finishes his work he goes away.

Q. Tell me why you did not think he was suitable?  
A. It was far better to get respectable people to  
sign the Will.

Q. At 12 o'clock the deceased came? A. 12 or  
12.30.

Q. Then did you think of getting witnesses? 30  
A. When I explained and he was satisfied I told  
him that two witnesses are necessary and I asked  
him whether he knows any witnesses here.

Q. After you read and explained the Will to the  
deceased you mentioned to him that witnesses were  
necessary? A. Yes.

Q. You did not want to get the witnesses yourself?  
A. No.

Q. You could have got professional men who had



their offices adjacent to your office to sign the Will? A. Yes.

Q. Mr. A.H. Seneviratne? A. That was another Mr. Seneviratne. There were a number of procurtors in Belmont Street.

Q. You did not want to get anyone of those witnesses? A. He told me that he knew Mr. Vethecan.

Q. You did not take any initiative on your own to get any witnesses? A. No.

10 Q. You wanted the deceased to do it? A. Yes.

Q. Did you also tell the deceased that the witnesses should be known both to you and to him? A. Yes.

Q. Why did you think it necessary that the witnesses should be known both to you and the deceased? A. It would be better.

Q. In what way better? A. The witnesses must make a declaration that the testator is known.

20 Q. In what way better? A. If the witnesses are known to the testator it would be much better.

Q. In what way would it have been better? A. It would be better to have witnesses known to the testator and to me. When the testator says he knows Mr. Vethecan what is the use of going after other people.

Q. Vethecan in 1951 was a sick and infirm man? A. He was doing work.

Q. He died in 1952? A. I think in 1953.

30 Q. Who brought Vethecan to your office? A. Testator.

Q. At the time he told you he knew Vethecan did you mention to him straightaway that one witness is not enough and that two witnesses are necessary? A. Yes.

Q. He told you he knew only Mr. Vethecan? A. Yes.

Q. Did you tell him one witness was not enough and another witness was necessary? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

Q. And to think of anyone whom he knew in Hultsdorf? A. Yes.

Q. He told you that the only person he knew in Hultsdorf was Mr. Vethecan? A. I do not know. He did not mention other names. At the time Mr. Dewapuratne passed that way. After the deceased told me that he knew Vethecan, the deceased and myself were waiting in the office for some time.

Q. For how long were you waiting in the office? 10  
A. 2 or 3 minutes.

Q. Then Mr. Dewapuratne passed that way?  
A. Passed that way.

Q. And then you called Mr. Dewapuratatne in?  
A. Yes.

(To Court: Q. The deceased, did he know Mr. Dewapuraratne? A. Yes.

Q. But you called him in? A. I called him in)

Q. You say Vethecan came there how many minutes before Mr. Dewapuraratne's arrival? A. Few minutes. 20

Q. How many minutes? A. 2 or 3 minutes.

Q. You remember the order in which the witnesses affixed their signatures? A. I think Mr. Dewapuraratne signed first.

Q. You have been summoned to produce your protocols for the period 1950-1954? A. I have brought them. These are protocols 401-500. This is a new binding. When this protocol was brought and produced in Court, it was removed. The binding was damaged. Then the Court ordered the respondent to pay me for rebinding. That is in the record. And this is the new binding. These protocols contain Nos. 401-500. 401 is dated 6.11.46. The last protocol is dated 15.5.52. 30

Q. The protocols 401-500 were bound after May 1952? A. After May 1952 when they were produced in Court.

Q. Before that they were not bound? A. They were bound. 40

Q. When did you first bind the protocols 401-500?  
 A. When I collect 100 protocols I get them bound immediately.

In the  
 District Court  
 of Colombo

Q. You got them bound roughly in May or June?  
 A. May 1952.

Petitioner's  
 Evidence

Q. Thereafter the binding was undone for the first time when you had to hand P11 to Court? A. Yes.

No. 33

(To Court: Q. Was that similar binding? A. Yes.)

D.A.J. Tudugala.

10 Q. Do you bind your protocols once a year?  
 A. No. Once I complete 100 protocols I get them bound. sometimes 50.

Cross-  
 examination  
 - continued.

Q. Until you collect the requisite number of protocols how do you keep them? In a box? A. Yes.

Q. Loose? A. Yes.

Q. Does P11 show that it has been bound twice?  
 A. It is bound once. P11 is not a carbon copy. Sometimes I take carbon copies.

20 Q. Generally your protocols are carbon copies?  
 A. Not always. In some cases they are originals and in some cases carbon copies.

Q. You explained the Will in the presence of Dewapuraratne and Vethecan to the deceased?  
 A. Yes.

Q. Was that correct? A. It is not necessary.

Q. But you took the precaution of explaining the Will in the presence of the two witnesses to the deceased? A. Yes.

30 Q. Why did you explain the second time? You had explained the Will to him no sooner he arrived about midday when witnesses were not present?  
 A. Yes.

Q. He was satisfied? A. Yes.

Q. You again explained the Will to him in the presence of the two witnesses? Why? A. Because I must explain. I thought I must explain in the presence of the witnesses.

Q. Between the arrival of the witnesses and the

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J.Tudugala.

Cross-  
examination  
- continued.

first time you explained the Will to the deceased about half an hour would have elapsed? A. Yes.

Q. And you thought the explanation soon after his arrival was not sufficient to get his signature to the Will? A. Yes. He wanted the Will that very day.

Q. Did you ask him why he was very keen? A. I did not ask him. I had become friendly with him by that time.

Q. You did not ask him why he wanted to execute the Will the same day and get the Will the same day? A. I did not ask him the question. The deceased came back at 4. He was not prepared to let the Will remain with me. He wanted the Will. He paid me a fee. It was not by Cheque but in cash. It is not noted down anywhere. My income was roughly Rs.400 - Rs.600 a month. 10

Q. How do you estimate your income if you do not keep a note of the fees earned by you?

A. Roughly I can estimate. 20

Q. You said in examination-in-chief that you helped Austin Peiris to get an affidavit from Mr. Dewapuraratne?

A. Mr. Dewapuraratne came there to see my protocol.

Q. Wijesekera was a good friend of the deceased?

A. Yes.

(To Court: Q. Did you mention to Wijesekera that this deceased had come and waited for him and because he had not turned up he had got you to attest the Will? A. I did not mention that.)

Q. After 4.6.51 did you meet the deceased in the office, 29 Belmont Street? A. I cannot remember. 30

Q. You cannot say whether you met the deceased after 4.6.51 on any date? A. I met him at the Kachcheri where we exchanged smiles.

Q. You told us you were very reluctant to attest this Will because it would ordinarily have been done by Mr. Wijesekera? A. Yes.

Q. And you did not want it to be said that you did any work which would normally have been done by Wijesekera? A. Yes. 40

Q. You went to the extent of even telling the deceased that he must give an explanation to Wijesekera about this matter? A. Yes. Mr. Wijesekera has been a good friend of mine.

In the  
District Court  
of Colombo

Q. You had known Mr. Wijesekera from 1937 or 1938?  
A. Yes.

Petitioner's  
Evidence

Q. You had shared the office together since 1937?  
A. Yes.

No. 33

10 Q. Why didn't you tell him so and so came to get some work done from you? A. It was not proper to tell him because it was a Will.

D.A.J. Tudugala.

Q. Didn't you tell him that so and so came and I did some work for him but I cannot tell you what the work is? A. If I told him he would have asked what the work was.

Cross-  
examination  
- continued.

(To Court: Q. But this was a Will which he wanted to get attested by Mr. Wijesekera? A. That is so. This being a Will I did not want to tell him).

20 If I did not do it, he would have got it done by somebody else. I did not tell Mr. Wijesekera that the deceased had even come there that day. I met the deceased in the Kachcheri.

Q. Did you ask the deceased "haven't you explained the matter to Wijesekera"? A. That is not the place to discuss the Will.

30 Q. You say you couldn't have asked the deceased whether he explained this matter to Wijesekera in the Kachcheri? A. There were so many in the Kachcheri.

Q. Then you could not have asked him that question?  
A. Yes.

40 Q. But for the fact that there were a large number of people in the Kachcheri you would have asked him the question? A. I would have never asked him. I did not want to find out whether he had explained to Wijesekera. I had told him to mention it to Wijesekera if Wijesekera came when I was doing the work. It was left to him to tell Wijesekera if he wanted.

Q. Can you think of any other reason why you did not mention it to Wijesekera? A. It was not proper for me to tell him.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Cross-  
examination  
- continued.

Re-examination.

Q. You were prepared to discuss the Will to a person called Mr. Peiris? A. I disclosed it to him after obtaining the necessary facts from him.

Q. Didn't Wijesekera tell you about the deceased's death? A. No.

Q. He was a fairly rich man? A. Yes.

Q. You say seriously you never knew deceased until May or June 1951? A. I did not know him.

Re-examined.

I have been asked many questions with regard to what I have said in some Insolvency proceedings. The evidence I gave in the Insolvency proceedings was about 15 years ago. I started practice in 1926. I got into politics about 1930. 1930 and 1931 was a very bad time for Ceylon. From 1930 - 1943 I was in politics. At one time I had an intention of giving up politics. I wanted to re-enter politics. I had been Chairman before. When I wanted to re-enter politics I lost my practice.

10

20

Q. You created a number of friends or enemies when doing politics? A. In Politics it is difficult to please people. When you do some work for one party another party is displeased. I find in the house every morning about 10 or 15 persons. When entering politics I lost my income and lost my practice. There was a person bitterly opposed to me. He was an aspirant in that area. He was aspiring to be Chairman. There was a lot of political embitterment. The Insolvency proceedings were started about 1930. They were started by a rival candidate of mine. He got hold of a creditor and put him up and Insolvency papers were filed. The purpose was to cust me. Insolvency is a disqualification under the Urban Council Ordinance. At that time financially I was not quite all right. That is at the time these papers were filed. A certificate was refused. There was an appeal but I did not prosecute the appeal. Thereafter I compounded with the creditors. Thereafter the proceedings were annulled. I was asked questions from my evidence in the Insolvency proceedings with regard to my having a life interest.

30

40

Q. You have told the Court already that you were not legally entitled to the life interest?

A. Yes. I was getting an income from those properties. I told in the Insolvency proceedings that I was getting an income from those properties. I was asked whether it was a life interest. I said I was getting an income of Rs.40 a month.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Re-examination  
- continued.

10 Q. What was your belief? A. I was under the belief that that was a life interest. I said so in the Insolvency case. I was asked questions with regard to Mrs. Jayalath. I was asked questions about Mrs. Jayalath in the Insolvency proceedings.

Q. Had the promissory note that you gave to Mrs. Jayalath any connection with your promise to marry her? A. That was the money she gave me. She gave me about Rs.10,000/- and not Rs.1000/- odd. When the promise fell off I paid off leaving a balance of Rs.1935/- which I was unable to pay.

20 (Mr. Navaratnarajah marks as R15e an extract from the witness' evidence in the Insolvency case beginning with the words "In 1939 my financial position was desperate" and ending with the words "I returned the money personally ....")

There was a big dowry that was promised to me by this lady. It was a dowry of lakhs and lakhs. That did not materialise.

30 Q. Eventually she wanted to marry a Graduate?  
A. I do not think she wanted to marry.

(R15e put to witness) This is the evidence I gave. I recall that now.

Q. A number of questions were put to you in cross-examination today and yesterday and you were referred to various documents? A. Yes.

Q. Suggestions were made that this Will was not executed by the deceased? A. Yes.

40 Q. This is the question which was put to you "When you read about the testamentary case in the Daily News you thought that there was going to be a contest in regard to your Will?" A. Yes.

Q. Your answer was "Yes"? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Re-examination  
- continued.

Q. The next question put to you is "Although at the time you did not know whether the provisions of the Will attested by Mr. Felix Silva corresponded almost word for word with the provisions of the Will attested by you"? A. Yes.

Q. This question is upon the assumption that your Will is almost word to word of the Will of Mr. Felix Silva?

(Mr. Navaratnarajah objects. He says it is a matter for comment.

10

Sir Lalita Rajapakse states that his statement that it is an assumption is based on the question that was put in cross-examination and that it is intended to lead up to a further question.)

Q. Read the Last Will attested by Mr. Felix Silva? A. (Witness reads the Will).

(Sir Lalita Rajapakse reads the evidence at pages )

I have read my own will.

20

Q. Is it correct to say that your will corresponds in any way with Mr. Felix Silva's Will? A. No. Instructions were taken down on a piece of paper.

Q. Is it obligatory that you should take instructions down in a book? A. No.

Q. The law does not require it? A. No.

Q. Do Proctor Notaries copy them down in the book? A. No.

Q. But it is obligatory that you should do certain things? A. Yes.

30

Q. For instance, to keep a register? A. Yes. I have brought the registers to Court. They are well bound. They are in chronological order.

Q. Are the documents you attested, whether they are last wills or deeds, given numbers? A. Yes.

Q. Are the numbers in the book which you are holding, about which you were asked questions in cross-examination, in chronological order? A. Yes.



The registers start from the day I passed and it goes up to this year. That number is 588. I have written against the number 470. There is June 1950-1951. It is an assignment of a bond. Sedawatta is the place of execution. The number is 470. The date is 1st June. I have put the names of the parties, district of registration, names of the lands, consideration and the stamp fee. Like that I have entered against 471, the next consecutive document, a deed of disclaimer. I have entered the particulars like that in the course of my professional work. 472 is on 3 June, a mortgage bond, and I have filled up the particulars. 473 is on 3 June, a gift, and I have filled up the particulars. Similarly, 474 is on 4 June and I have entered No.474, date "4" Last Will and Testament", Place of execution "Colombo". That particular item and entry in my register is the reference to the Last Will, the Protocol of which is P11. The next item is 475 on 5 June, a transfer executed in Colombo, and the particulars are given. After that is 476 and it goes on.

Q. Is this a faithful record of all your attestation deeds and last wills that you have made?

A. Yes. In the case of Last Wills I do not enter the names of the parties because it is a confidential document.

Q. Under the Notaries Ordinance is it obligatory on you to make weekly returns or monthly returns?

A. Yes.

Q. Weekly returns would be returns of the transfers and last wills that you have attested? A. Yes.

Q. In the case of transfers in your return to the Registrar of Lands you have to give not only the number and date but you have to give the names of the transferors and transferees? A. Yes.

Q. When you make a return to the Registrar of Lands weekly or monthly, if the item is a last will, you give only? A. The number, the date and the place of execution.

I have been sending these returns regularly to the Registrar of Lands. In June 1951 I have been sending returns to the Registrar of Lands. This book has been in my custody and this is the only book I have kept with regard to the register of deeds right from the day I started my practice. This book begins with No.1 on 2.9.26, a transfer executed in Colombo, and I

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J.Tudugala.

Re-examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala ..

Re-examination  
- continued.

give the names of parties. Up to 1955 it is a faithful record of the documents I have attested in chronological order. I have in my practice rich clients and poor clients.

Q. Do you charge a fee whether the client is poor or rich? A. If the client is poor I charge less and if the client is rich I charge more. When I undertake to do Court work if I find the client is poor I charge a lower fee. If the client is in a position to pay I claim a higher fee. 10

Q. Is that something unique or peculiar to you or something that every proctor and advocate does? A. Yes. I charged Mr. Peiris Rs. 100 for giving a copy of the protocol. I said that Mr. Peiris did not tell me that a case had been instituted. I was asked what fees I had charged. I was asked whether I would have charged a higher fee and I gave some reasons. One reason I gave was that the fee might be more if there was a contest. I also said I may have to give evidence in Court. That was another factor. 20

Q. Any other factors? A. The wealth of the man.

Q. Do you sometimes find if you undertake a case there may be a contest in the case? A. Yes.

Q. Your fee would be decided on whether there would be a contest? A. Yes.

Q. It would also be decided on the question whether your client is rich or poor? A. Yes. I was asked question with regard to Mr. MacIntyre being on the list of witnesses. I am not the Proctor in this case. The Proctor is Mr. Paul Pillai. On 10 September Mrs. de Silva applied for permission to examine my protocol. I was requested to deposit the protocol on or before 23 September. 30

Q. Your will was challenged by the other side?

A. Yes. I draw the attention of Court to Journal Entry dated 17.9.54. Mr. Muthukrishna's name was included in the list. I draw the attention of Court to Journal Entry of 22.9.54. Mr. MacIntyre's name was given. I have seen Mr. Vethecan signing on a number of occasions. I said that his signature varies. He was rather old at that time. He had nervous debility. I said I was not quite sure whether a protocol would be 40

accepted as an original in Court. I did not know what the legal position was. Mr. Vethecan signed Pll in my immediate presence I saw him signing.

Q. You swear to that? A. Yes.

Q. And the deceased, did you see him actually signing that? A. Yes, in my presence.

Q. Mr. Dewapuraratne? A. He too signed in my presence. I was asked about my clerk and Mr. Wijesekera's Clerk: My clerk was John Perera. That is a different person from the timber merchant John Perera. That John Perera was a rich man. My clerk John Perera was not a regular clerk. If there is any work he comes to my office and does it and then he goes to another office and does work. He worked for other Proctors as well. During a day he would be going to several Proctors. He was not a regular clerk of mine to whom I paid a salary. That clerk cannot type. I do the typing. When there is a big job I give the work to the typist Mr. Costa. Pll was typed by me. I was asked about a will of a Samarakoon. He is a person from Havelock Town. He is a very rich man. There are contests among heirs in that Samarakoon estate. I was asked whether the Public Trustee was contesting a Will I had made. There were many heirs.

Q. The heirs of an elder brother entrusted the matter to the Public Trustee? A. Yes.

(Mr. Navaratnarajah objects)

I was asked questions with regard to the witnesses that were got for the last will. I have already said that the last will is an important document. Last Wills are sometimes contested. I was asked why I thought it better to get a respectable person than John Perera as a witness. I wanted to get a witness known to the Testator and to me. I thought it would be better. Of these two witnesses, Mr. Vethecan came first. The testator himself brought Mr. Vethecan. The testator told me he knew Mr. Vethecan. Then I waited for some time. Then I saw Mr. Dewapuraratne getting down from the steps and passing. Then I called him and asked him whether he knows the testator. Then he said "why not I know him". I was asked about John Perera, the timber merchant, coming with the deceased to my place first at the beginning of 1950. John Perera

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.

Re-examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala..

Re-examination  
- continued.

told me that one Mr. William Fernando would be coming; he is a rich man; he is from Moratuwa and that he is known as Indian Mudalali. They came to my place one day. I was to ask the deceased to give John Perera further time as I was raising a loan for him. That is how I made friends for the first time with the testator. I said I was reluctant to attend to the business of Mr. William Fernando because I thought he was Mr. Wijesekera's client. Actually he was seated in Mr. Wijesekera's room. Mr. Wijesekera did not turn up. After some time the deceased told me he wanted to execute a will. I also told Court that I requested him to explain to Mr. Wijesekera that I had attended to his work. I said that I did not want to feel that I had done work for a person who was Mr. Wijesekera's client. Mr. Wijesekera was my friend, sharing the same office. I did not want him to feel that I was taking up his work. This will was a confidential document. I was asked whether I had told Mr. Wijesekera thereafter that I had done the work. I did not tell him. I was waiting till Mr. Wijesekera asked me. I thought if the testator spoke to me about his having told Mr. Wijesekera then I would have known that he had told Mr. Wijesekera. When the testator did not tell me anything I thought the testator had not told Mr. Wijesekera and I thought it was not proper for me to mention it to Wijesekera. I met the deceased at the Kachcheri. He was busy.

10

20

30

Q. Would you have told Wijesekera at the Kachcheri or elsewhere that you had executed the last will?

A. No. I have had my ups and downs in my financial matters. I started my professional work and I had a fair practice. Fortunately or unfortunately I entered politics.

Q. You got into financial difficulties? A. Yes.

Q. Did you pay off your creditors? A. Yes.

Q. All? A. Yes.

Q. And thereafter did you go back to politics or come back to the Bar? A. I came back.

40

Q. And you have been practising at the Bar?  
A. Yes.

Q. And you built a fairly good practice now?  
A. Fairly.

- Q. There was a fair clientele? A. Yes.
- Q. Are you today in any financial embarrassment at all? A. I have little debts.
- Q. Otherwise you are all right? A. Yes.
- Q. Being fairly well in your professional work? A. Yes.
- Q. It has been suggested that this will that you attested is a forgery? A. Yes.
- Q. What have you to say to that?

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 33

D.A.J. Tudugala.  
Re-examination  
- continued.

10

(Mr. Navaratnarajah objects on the ground that it is a question that should be answered by Court. Sir Lalitha Rajapaksa withdraws the question)

Q. The opponents state that the Will is a forgery, is that so? A. It is not a forgery. It is a genuine signature.

Q. It was executed by the deceased in your presence? A. And in the presence of witnesses.

Q. You swear to that fact? A. Yes.

20

Sgd. V. Siva Supramaniam  
A.D.J.

Further Hearing on 3rd, 9th, 10th, 20th and 27th February, 1956.

Sgd. V. Siva Supramaniam  
A.D.J.

3.2.56.

Inquiry resumed.

Same appearances.

30

Errors in previous day's proceedings corrected of consent.

Sir Lalitha states that the last question in Cross-examination at page should read: May or June 1950, instead of 1951.

Mr. Navaratnarajah states he has no recollection but would like to consider the matter after examining the evidence recorded, and moves that the matter of the amendment of the record may be considered on the next date.

Sir Lalitha has no objection.

40

He calls:

In the  
District Court  
of Colombo

No. 34

V.C.C. DEVAPURARATNE

Petitioner's  
Evidence

V.C.C. DEVAPURARATNE. Sworn Proctor S.C.& N.P.  
Colombo.

No. 34

V.C.C.  
Devapuraratne.  
Examination.

I have been a proctor for 19 years. Before I became a proctor I was the senior shorthand writer of the State Council. I left Government Service on pension in the year 1937. I took my oaths as proctor in 1937 after leaving Government Service. As a Proctor I do both civil and criminal work. 10

Q. Even as a proctor are your services taken by any Court in any matter? A. In recent years I did work as shorthand writer for the Supreme Court and also for the Law Society.

In 1951 my office was at Belmont Street. (Shown P11 Protocol) I identify the first signature as mine to the last will attested by Mr. Tudugala.

Q. The testator was? (The witness looks at the will) A. Mr. Fernando. (Witness is shown the date on the protocol) The date is 4 June 1951. 20

Q. Have you a recollection of the incident of your signing this as witness? A. I do.

Q. Where was this will executed? in whose office? A. In Mr. Tudugala's office in Belmont St. That is very close to my own office. I went there at about 12.30 or 1 p.m. I was going down the steps of this District Court leading to Belmont Street when Mr. Tudugala clapped hands. Then I entered his office. 30

Q. Who were there in the office when you went in? A. There was Mr. Vethecan, Proctor.

Q. And? A. And this gentleman the testator?

Q. Did you know this gentleman the testator? A. Yes.

Q. How did you know this gentleman? A. He was once introduced to me by Mr. Tudugala himself.

Q. Did you know his name? A. Mr. Fernando.

Q. How was he introduced to you? A. As the Indian Baas. 40

Q. When you went there, you told the Court Mr. Tudugala was there, Mr. Fernando the testator and Mr. Vethecan were there. Then what happened?  
 A. Mr. Tudugala asked me whether I could sign a last will as a witness.

Q. What did you say? A. I said yes.

Q. What happened then? Did the testator speak to you at all? A. Yes. He asked me whether I could sign a last will of his. I said I had no objection.

Q. Then what happened? Tell us briefly what happened about the will? A. It was read over by Mr. Tudugala. Then the document was signed.

Q. Who signed? A. The testator signed.

Q. After that? A. I signed. After that Mr. Vethecan.

(Shown P11) Q. Is that the signature of the Indian Baas whom you referred to as testator Fernando?

A. Yes. This is dated 4.6.51. Subsequently I swore to an affidavit. (Shown P15) I have signed this affidavit.

Q. Will you tell the Court in brief the circumstances leading up to the swearing to of that affidavit in 1954? A. A Mr. Peiris saw me one day at my house, probably in 1954, and showed me the certified copy of a last will and inquired from me whether I could sign an affidavit on that will. I told him I remembered the incident to some extent, but that I should like to be sure of my signature in the original. Then he took me to Mr. Tudugala's home in his own car. There I was shown the protocol P11.

Q. Having verified that you swore to the affidavit? A. Yes. The statements contained in the affidavit P15 are correct. I saw the testator signing. I signed after that. Proctor Vethecan signed after that. Thereafter Proctor Tudugala.

Q. All those acts were done at one time in your presence? A. Yes.

40 Cross-examined.

My office is presently at No.51 Kuruwe Street. I am having a room there. I pay Rs.30/- as rent. I have had my office at Kuruwe St. for about a

In the  
 District Court  
 of Colombo

Petitioner's  
 Evidence

No. 34  
 V.C.C.  
 Devapuraratne.

Examination  
 - continued.

Cross-  
 examination.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 34

V.C.C.  
Devapuraratne.

Cross-  
examination  
- continued.

year and a half. Prior to that my office was at No.13 Belmont St. The entire premises was not my office. I had a room there. My office was a room and not part of a verandah. That was small. I paid a rent of Rs.12/- for that. I had my office at No.13 Belmont St. for about 5 years. Prior to that I was at Hultsdorp in a part of Proctor Cecil Perera's room for which I paid a rent of Rs.15/-. I had that office practically from the start. I did not have that office on the very day I took my oaths as a proctor. It was sometime thereafter. I came to know Mr. Tudugala somewhere in 1922 when I was the chief reporter of Ceylon Daily News.

10

Q. Good friends? A. He came there occasionally.

Q. Were you a good friend of Tudugala's? A. Yes. I did not visit him quite often. I called very seldom at his house. Between 1922 and today I have called at his residence on 4 or 5 occasions. He has never called at my residence. I have not signed a number of wills. Apart from the will in this case, I have signed only one other will as attesting witness. That was about 6 or 7 years ago. That will was attested by the late Mr. Berrence Fernando, Proctor and Commissioner for Oaths. That will was signed at Mr. Fernando's residence. When that will was signed I was at the Belmont St. Office.

20

Q. You say you have a clear recollection of the incidents of the date on which you signed the will attested by Mr. Tudugala? A. Not detailed. I remember it very well. Mr. Peiris saw me a couple of days before I signed the affidavit. He showed me a certified copy of P11 I saw my name there as a witness. I saw Mr. Vethecan's name as a witness. I saw the name of W.S. Fernando on the certified copy. I saw the name of Mr. Tudugala also there on the will as the attesting notary. I must have read the will.

30

Q. You read the certified copy shown to you by Mr. Peiris? A. I was more concerned with my signature. Mr. Peiris came to my house. Beyond his speaking to me I do not remember the details of the day he came to my house. He came to my house and talked to me regarding this will. I have a clear recollection of the incidents of that evening. Mr. Peiris came and told me that I had signed

40



as a witness to a last will, and asked me whether I sign an affidavit to that effect. I knew what the affidavit was for. I said "certainly, as I have signed the last will I have no objection".

As soon as Mr. Peiris saw me he showed me a certified copy of the last will.

10 Q. And you recalled to mind your signing the will as a witness? A. Yes. I had no doubt. I recalled Tudugala's having attested the will. I recalled that Vethecan signed as a witness. When Peiris showed me the certified copy of the protocol I recollected what happened in Tudugala's office on that date and I said I had no objection to signing the affidavit. He must have asked me whether I had any objection to signing though not in those words. I went to Mr. Tudugala's house that night to see the original. This being a copy I wanted to see the original.

20 Q. Why did you want to see the original in order to decide whether you were going to accede to Peiris' wish or not? A. To be quite sure.

30 Q. Quite sure about what? A. About the will: if the protocol was there. I went to Tudugala's house to see whether the protocol was in existence or not. I did not think the protocol might have mysteriously disappeared. I wanted to see the original of my signature as I was shown a copy. I did not have any doubts as to whether my signature would appear in the protocol. When Peiris showed me a certified copy of the will I did not ask him where the original will was. I did not ask this question of Tudugala.

40 Q. So that either at Tudugala's place that evening or in your house you did not ask Peiris or Tudugala as to where the original was? A. I did not. The affidavit was brought to me by Peiris. I read the affidavit in my house. I did not ask Peiris who drafted the affidavit. I cannot say who drafted that affidavit. I did not ask any one about it. I signed this affidavit a couple of days later at Proctor Rosayro's office. Proctor Rosayro attested my signature. Even on the date I signed the affidavit. I did not know the whereabouts of the original of the will. Even today I do not know whether the original will is in existence or not.

Q. Before the affidavit was signed by you did you

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 34

V.C.C.  
Devapuraratne.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 34

V.C.C.  
Devapuraratne.

Cross-  
examination  
- continued.

know whether the man who signed it was living or not? A. That too did not occur to me. It did not occur to me to question anybody to find out whether he was living or dead. I did not discuss this case with Mr. Tudugala. I have not spoken to him about it. I have spoken to him several times about this case. I have heard of the allegation that is made regarding document P11. Mr. Tudugala told me. I know that Mr. Tudugala signed an affidavit in regard to this will. That was signed on the same day. Mr. Tudugala did not tell me that was signed on the same day. Mr. Tudugala did not tell me that he expected this will to be contested. Some days later he told me that Peiris had not told him that there was a Testamentary case.

10

The date of my affidavit is 24 June 1954. Some days after the 24th Mr. Tudugala told me - he was rather indignant with Peiris for not mentioning to him that there was a testamentary case.

20

Q. Whose testamentary case? A. That there was another will in respect of the same property. I did not ask him what he meant by that. I was not interested.

Q. Didn't you ask him why he was indignant that there was another will in respect of the same property? A. I did not ask him. I knew he was worried.

Q. Worried about the affidavit that he had signed in respect of P11? A. Not about the affidavit: worried that he was not told the truth by Mr. Peiris. He was worried that Mr. Peiris had not told him the real truth. I got the impression that he was worried. He did not tell me he was worried. I cannot say how I got the impression he was worried.

30

Q. Did Tudugala also tell you that he expected this will P11 to be contested? A. He may have told me that.

Q. Contested on the ground that it was a forgery? A. Probably. All these matters were mentioned to me by Mr. Tudugala a few days after the affidavit was sworn to - I cannot be sure of the date. May be within a month of the affidavit's being sworn to.

40

Q. Did Mr. Tudugala tell you about Mr. Macintyre having looked into the protocol of this will? A. No.

Q. Weren't you also alarmed when you heard that this will was going to be challenged as a forgery?  
 A. I was alarmed. I have not practised as a Notary. I did not take out my licence as a Notary. I worked to some extent in Court.

In the  
 District Court  
 of Colombo

Petitioner's  
 Evidence

No. 34

10 Q. Mostly you attest signatures of parties? A. No I must have attested the signature of a Muslim lady consenting to judgment. I am not aware that she came thereafter to Court and said that she did not attest that document. I was summoned and I came to Court in connexion with that. I make no returns for income tax. I used to pay income tax as a Government Servant. I am married. I have no children. I worked as a stenographer in the Supreme Court over a couple of years ago for several years for which I received an allowance of Rs.10/50 per day. I recorded summings up. I had considerable time at my disposal to devote to that work. I had worked as a shorthand writer for the Law Society in connexion with disciplinary inquiries. I have earned equally from the shorthand profession after I became a Proctor. Perhaps more. I have not frequently attested signature of parties to actions. I charged a fee for that. The testator paid me a fee of Rs.10/50 for attesting this will. Perhaps Mr. Tudugala saw the fee being paid to me. It was paid to me in his office. I draw petitions for various people. I draw petitions in the case of people who are convicted and charge a fee for it. Peiris did not talk to me about this case. P11 is dated 4.6.51.

20

30

V.C.C.  
 Devapuraratne.

Cross-  
 examination  
 - continued.

Q. How long before that date did you meet the person who signed that document as testator? A. I cannot give the period. I met him at Mr. Tudugala's office and Mr. Wijesekera's office. They are both under the same roof.

40 Q. How long prior? A. It is very difficult to say. I met him once or twice before 4 June. I have seen him in that office. I have never talked to him.

Q. If a photograph of the deceased is shown to you can you identify him? A. I remember him. I think I may be able to identify him.

Q. The first time you ever talked to him was on the day you signed P11? A. The day I was introduced to him as Indian Baas.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 34

V.C.C.  
Devapuraratne.

Cross-  
examination  
- continued.

Q. How long was that before 4 June? A. I cannot recall. The day I was introduced to him only Mr. Tudugala was there. That day this gentleman was seated in Mr. Tudugala's office. I went into Tudugala's office to see Mr. Wijesekera. Mr. Wijesekera was not there when I went. So I dropped in casually on Tudugala and met the person who signed this document.

Q. Is it correct to say that he was introduced to you as Indian Baas? A. Yes. The name Mr. Fernando was also given. Mr. Tudugala knew that I knew this person.

10

Q. Mr. Tudugala knew prior to 4.6.51 that you were one of the persons who knew Mr. Fernando because he introduced him to you? A. Yes.

Q. On 4.6.51 in Tudugala's office Mr. Tudugala told you that he was keen to have a person who knew him to sign that document as a witness? A. Yes. I do not know whether he said it was just luck that I came into the office. I do not think he said that. The steps of this Court are opposite Mr. Tudugala's office. When Mr. Tudugala clapped I went into his office. I met Mr. Fernando when I went to Mr. Tudugala's office. The first person who talked to me was Mr. Tudugala. Mr. Fernando recognised me. He did not say Good morning. As soon as I entered the deceased gave me a look of recognition. He did not speak to me until Mr. Tudugala asked me whether I would sign a last will. I said, "Yes, that is the Indian Baas whom you had introduced to me earlier". The other man gave me the impression that he was happy.

20

30

Q. You told Tudugala "I am quite happy to attest the Will of the man who was introduced to me as the Indian Baas?" A. Yes. I cannot definitely say, but I think the deceased asked me to attest the will. I am definite the first person who talked to me was Tudugala, and he asked me whether I was willing to sign a will as a witness and I said, "I am quite happy to attest the will of the person who was introduced to me as Indian Baas". "Baas" means the head of a certain place. Not so high as a king.

40

Q. Thereafter did the deceased also ask you "Are you prepared to sign my will"? A. He must have asked me.

Q. You cannot recollect whether the deceased had

asked you? A. He may have. He had no objection. If Tudugala asked me in the first instance and I said I was willing to sign the document as a witness there was no reason for the deceased to ask me.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 34

Q. You tell us the deceased never asked you whether you were prepared to sign the document? A. I cannot be definite.

10 (Mr. Navaratnarajah informs witness that he is going to question him on certain evidence given by Mr. Tudugala)

V.C.C.  
Devapuraratne.

Cross-  
examination  
- continued.

Q. Is it correct to say "While we were waiting (i.e. while Tudugala, Vethecan and Fernando were waiting in the office) Proctor Devapuraratne passed that way". That is not correct. You did not pass that way? A. It amounts to that.

"I clapped and called Mr. Devapuraratne", is correct.

20 Q. "I asked Mr. Devapuraratne whether he knew the testator". Did Mr. Tudugala on 4.6.51 ask you whether you knew the testator Mr. Fernando? A. I told him that I knew him. I cannot say whether he asked me that question.

Q. In fact, according to you, you have already told us that Mr. Tudugala was fully aware that you knew Fernando before 4.6.51? A. May have been.

Q. Did you tell us earlier that Mr. Tudugala was quite aware that you knew the deceased prior to 4.6.51? A. If I said so it must be true.

30 Q. Did you tell us earlier that Tudugala was aware that you knew the deceased prior to 4.6.51? A. Yes. This is a correct statement. I have also said that as I stepped into the office Fernando gave me a look of recognition.

Q. Mr. Tudugala in those circumstances could never have asked you whether you knew Fernando or not? A. I cannot say.

40 Q. What is your impression did he ask you the question as you went into his office? "Do you know this man?" A. He did not ask me. After I told Tudugala "I am happy to sign the will of this gentleman whom you introduced to me as the Indian Baas", Tudugala read out the will.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 34

V.C.C.  
Devapuraratne.

Cross-  
examination  
- continued.

Q. Did the deceased say why are you reading out the will to me. You have already read it out to me? A. No. I got the impression that it was read out for the first time that day.

Q. I take it Fernando questioned Tudugala about some provisions in the will? A. There were no questions in my presence. He read the will out in English and explained it in Sinhalese in the presence of both Vethecan and me. The Rs.10/50 was paid to me as I was coming.

10

Q. Who was the first person you talked to about this will after that date? A. Mr. Peiris. He told me he came to see me in connexion with a last will. He did not give me the particulars of the last will. He showed it to me. He showed me a certified copy. He did not tell me how he was interested in the will.

Q. Even on the date you signed the affidavit you did not know what interest Peiris had in the matter? A. I must have known then, that his wife was interested in the will.

20

Q. In what way? A. As a child of the deceased.

Q. So, it is clear that Peiris did not tell you that evening in your house how he was interested? A. Yes, neither did I ask him the question. Neither did I ask him whether the man who signed the will was living or dead. I may have thought he was living at the time.

Q. Then did you ask him if you thought the man who signed the will was living, "What is the use of the affidavit"? A. That matter did not occur to me at all. At the time Peiris showed me the certified copy of Pl I may have thought that the deceased was living.

30

Q. If you had thought so didn't you ask him what is the use of the affidavit? A. I did not.

Q. Did he tell you the purpose for which the affidavit was asked? A. Yes. Later he told me. On the first date I think he told me he wanted to prove the will.

40

Q. So that you knew the man was dead. He told you the person who executed the will was dead? A. Yes.

Q. So, when you went to Tudugala's house that evening you knew that the person who executed that document was dead? A. That is Peiris' version.

In the  
District Court  
of Colombo

Q. You had a doubt as to whether Peiris was speaking the truth or not? A. That I cannot say.

Petitioner's  
Evidence

Q. At Tudugala's place you knew the man was dead?  
A. Yes.

No. 34

10 Q. And you knew also as a proctor of this Court that a will can be revoked by destruction of the original? A. Yes. A man can destroy it and thus revoke it. I knew that the original of the will must be produced in a Testamentary case.

V.C.C.  
Devapuraratne.

Cross-  
examination  
- continued.

Q. You also knew that before you swore to an affidavit in regard to the will that you had to satisfy yourself that the original was in existence?  
A. Not in this case. I did not think so.

20 Q. What were the special circumstances in this case that prevented you from inquiring about the original of the last will? A. It is difficult to say that. This is the first time I swore to an affidavit in regard to a will. Nothing happened about the earlier affidavit. I went from my house to Tudugala's house in Peiris' car. Tudugala was there. When I went there I must have told him that I saw a certified copy, and that I should like to see the protocol.

30 Q. Why did you not ask him for the original?  
A. That did not occur to me. Tudugala did not tell me the original was destroyed. He may have told me that the original was not in existence. I cannot remember. Even now I do not know whether the original is in existence or not. Tudugala's office is just opposite the Court steps across a road 10 to 15 feet wide. Tudugala was at his desk in the verandah when he clapped for me. Between the verandah and the desk I am not sure whether there is a trellis. Tudugala usually addressed me as Devapuraratne. On that occasion he clapped to invite my attention.

40 Re-examined

Re-examination.

Q. Can you remember when Mr. Tudugala clapped hands whether his right palm was above the left palm or whether the left palm was above the right palm? A. No. I have given evidence of my recollection of the incident of my signing as a witness and also in regard to the signing of the affidavit.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 34

V.C.C.  
Devapuraratne.

Re-examination  
- continued.

Q. At this point of time are you able to give a detailed recollection with regard to the number of questions and the order of the questions and the words of the questions?

(Mr. Navaratnarajah objects to the question. He states that the witness in examination in chief said he had a clear recollection. I allow the question)

A. No. Having given evidence in a Court of law before this I was referred to a Muslim lady's case. I have given evidence in court before this before Mr. Crossette Thambyah who was District Judge. 10

Q. Was your evidence accepted?

(Mr. Navaratnarajah objects to the question. I uphold the objection)

Q. About the Muslim Ladies case, was there any basis for the foundation of the questions put to you by Learned Counsel. A. No.

Q. You were asked questions whether you knew as a matter of fact that Mr. Fernando was dead at the time you swore to this affidavit: Did you know as a matter of fact that he was dead? A. I gathered it then. 20

(Shown P15 para 2) This refers to the late Mr. Fernando. This was two days after I saw Mr. Peiris. The affidavit I swore to was in respect of a last will and I refer to the late Mr. Fernando.

Q. You have already said that Mr. Peiris told you that Mr. Fernando had died? A. Yes.

Q. You also told the Court that personally you were not aware that Mr. Fernando was dead but you accepted it? A. Yes. I was questioned regarding my meeting Mr. Tudugala in the Daily News Office. I was in the Daily News at the time as chief reporter. At that time I came to know Mr. Tudugala. He came there because the late Mr. Wijewardena, the proprietor of the Newspaper, and Mr. Tudugala were cousins, and Mr. Tudugala came there practically daily. In that connexion I met Mr. Tudugala at Lake House. I was questioned about my going to see the protocol at Proctor Tudugala's house. 30 40

Q. Do you know whether a proctor and notary keeps the original or protocol of a will? A. The protocol is with him. The original is sometimes with somebody else.

Sgd. V. Siva Supramaniam.  
A.D.J.



No. 35

K. A. NONAIn the  
District Court  
of ColomboK. ALOE NONA. Affirmed. 30, Widow of Simon  
Singho, Makola.Petitioner's  
Evidence

No. 35

K.A. Nona.  
Examination.

Q. Did you work in Matale under the late Mr. William Fernando as cook? A. Yes. I worked as cook woman for the late Mr. Fernando in Matale for 7 or 8 years. I addressed Mr. Fernando as Lokumahatmaya.

10 Q. Who was in the house of Lokumahatmaya during the time you were in Matale? A. A person known as Marina Fonseka, John the driver and there was a small girl. I refer to the petitioner as Millienonamahatmaya.

Q. Did Millienonamahatmaya also pay a visit to her father Lokumahatmaya at Matale? A. She used to come to Matale during the School holidays.

20 Q. On one occasion an incident occurred. Can you tell us that incident in regard to the lady? A. Millienona, driver Banda (petitioner's driver) and the children came for a bath to Matalewatta where the deceased had his residence. There was a spring to bathe there.

30 Q. Tell us shortly what incident took place? A. When driver Banda was coming down holding Millienona's hand my master saw it through the window. Then my master scolded saying, "Look there, the disgrace that is being done to me". I also came and looked. After the bath Banda driver brought them to the bungalow and he went for a bath. Then my master warned her not to repeat such acts but to allow the children to go for a bath and for her to fill the tank in the bungalow and bathe.

Q. That was one incident at Matale? A. Yes.

Q. Marina Fonseka was the mistress of your master?

(Sir Lalitha withdraws the question)

Q. Who was Marina Fonseka to the Master?

40 A. At the time I went in the master was keeping her as his wife. After some time we all returned to Kaldemulla. My master, Marina Fonseka, John Driver, myself and the little girl returned

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.

Examination  
- continued.

to Kaldemulla. John was the master's driver. We all came down and my master took up residence at Kaldemulla.

Q. What happened there? A. About 2 or 3 months after we came to Kaldemulla a sort of meeting was held under the portico of the house. I was cook woman even then. I was also present at the meeting. There were several people. John Driver brought Millienona at the request of Lokumahatmaya.

Q. What did Lokumahatmaya tell Millienona? 10  
A. I do not know what discussion took place at the meeting. After the meeting was over John Driver took Millie Nona away in the car. That is all I know.

Q. Has the master ever in your hearing, or to you said anything about Millienona when you were at Kaldemulla? A. Lokumahatmaya also had told Millienona in my hearing to discontinue driver Banda. Then Millienona said "In whatever way you may ask me I will not discontinue Driver Banda". 20

Q. Do you know personally why your master asked Millienona to discontinue driver Banda?  
A. Yes. He had told to my hearing in the bungalow, as driver Banda is a young man he is not suitable for her to keep as a driver and asked her to discontinue him, he also said he will give her a driver. At this time Millienona's husband was dead. Even at the time of the bathing incident at Matale Millienona's husband was dead.

Q. When Millienona refused to discontinue the driver Banda upon the request of your master, was he pleased or displeased with Millienona that she refused to accede to his request? A. He was displeased. I continued to cook in the house at Kaldemulla till the deceased died. Banda Driver was not discontinued by Millienona. The deceased died one day. The deceased took ill about 3 years after he came down from Matale. One day he was taken to hospital and he died. 30

Q. How long before he was taken to hospital did he take ill in that final illness? A. About a month. At that time Millienona was living in Colombo. 40

Q. How many days before the master died did Millienona come to the master's house at Kaldemulla?

A. She stopped coming there for about 2 or 3 months after the meeting and came thereafter. Millienona came there about a week or so before the master died.

In the  
District Court  
of Colombo

Q. Do you know whether in the Kaldemulla house the master has a safe? A. Yes. When the master was well he had the keys.

Petitioner's  
Evidence

No. 35

Q. After he fell ill when Millienona came what happened? A. They were in her charge.

K.A. Nona.

10 Q. Prior to the master's being taken to hospital did you see any letter being sent to Dulcie Nona?  
A. Yes. There was a nephew of the deceased called Darling. That day in the morning when he was going past the house to his office Millienona saw him and called him in and told him that she wanted to send a letter to her younger sister as the father was now well asking her not to come. And she got a letter written to her dictation by the kangany, Simon Perera. Lala Baby, Millienona's  
20 son, signed the letter, and Millienona gave that letter to Satan who was there to deliver it to Dulcie.

Examination  
- continued.

(Sir Lalitha states that the letter referred to is P10 and that he will be calling the Headman in regard to it)

Dulcie came to see her father.

Q. As far as you could make out, from your impression, were daughter and father happy to meet each other? A. Yes.

30 Q. You have told us that the deceased was displeased with Millienona over this Banda matter.  
A. Yes. After the deceased died I fell ill and went to my house at Makola. Then Millienona came there and offered to take me under her employ and called me to work in her house. I was not in good health at the time. Yet I came to work under her telling her that I will work under her for a short time. I worked in Millienona's house at Melbourne Avenue. That house comprises an upstairs and a  
40 downstairs.

Q. You knew of the driver Banda and Millienona matter that was referred to by the deceased. What did you see yourself at Melbourne Avenue?

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.

Examination  
- continued.

(Mr. Navaratnarajah objects to the question on the ground that it is irrelevant. Sir Lalitha states it is relevant. When the deceased got angry with Dulcie he wrote a will against her. Thereafter he was at Matale and then he wrote a will in favour of Millie again. The deceased got angry over the familiarity of Millie with the driver and wrote this other will. Sir Lalitha states he seeks to lead evidence of the motive for the writing of the will. The question is intended to show that this witness' statement in regard to what the deceased said is borne out by subsequent conduct, and that when the deceased got annoyed with Millienona he cancelled the earlier will and wrote the subsequent one. 10

Mr. Navaratnarajah states that Sir Lalitha did not open his case on this basis - Sir Lalitha refers to the evidence at page 6 and at pages

ORDER

I do not think that the conduct of the petitioner subsequent to the death of the deceased is relevant to the issues in this case. I therefore uphold the objection and overrule the question.) 20

Q. How did you leave the bungalow?

(Mr. Navaratnarajah objects to the question as irrelevant. I allow the question)

A. There was a wedding to take place in our house and my elder brother wanted to take me for the wedding. When I was working with the Lokumahatmaya I used to call driver Banda as Bandaiya. After I came under the employ of Millienona she asked me to call him Banda Mahatmaya. 30

Q. Tell us why you left? A. Because she told me that if I went home I need not come back. So I did not come back.

Cross-  
examination.

Cross-examined

I spoke of a bathing incident at Matale. I did not mention this incident to any one until today. I spoke of an incident at a meeting at Kaldemulla I did not mention this meeting to any one. 40

(To Court - Q. You mean till you got into this witness box and gave evidence you did not mention to any one? A. I have not mentioned it to outsiders.

Q. Have you mentioned to any one else? A. With regard to the meeting which was held to discontinue the driver I did not mention it to anyone until I gave evidence in this box.

10 Q. You did not mention that even to any of the parties in this case? A. No.

Q. After those incidents happened the first time you are mentioning them is in the witness box? A. Yes.

Q. You were not questioned about it by anybody before you got into the witness box? A. When I was examined by Counsel in this case I mentioned. Before that I had not mentioned it to anybody.

Q. In answer to questions by the lawyers who gave this information? A. Yes.

20 Q. Prior to that questioning you had not mentioned it to anybody? A. No.)

30 I talked to the lawyers last year soon after this case was started. I cannot remember the month. I cannot say whether it was in the early or later part of last year. I am definite it was last year. The new year commenced in January. I spoke to the lawyers last year, but I cannot say whether it was in the early part middle part or in the later part of the year. I met the lawyers in the bungalow of the Advocate. Before I went to the Advocate's bungalow I had been to the Proctor's bungalow. The Proctor did not take me from his bungalow to the Advocate's bungalow. Mr. Peiris took me. When I was questioned by the advocate the proctor was not present. When I went to the Advocate's Bungalow with Mr. Peiris the proctor was there. I knew why I was taken to the Advocate's bungalow. Mr. Peiris asked me to tell the advocate whatever I knew about this case. Mr. Peiris came to my house at Makola and told me that there was a case and that he wanted to put me as a witness. I told him I will give evidence of whatever I knew. Mr. Peiris did not give me a description of the case, but he said 40 it was in regard to property. He did not tell me

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.

Cross-  
examination  
- continued.

it was a case of Millie Silva one on side and Dulcie on the other. He did not tell me on what points I was to give evidence. He told me "whatever you know you say."

Q. You never told Peiris nor was he aware of the evidence you could give regarding this property case? A. Yes. I know Driver John. I did not discuss with him the evidence I was going to give in this case. After the death of the deceased I did not talk to driver John. After the deceased's death my brother came and took me home. I have come to Court in connexion with this case about 4 or 5 times inclusive of today. The first time I came to Court was sometime last year: I do not remember the date.

10

I cannot say when prior to my coming to Court for the first time I had spoken to the lawyers about this matter. I cannot say whether it was a few days earlier or a month earlier. I have met driver John in Court on the days I came to Court. I did not tell him what evidence I was going to give in this case. I did not talk about this case. I did not ask him why he came to Court. Mr. Peiris had told me that the case was for today and asked that I should come to Court. I told him that I will definitely come to Court and that he need not trouble to take out summons against me. I knew that summons had to be taken out to compel a witness to attend Court.

20

I am not employed at Makola. Mr. Peiris pays me my expenses. He gives me my food and other expenses here and when I am leaving he gives me Rs.5/- for my trip home.

30

Summons in this case was never served on me. I talked to Mr. Peiris for the first time only after the death of the deceased. That was when he came to my house to ask me to tell the Court what I know about this case. On that occasion Mr. Peiris came with Dulcie Nona.

Interval.

40

Sgd. V. Siva Supramaniam  
A.D.J.

3.2.56.

After Lunch. Appearances as before.

In the  
District Court  
of ColomboA. ALOE Nona - Recalled - Affirmed.Petitioner's  
EvidenceCross-examination continued.

No. 35

K.A. Nona.  
Cross-  
examination  
- continued.

10 I have a brother. I have three brothers. They were living with me in my place in Makola in 1954, and 1955 and even today. Peiris had not spoken to one of my brothers before he spoke to me. I cannot remember when I first got employment under the deceased. I know that Millie has four children.

Q. How old was the youngest child when you took employment under the deceased? A. I cannot say.

Q. You had met Millienona and children soon after you got employment under the deceased? A. I met Millienona and her children about 8 or 10 months after I took employment under the deceased. I met all the four children.

20 Q. How old was the youngest child at that time roughly? A. About 10 or 12 years old. I was at Matale with the deceased for about 6 or 7 years. I spoke about a bathing incident at Matale. Millie Nona, the children and the ayah had come to spend their holidays.

30 Q. It was usual for Millienona, children and the ayah to spend the school holidays in Matale with the deceased? A. There is an estate called High Walton Estate where there is a bungalow and Millie Nona and the children spent their time during the holidays in that Bungalow. That High Walton Estate is about 2 miles from Navagala Estate. In Navagala Estate there is only a small bungalow. The incident I referred to took place at Navagala Estate where they had come for a bath from High Walton Estate. There is a spring near Navagala Estate. It was a usual thing for Millie Nona, the children and the ayah to take a bath at the spring whenever they come for the holidays.

40 Q. Can you tell me how many years after your employment this incident took place? A. About 4 or 4½ years.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.  
Cross-  
examination  
- continued.

Q. Would you agree that the eldest child of Millie Nona would have been about 15-16 years old?

A. Yes.

Q. You say on that occasion Millie Nona and all these four children, the eldest of whom was 15 years, and the ayah had a bath in the spring?

A. Yes.

Q. As they always do? A. Yes. The eldest child is a boy. The 16 year old child I referred to was a boy. The ayah was a relation of Banda driver. She was about 18 or 19 years old. The spring is on a much more lower level than the bungalow. The spring can be seen from the bungalow. It is more or less  $\frac{1}{2}$  mile from the bungalow and it is visible to the bungalow. I was in the kitchen and the spring is visible to the kitchen.

10

Q. You were looking in the direction of the spring to see what was happening? A. I was not looking in that direction, but the spring is visible when you go and come from the kitchen. When the deceased shouted out, I heard it and I came out and looked and saw. I saw the children. I saw the ayah. I also saw the driver leading Millie Nona by her hand. Millie Nona, the children and the ayah were going down for a bath. I saw the driver holding Millie Nona by the hand in the presence of the children and the ayah.

20

Q. Did the driver take her by the hand right from the house up to the spring? A. No.

Q. For what distance did he do that? A. There is a passage from the road to go to the spring and I saw Millie Nona being held by her hand and led by the driver down that passage to the spring.

30

Q. For what distance? A. 2 or 3 yards.

Q. Even after that incident Millie Nona and the children have gone to High Walton for their holidays? A. No. They never came.

Q. When did you see Millie Nona after this incident? A. After that we came to live at Kaldemulla and 7 or 8 months after we had come to Kaldemulla I met Millie Nona at Kaldemulla. The bathing incident was about  $1\frac{1}{2}$  years or so before we came to Kaldemulla. I do not know Victor Fernando the headman, very much. I have seen him.

40



He has come to the house of the deceased, at Kaldemulla.

In the  
District Court  
of Colombo

Q. You listened to the conversation the deceased had with the headman? A. No. I do not know why Victor Fernando called on the deceased. I know the mother of Dulcie. I do not know whether the deceased had made complaints to the Police against Dulcie's mother.

Petitioner's  
Evidence

No. 35

10 Q. Do you know whether the deceased had quarrels with Dulcie's mother at any time? A. No. After the deceased came to Kaldemulla she never came there till his death. I referred to a meeting which took place in Kaldemulla. That meeting took place in the portico. That house is a fairly large house.

K.A. Nona.

Cross-  
examination  
- continued.

Q. The kitchen is far away from the portico?  
A. The kitchen is within earshot from the portico. I do not know the gentlemen who were present at the meeting. I was at the meeting.

20 Q. You could not identify any of those people?  
A. The only person whom I knew among those who were present at the meeting was the deceased's nephew Darling. There were 7 or 8 others. Millie Nona was the only lady present. The other 7 or 8 people I saw for the first time that day. I cannot remember at what time the meeting took place. I was at the meeting for a short while and then I went to the kitchen. Millie Nona was present at the meeting right from the commencement.  
30 Millie Nona was the first person to come for the meeting. Thereafter the 7 or 8 gentlemen came for the meeting.

Q. Were you present at the discussion between Millie Nona and the 7 or 8 people? A. No.

Q. You do not know what transpired at the meeting?  
A. Yes.

Q. How long after the deceased had come did this meeting take place? A. About 4 or 5 months after.

40 Q. Counsel for the respondents on instructions given to him states that the deceased came to reside in Kaldemulla in 1951. Do you accept that?  
A. No. I cannot accept or refuse to accept because I cannot remember the year.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.

Cross-  
examination  
- continued.

Q. How many months or days after the deceased came to Kaldemulla did this meeting take place?  
A. About 2, 3 or 4 months. At that time Millie Nona was living in Colombo. I had been to that place. That was during the lifetime of the deceased. When the deceased was living in Kaldemulla I have been to the bungalow of Millie Nona in Colombo. I know the upstairs house in Melbourne Avenue. I had been to that house during the lifetime of the deceased.

10

Q. With the deceased? A. No. With Marina Fonseka.

Q. The deceased too had gone there? A. He had not gone with us. He had left the house saying he is going there, but I personally do not know whether he went there or not.

Q. Do you know when Millie went into occupation of that upstairs house? A. I cannot remember.

Q. How many months or years before the death of the deceased? A. I cannot say.

20

Q. Whether it is a year or two years you cannot say? A. I cannot remember.

Q. Can you tell us how long after the deceased had come to stay at Kaldemulla permanently did Millie Nona go to live in this upstairs house? A. That is what I say I cannot remember. I do not know to whom that house belongs. The deceased never in the house mentioned about as to who the owner of the upstairs house was. I said the deceased had asked Millie to dismiss the driver Banda.

30

Q. You say until that request was made Millie used to come to Kaldemulla with the children? A. Yes.

Q. How long after the meeting was this request made? A. On the same day. So the deceased said in the bungalow.

Q. You were not present at the time the deceased asked Millie Nona to dismiss the driver? A. No.

Q. Do you know in whose presence that request was made by the deceased? A. Marina Fonseka was present.

40

Q. Anyone else? A. No.

Q. The deceased thereafter told you that he had requested Millie Nona to dismiss the driver?

A. To my hearing.

In the  
District Court  
of Colombo

Q. To whom did he mention that? A. He was telling that to Marina Fonseka to my hearing.

Petitioner's  
Evidence

Q. What exactly did he say to Marina Fonseka?

A. He told Marina Fonseka that he requested Millie Nona to discontinue the driver Banda but she told that under no circumstances she was prepared to discontinue him.

No. 35

K.A. Nona.

Cross-  
examination  
- continued.

10 Q. After that incident did you ever see Millie Nona? A. About 3 or 4 months after that meeting Millie Nona came to the bungalow, when I met her.

Q. With her children? A. Yes. The deceased was there at that time. The deceased was well at that time.

Q. Thereafter when did you meet Millie Nona?

20 A. After that when the deceased fell ill Millie Nona came to the bungalow.

Q. You told us you had seen her a number of times in the upstairs house in Colombo? A. Why I also lived in that house.

Q. You said earlier while you were living in Kaldemulla with the deceased you had gone to the upstairs house in Colombo? A. I had gone there one day.

30 Q. Was it before the deceased requested Millie to dismiss the driver or not? A. Before. I referred to a certain letter in the course of my examination-in-chief.

(Shown P10) Q. Is this the letter? A. I cannot read or write. I saw the letter being written. It was written by Simon Kankanama.

Q. That is M.D. Simon Perera? A. May be.

Q. He was working under the deceased when you took employment under the deceased? A. Yes.

Q. Simon Perera was the person who looked after all the business affairs of the deceased?

40 A. That I do not know exactly.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.  
Cross-  
examination  
- continued.

Q. Simon Perera used to visit the deceased very frequently? A. No; once in two weeks or once a month.

Q. This letter was written by Simon Perera in the room in which the deceased was? A. No, in the hall.

Q. Did you see the deceased making any endorsements on that letter? A. No.

Q. Were you present until this letter was written out? A. Yes. 10

Q. Close to Simon Perera? A. Yes.

Q. Watching what was happening? A. Yes.

Q. How long did it take? A. Quickly it was written.

Q. Was there any inquiry about that letter?  
A. That I cannot remember.

Q. Did Dulcie or Dulcie's mother or Dulcie's husband come to the house after the letter was written out? A. No.

Q. The police arrived on the date the body of the deceased was brought to the house? A. I was ill. At the time the body was brought to the house I was seriously ill and confined to a room two rooms away from where the body was. I cannot say whether the police arrived or not. I do not know whether the car or the safe was removed from the house. 20

Q. On the following day did the Inspector of Police come to the Bungalow? A. I do not know because I was ill and lying down unable to get up. 30

Q. Was the mother of Dulcie in the house on the day the body was brought? A. No.

Q. On the following day? A. After the body had been brought to the bungalow Dulcie brought her there.

Q. Was Dulcie's mother in the house on the following day? A. Yes.

Re-examined

Millie Nona had four children. Millie Nona had a boy, who was the eldest in the family, and three girls. That boy is called Lala Baby.

Q. Did Lala Baby leave for England when you were under Millie Nona? A. Yes.

Q. Then there were the three daughters and Millie Nona in house? A. Yes.

10 Q. Have you any displeasure against Millie Nona or Dulcie Nona? A. Nothing. At present I am at home doing nothing. To give evidence in this case Dulcie Nona and Mr. Peiris contacted me first. That was 2 or 2½ years ago. Mr. Peiris said with regard to the case if you know anything while you were in the house will you tell that without fear; don't tell anything other than the truth. I said I will tell whatever I knew, tell me the date when I should come to Court. After that Dulcie Nona and Mr. Peiris took me to the Proctor. The Proctor questioned me. Then I told him I knew such and such and I could give that evidence.

20

Q. What are such and such? A. I told him I will give evidence with regard to whatever I knew that were in the house and what was happening in the house. I mentioned about the bathing incident.

Q. Did you tell the proctor that incident? A. Yes.

Q. You referred to the incident about a meeting under the portico in Kaldemulla? A. Yes.

30 Q. Did you tell that to the Proctor? A. Yes.

Q. How many times did you go to Counsel's house in connexion with this case? A. Two or three times. The first time was about 1½ or 2 years ago.

Q. Were you asked about these two incidents in the Counsel's house? A. Yes.

Q. Did you refer to these incidents? A. Yes.

Q. After that did you go to Counsel's house with the proctor and others once or twice? A. Yes.

40 Q. Again were you asked about these two incidents? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.

Re-examination.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 35

K.A. Nona.  
Re-examination  
- continued.

Q. You were cross-examined and you gave an answer to Court "I did not tell this to outsiders". What did you mean by that? A. What I meant by outsiders were neighbours or those who had no interest. I referred to the meeting in the portico in Kaldemulla in the deceased's house. I referred to a person called Darling. I used to call him Darling Mahatmaya. He was related to the deceased. He was a son of an elder sister of the deceased.

Q. Who brought Millie Nona to the portico for this meeting? A. John driver. 10

Q. Was John driver also present when this meeting took place? A. Yes.

Q. Was it a talk or a meeting? A. It was a discussion. About 7 or 8 and others got together and had a talk.

Q. That is what you referred to as a meeting?  
A. Yes.

Sgd. V. Siva Supramaniam  
A.D.J.

20

No. 36

P.V.H.F.Perera.

Examination.

No. 36

P.V.H.F.PERERA

P.V.H.F. PERERA - Affirmed - V.H. 548 - Kaldemulla.

I have been a Headman for 2 years and 3 months. I know Letitia Peiris. I am not the headman of the area where they reside. I am the headman of the Kaldemulla division. Letitia Peiris is living in Laxapathiya, the adjoining village. One day Letitia Peiris made a complaint to me with regard to a letter. I have the complaint in Court. (Witness reads the complaint) 30

(Sir Lalitha Rajapaksa marks as P16 a copy of the complaint.)

(Shown P10) This was the letter. I made inquiries. I questioned the manager called Simon. I recorded Simon's statement. I produce P17 a copy of his statement. (Witness reads the statement) The date of the complaint is 3.3.54. Letitia

Peiris' mother, Nancy Catherine Fernando, made a complaint to me on the 24th in regard to an incident in the funeral house of the deceased. (Witness reads the complaint).

(Sir Lalitha Rajapaksa marks a copy of the complaint P18).

Cross-examined

10 The complaint by Nancy Catherine Fernando was made on the 24th. That appears at page 55 of my book. It is signed by her.

(Witness underlines her signature.)

Q. At the bottom of page 55 there is an initial?

A. That is my signature dated 25 February. At page 56 there is a reference to the date 23 February.

Q. What is that reference to 23 February?

20 A. I had made inquiries with regard to the property belonging to S. William Fernando and made a report to the D.R.O. that he was possessed of property over Rs.2500.

(Further hearing on 9.2.56).

Sgd. V. Siva Supramaniam.  
A.D.J.

9.2.56.

Appearances as before.

30 In regard to the correction suggested by Sir Lalitha on the last date, namely, the last question in cross-examination on page Mr. Navaratnarajah states that he has no clear recollection of the matter but that so far as he can recollect, having regard to the previous questions put by him, the question was "You say seriously you never met the deceased after May or June 1951".

P.V.H.F. Perera - Recalled - Affirmed:

Cross-examination continued:

I took up appointment as headman for the first time on 11.3.53 for the division of Kaldemulla.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F. Perera.  
Examination  
- continued.

Cross-  
examination.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.

Cross-  
examination  
- continued.

That is not the division in which Mr. Austin Peiris or Mrs. Peiris resides. In 1953 and 1954 the headman of the division in which Mr. and Mrs. Peiris resided was the headman of Laxapathiya. He is T.V.J. Peiris.

Q. For how long has he been the headman of Laxapathiya?

A. I cannot give the date. He was appointed about a month after my appointment. The diary is issued by the Government every year. I was issued a diary for 1953. I have brought to Court my diary for 1954.

10

(Shown page 9 of the diary for 1954)

Q. At page 9, third line from the bottom, you have enclosed something in a bracket? A. Yes.

Q. Why have you enclosed that in a bracket?

A. That is my signature bracketed. Simon Perera made a statement to me and I recorded that statement at page 63.

(Shown page 63) Q. Are not the last two letters written over an erasure? A. No.

20

Q. Look at it closely? A. There the impression is stronger.

(The letters are underlined by me in red)

Q. There is a blot of ink? A. Yes.

Q. Are the last two letters of that word written over an erasure? A. No, but the ink dropped on that spot. I blotted it with the handkerchief and wrote on it.

(The letters are underlined by me in red)

Q. The first word underlined is "sitiya"? A. Yes.

30

Q. What is the meaning of "sitiya"? A. I met him or that he was there.

Q. What is the Sinhalese word for the phrase "was not there"? A. "Sitiyena".

Q. Had you put down "sitiyena" first and then put "sitiya"? A. No.

Q. Read the sentence in which the word "sitiya" occurs? A. I went to meet Simon Perera. I met him there and he stated ...

40

Q. Look at the second word? A. It is "keemata nivi".



Q. What is the meaning of that? A. Not at his request.

Q. If it is at his request what is the word?

A. "Kiyasitiya" or "keemata".

Q. Did you write "keemata" first and then alter it to "keemmata nivi"? A. No. The ink dropped there and there was a blot after I had written the word. These two words were not written over erasures, but it was blotted with a handkerchief.

10 Q. Did you try to erase the ink blot? A. No. I did not have an erasure at that time. I only used my handkerchief.

Q. Did you at any time use the erasure in regard to these two words? A. I never use an erasure on the diary. If I made a mistake I would have bracketed it. If I make a mistake, the rule is that I should bracket the wrong word. I knew that in 1954.

20 Q. Look at the first letter underlined in red. Do you see a small line descending below the red line? A. It is there.

Q. For how long have you known Mr. Peiris? A. For about a year now.

Q. When did you meet him for the first time? A. I met Mr. Peiris for the first time when he accompanied his mother-in-law who came to me to make a complaint on the 24th. That is the complaint that appears at page 55 of this book. That complaint was made to me on the 24th.

30 Q. Did you go to the house Nancy Villa on the 23rd? A. Yes.

Q. Was there a dispute there about a car? A. Yes.

Q. Why did you go there? A. I was taken by the police.

Q. You met Mrs. Millie Agnes de Silva? A. Yes, inside a room.

Q. Did she talk about a last will? A. She did not talk to me anything.

40 Q. Did she mention that there was a last will in her favour? A. No. I said there was a

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.

Cross-  
examination  
- continued.

dispute about the car. What I meant was that there was a discussion over the switch key being not given so that the car may be used to make arrangements for the funeral.

Q. Did anybody that night, 23rd night, claim the car? A. Yes.

Q. Who claimed the car? A. The deceased baas unnahe's wife Nancy Catherine Fernando.

Q. She claimed the car as her own? A. She asked for the car so that it may be used to make arrangements for the funeral. 10

Q. She claimed the car as her property? A. She did not claim the car as her property, but she was asking for the car so that it may be used to make arrangements for the funeral.

Q. Did anybody claim the car as his or her property? A. There was no claimant for the car, but there was a refusal to give the car. I went with S.I. Joachim, P.C. Jayawardena and another P.C. 20

Q. These officers talked to the ladies Mrs. Millie Agnes de Silva, Mrs. Peiris and the widow of the deceased in Sinhalese? A. No, in English also.

Q. Who talked in English? A. Mrs. Agnes de Silva spoke to the police in English.

Q. There is an entry here in regard to your visit to Nancy Villa at page 54? A. Yes.

(Mr. Navaratnarajah marks as R23 a certified copy of the statement that appears at page 54)

This is an entry made at my request by S.I. Joachim when I wanted to leave for home. 30

(Mr. Navaratnarajah states that he will call Joachim who has made the entry to prove the entry.

Sir Lalitha objects on the ground that Joachim is not a witness.

Mr. Navaratnarajah states that he will call Joachim for the purpose of proving the entry and that he will not question Joachim on any other matter. 40

ORDER - I allow the document to be marked and Joachim to be called for that purpose.)

Q. Mr. Joachim in his statement says that Mrs. Millie Agnes de Silva claimed the car under the last will in her favour? A. Yes.

In the  
District Court  
of Colombo

Q. Will you admit that as correct? A. I was not present at the discussion S.I. Joachim had inside. I was waiting out. When I gave the diary to him for him to make an entry so that I may leave he wrote that entry.

Petitioner's  
Evidence

No. 36

10 Q. Now you say you were not present when the police officers had a discussion with Mrs. Millie Agnes de Silva? A. The Police Officers and Mrs. de Silva had discussions not once. They had discussions on or about 6 or 7 times. Once I saw them discussing in English, but I did not hear the discussion.

P.V.H.F.Perera.

Cross-  
examination  
- continued.

Q. Did you hear the discussion the police officers had with Mrs. Austin Peiris? A. That I cannot remember.

20 Q. Were you present when the police officers had discussions with the widow of the deceased? A. Yes.

Q. Did you make a record of what happened at Nancy Villa that night in your diary? A. Yes.

Q. At what time were you at Nancy Villa that night on the 23rd? A. When the police came to take me it was about 10 p.m. I am unable to be exact.

Q. Till when were you there? A. I think as far as I could remember I was there till about 1 a.m.

30 Q. When did the widow of the deceased make the complaint to you? A. That was on the 24th about 6 a.m. Mrs. Peiris made a complaint to me on 3.3.54. She did not come alone. She came with her husband. She showed me letter P10.

(Shown P10). Q. The writing that is sidelined in red in P10 is not by the same person who has written the rest of the letter? A. Yes. Mrs. Peiris said this letter was given to her on 20.2.54. She also told me that as a result of this letter she did not go to see her father in Nancy Villa. She also told me that she knew on the 20th that this letter had not been written on the authority of her father.

40

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.

Cross-  
examination  
- continued.

Q. She also told you that the deceased was alive till 23 February? A. She did not tell me.

Q. You knew that the deceased was alive till 23 February? A. I knew it.

Q. Didn't you ask her why she did not come and make the complaint on the 20th when the deceased was alive? A. Yes. She gave a reply. She told me that the delay to come was because she had lot of trouble and worries on account of the illness of her father and could not find the leisure or time to come to me.

10

Q. Did she also tell you that her mother had made an application to Court in connection with this matter on 2.3.54? A. No. I did not know that.

Q. Did you ask her who according to her wrote the writing which is sidelined in red? A. Yes.

Q. What did she tell you? A. She said she did not know.

Q. She did not know whose writing it was? A. Yes.

20

Q. Did you ask her in whose writing the rest of the letter was? A. Yes.

Q. What did she say? A. The Manager's writing.

Q. She did not give the name? A. She said this was the handwriting of the manager.

Q. You recorded whatever she said in your note book? A. Yes. The statement made by Mrs. Peiris appears at page

(Witness reads P16)

30

Q. Will you admit now that you have not recorded all that Mrs. Peiris told you on that date? A. It was after recording her complaint that I questioned her with regard to the contents as to who could have written the letter and so on.

(To Court: Q. What she told you in reply to your question you did not record? A. No.)

Q. You told us earlier that at no stage Mrs. Peiris gave you the name of the manager as Simon?

A. She said manager. Then I told her I must have the name of the manager. Then she said Simon Perera.

In the  
District Court  
of Colombo

Q. According to the statement P16, the entire letter P10 is alleged to have been written by Simon Perera? A. Yes.

Petitioner's  
Evidence

No. 36

10 Q. But you told us earlier that she told you part of the letter was written by Simon Perera and part had been written by a person whom she cannot identify? A. I have recorded the complaint in the way she had made it. After the complaint was recorded by me, when I questioned about the letter in detail, she gave me those replies which I have given in evidence.

P.V.H.F.Perera.

Cross-  
examination  
- continued.

Q. Did you think the complaint made by her disclosed an offence? A. Yes.

Q. You took the view that if what she stated was true Simon had committed an offence? A. That Simon had committed a wrong.

20 Q. Did you ask Simon who wrote the writing sidelined in red? A. Yes.

Q. What did he say? A. When I questioned Simon he told me that the upper portion of P10 was written by himself and the sidelined portion was written by Lala Mahatmaya.

Q. I put it to you he told you that the portion sidelined in red was in the handwriting of the deceased? A. No.

30 Q. Did you note down in your diary that the portion sidelined in red was in the handwriting of Lala Mahatmaya? A. It was after I recorded Simon's statement that I questioned about this letter. It was then that he told me that the lower portion had been written by Lala Mahatmaya.

(To Court:- Q. Did you record that in your diary?  
A. Then I asked him whether he was prepared to give me that statement to be recorded. He refused.

40 Q. Did you record the fact that you asked him to give that statement and that he refused?  
A. No.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.

Cross-  
examination  
- continued.

Q. If you went to investigate into what you considered was an offence and the person made a further statement, isn't it your duty to record it? A. It is my duty.

Q. You failed in your duty in not recording it? A. Yes.)

Q. Did you find out where Simon Perera lived at the time? A. I knew that Simon Perera was living in an adjoining land. Further I questioned about Simon Perera from one Marina Fonseka and she also said that he was living on that land. 10

Q. What is that land called? A. It bears No.84 and the name is Nancy Villa. The land has no name.

Q. That is where Mrs. de Silva was living at that time? A. No, I have not seen Mrs. de Silva living in that house at any time.

Q. Did you find out who were living in that house at that time? A. Yes.

Q. Who were living in that house at that time? A. Marina Fonseka, another wife of the deceased, was living in that house. 20

Q. The deceased was a well known man in the village? A. Yes.

Q. I put it to you that you sent for Simon Perera and Simon Perera came to your house? A. I sent for Simon Perera but he did not come to my house.

Q. Have you made a note of that fact in your diary? A. No.

(Lunch)

Sgd. V. Siva Supramaniam.  
A.D.J.

30

9.2.56.

After Lunch.

P.V.H.F.Perera, Affirmed, recalled.

Cross-examination continued:

Mrs. Peiris made a complaint on 3 March - I cannot remember whether it was made at midday.

I met Simon Perera for the first time on 4 March at about 8 p.m. That was not the first time I met Simon Perera. I had met him before. I did not know he was working under the deceased for a number of years. I knew he was the deceased's Manager. I told Simon Perera of the complaint made by Mrs. Peiris. I did not show him the letter P10. I did not take the letter with me. I never showed him the letter. Mrs. Peiris had not given the letter to me at any time. I asked Simon Perera at whose request he wrote the letter, whether he wrote it of his own accord or at the request of the deceased or at the request of any one else.

10

Q. Did you also tell him that the letter appeared to be written by two persons? A. No.

Q. At no time did you tell him that the letter appears to have been written by two persons? A. No.

20

Q. The question as to whether the letter was written by one or two persons did not arise in the discussion you had with Simon Perera? A. It arose. I asked him who wrote the letter. Then he said the upper portion of the letter was written by him and not the lower portion. After he made his statement in answer to my question he told me that he did not want to put Lala Mahatmaya in trouble.

30

Q. That is, after the statement was signed by him he told you that the earlier statement made by him that the entire letter was written by him was incorrect? A. In accordance with the legal requirement he made the statement. But after he made the statement he discussed with me the circumstances that led to the letter being written and to his having signed it, but he did not want to say that because he did not want Lala Mahatmaya or any others to be in trouble.

40

Q. After the statement was signed he said that what he said earlier that the entire letter was written by him was not correct? A. Yes. After he made the statement and I had recorded and signed it he said that he made that statement fearing that Lala Mahatmaya might fall into trouble, but what actually happened he explained to me that the lower portion of the letter was not written by him. He

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.

Cross-  
examination  
- continued.

In the District Court of Colombo

Petitioner's Evidence

No. 36

P.V.H.F.Perera.

Cross-examination - continued.

also said that the lower portion was written by Lala Mahatmaya. He told me that Lala Mahatmaya was Mrs. Silva's son. I was conducting an inquiry to find out by whom the letter was written. I did not question Lala thereafter because he was not resident of that village. I did not make inquiries about Lala or go to question him because in the statement Simon Perera made to me at the inquiry he did not mention Lala Mahatmaya. He mentioned him subsequently.

10

Q. Did you tell us earlier that you did not question Lala Mahatmaya because he was not residing within your jurisdiction? A. I intended saying so. I intended to give such a reply, but I stopped halfway. I asked Simon Perera why he wrote that letter. He told me that he wrote that letter at the request of Lala Mahatmaya, Mrs. Silva and Mr. Peiris.

Q. That is, his position was that these three people instigated him to write that false letter? A. I cannot say whether it was a false or true letter. That is the statement he made. That is what he told me. That letter is alleged to have been signed by the deceased. Mrs. Peiris complained that it was not the handwriting of her father.

20

Q. Did she complain to you that letter was never sent with the authority of the deceased? A. I cannot remember the complaint that she made as it was made a long time ago. It was made in that manner.

30

Q. Have you no recollection today of the statements made to you by Mrs. Peiris? A. This complaint was made some number of years ago. Only after a reference to the book that I could remember the complaint.

Q. Independently of the book you have no recollection? A. It is not possible for me to give the complaint in toto without the book. I can give a gist of what she said. (Shown P16) She complained that her father did not write the letter.

40

Q. Your object in questioning Simon Perera was to find out whether the letter was sent with the authority of the deceased or not? A. Yes.

Q. Did you question Simon Perera whether it was sent with the authority of the deceased? A. No. I questioned him.



Q. And Simon Perera said that he sent the letter at the request of Lala Mahatmaya, Mrs. Silva and Peiris? A. Yes.

In the  
District Court  
of Colombo

Q. So that in the statement Simon Perera made to you which you recorded Simon Perera had implicated Lala Mahatmaya? A. Yes.

Petitioner's  
Evidence

Q. In that case wasn't it your duty to question Lala? A. It was my duty.

No. 36

Q. And to question Mrs. Silva? A. Yes.

P.V.H.F.Perera.

10 Q. And you knew who Mrs. Silva was? A. Yes.

Cross-  
examination  
- continued.

Q. And also to question Mr. Peiris? A. Yes.

Q. And Mr. Peiris lives at Kaldemulla? A. I made inquiries for Mr. Peiris but I could not identify him. I asked Simon Perera who this Mr. Peiris was. He said he was a person who was living near about this house. That is in Kaldemulla. I did not ask Simon to point out Peiris's house.

20 Q. You knew it was your duty to question Peiris? A. Yes. I did not ask Simon Perera to point out Peiris' house because I did not think at the start that this thing would go to this extent and I did not take it seriously as it was a civil matter. Now I realise that it was my duty to pursue the matter.

Q. I suggested to you earlier that the second word underlined in red at page 63 (of P19) was "Keematai"? A. Yes.

30 Q. And I suggested that you had erased the word "I" and put down "Nivi"? A. I deny that.

Q. If the word was "Keematai" it would show that that letter was written with the authority of the deceased? A. Yes.

Q. Did you question Simon Perera or any one else about the health of the deceased? A. No. Simon Perera told me that the deceased was not in his senses, or unconscious.

40 Q. So that Simon Perera told you that he had written a false letter at the instigation of these three people when he was unconscious? A. Yes.

In the District Court of Colombo

Petitioner's Evidence

No. 36

P.V.H.F.Perera.

Cross-examination - continued.

His statement that the deceased was unconscious was recorded.

Q. In fact he admitted he was guilty of having done something wrong? A. Yes.

(Witness volunteers after some time:)

He also said that he was a person working under them, he will do anything that is requested so long as he was their servant.

Q. He told you also that he was working under Millie Nona; Lala Mahatmaya and Peiris? A. No. 10 He told me that he was working under the deceased. When the women relations or men relations of the deceased requested him to do anything he would do it. He told me this after the record had been made and we were having a talk. The word "unconscious" occurs at page 63. (Mr. Navaratnarah underlines the expression in blue pencil). The word "unconscious" occurs at the end of a line and the word "No" commences the next line. The signature of W.D. Simon Perera appears in the line below 20 the line commencing with the word "No". The word after "No" is my statement that I read over and explained the statement to Simon Perera. After I had read over the statement I gave the book to his hands. He also read it.

Q. What you tell us is that he was not satisfied with what you read out. He wanted to read it himself? A. He read it over. I had prepared 30 copies of the statements when I came to Court on the last date and I had them with me. But they were handed to the lawyers in Court on the last date.

Q. Until that date you had not shown your diary or your copies to the lawyers? A. I had shown the 40 copies earlier. Mrs. Peiris saw me again on the 4th March. She asked me whether I had made inquiries. In her statement she did not request me to question Simon Perera. She asked me to find out and inform her. She did not specifically request me to question Simon Peiris. When a complaint is made to me it is my duty to inquire into it. I told Mrs. Peiris that Simon Perera had admitted that he wrote the letter with the authority and at the instigation of these three people.

Re-examined.

(Sir Lalitha marks the diary as P19)

This is my diary for 1954 which was kept by me in the ordinary course of business. I was referred to an ink mark at page 63. (Shown page 7) There are ink marks on this page at two places. When there is excess of ink in the pen and there was fresh ink in the writing when the book is closed it gets smeared. At page 63 there is a portion that Counsel underlined in red which is "Sitiya". At page 63 is Evelyn Letitia's complaint.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.

Re-examination.

10

Q. The particular sentence in Sinhalese where it was suggested there is an erasure reads as follows: I went to meet the manager called Simon Perera who is now presently residing in the house called Nancy Villa? A. Yes. The Sinhalese words there being "Moona Gassimeta" I went to meet face to face.

20 Q. Moona is face, and Gassimeta to meet? A. Yes.

Q. The next sentence which is the one about which an erasure was suggested is this: Ahi a aya moona gassi kiyasitiya? A. They are: That person met face to face and stated.

Q. The next word Kiya is said? A. Yes.

Q. The next word is a portion of the intransitive verb? A. Yes.

Q. Ahi "there" a aya "that person" Moona gassi "Face to face met" kiyasitiya "stated"? A. Yes.

30 Q. Kiyasitiya is a tense of the Sinhalese word Kiyana. Is that right? A. Yes. The first sentence is "I went to meet Simon Perera face to face". The next sentence is, "Having met him face to face and he stated".

Q. The suggestion is not with regard to meeting him face to face. The suggestion with regard to the alleged erasure is with regard to the tense of the word said. Is that right? A. Yes.

40 Q. The allegation is with regard to the letters denoting the past tense of the word said? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.  
Re-examination  
- continued.

Q. Kiyasitiya means "He stated"? A. Yes.

Q. It has nothing whatever to do with your meeting face to face because you have already said earlier that you met him face to face? A. Yes.

Q. An alteration with regard to the past tense of sitiya has no effect one way or the other? A. Yes.

Q. You swear that there is no erasure with regard to the word sitiya at all? A. Yes.

Q. The next portion that was underlined by Counsel in cross-examination relates to the sentence apay mahatmayage kiyamat nivi. That means "Not his saying"? A. Yes. 10

Q. It was suggested to you that the word Nivi was written upon an erasure. Does an erasure appear? A. It is not on an erasure. It is a blob of ink.

Q. The suggestion was that the original word was Kiyamatai and instead the word nivi has been written? A. Yes. Kiyamatai is four letters in Sinhalese. 20

Q. The suggestion is that you had written four letters there originally and that it was erased and 2 letters for Nivi written? A. Yes.

Q. That instead of the last Sinhalese letter in Kiyamatai the word Nivi has been written. A. Yes.

(The witness is directed to write the word Kiyamatai on a sheet of paper. He does so. He is also directed to write the word Nivi below. He does so. 30

The document is marked P20.)

Q. The suggestion that is made to you is that what appeared originally was Kiyamatai and you erased that and put nivi? A. Yes.

Q. Kiyamatai occupied a space of four letters. The next letter begins just after that? A. Yes.

Q. To begin with there is no erasure? A. Yes.

Q. The word Ni has to be added in the same line between the letter Me and Ni? A. Yes.

Q. That you tell His Honour is an impossibility? A. Yes. 40

Q. Another thing that was referred to was this: In the same document P17 occur the words Apay mahatmayata hondatama sihiya nathe "Our master was fully unconscious"? A. Yes.

In the  
District Court  
of Colombo

Q. The suggestion was made that sihiya is at the end of a line and nathe at the beginning of the next line. Can you write in any way other than that your Sinhalese language? Is there any space to continue after the word sihiya? A. As there is no space there is no other way of writing.

Petitioner's  
Evidence

No. 36

P.V.H.F.Perera.

Q. You can take page after page in this where a word ends a line and another beginning the next line? A. Yes.

Re-examination  
- continued.

Q. If the word nathe is not there there will be a space left? A. Yes.

Q. That you do not do in your diary? A. Yes.

Q. A reference was made to page 9 of something in brackets. You said that was your signature? A. Yes. I am giving evidence in Sinhalese now. This diary had been kept by me in Sinhalese. At page 54 is the document R23. I gave my diary to Mr. Joachim requesting him to sign my diary and give it as I wanted to go away. Joachim did not say anything. He took my diary, recorded R23, and gave it to me. R23 is in English. It was not made by me.

(To Court .. I can read and write a little English. I passed the 7th Standard in English)

Q. You questioned Simon Perera and he made statements to your questions? A. When I made inquiries from him this is the statement he made which I recorded.

Q. Did you give your written record to Simon Perera to see before he signed? A. After recording Simon Perera's statement I read it to him and gave the book to him to read and sign it.

Q. Did he read it? A. I do not know whether he read it. But he took the pen and signed it. He perused it: he looked over it and signed. This is his signature.

A Certified copy of this statement is P17.

At page 55 a portion has been underlined.

In the District Court of Colombo

Petitioner's Evidence

No. 36

P.V.H.F.Perera.

Re-examination - continued.

That is the signature of Nancy Catherine Fernando. Nancy Villa is at Kaldemulla. That is the house in which the deceased lived before his death.

Q. The allegation of Evelyn Letitia was that a letter was alleged to have been sent from Nancy Villa? A. Yes. I am the headman of Kaldemulla. That is the area in which Nancy Villa stood and in which the deceased lived. Laxapathiya and Kaldemulla are 2 villages divided by a road. A complaint was made to me by Mrs. Peiris. Pl6 states, "Please inquire from Simon and let me know at whose instigation that letter was written".

10

Q. That was the request made to you? A. Yes. I questioned Simon. I was satisfied with his reply. I was asked why I did not proceed further and question Lala Baby, Mrs. Silva and Mr. Peiris. I had not been requested to question them by the complainant and also I did not think that this was a matter that had to be pursued to such length, and as it was a civil matter I did not think it would be necessary to inquire at length.

20

Q. With regard to the incident after deceased Fernando's death: You were asked a question as to whether you were told about a dispute with regard to a car? A. Yes.

Q. You told His Honour that there was a dispute with regard to the switch key of a car? A. Yes.

Q. Was any complaint made to you with regard to the ownership of a car by Millie Silva or anybody? A. At that time, no.

30

Q. How did you happen to go to Nancy Villa? With whom did you go? A. I was called by the police. S.I.Joachim, P.C.Jayawardena and another P.C. were there. I was asked to accompany them. The inquiry was conducted by Inspector Joachim.

Q. You were the village headman accompanying the police? A. Yes,

(The witness is directed to leave his diary behind in Court).

Sgl. V. Siva Supramaniam. A.D.J.

40

No. 37

G. J. APPUHAMYGAMAGEGODAGE JOHN APPUHAMY. Affirmed. 50 Car driver, Laxapathiya.In the  
District Court  
of ColomboPetitioner's  
Evidence

No. 37

G.J. Appuhamy.

Examination

I was the driver of motor car under deceased William Fernando. I first got employment under Mr. Fernando as driver in 1929 when my salary was Rs.25/- per month.

10 Q. How many years did you work as driver in that first spell? A. I cannot say. Roughly I worked for about 8 years.

During that time I knew Millie Silva and Dulcie as little girls attending school. About that time the deceased was doing business in India.

Q. Do you remember an incident connected with Mrs. Millie when she was a young girl? A. Yes. She was making preparations to run away with Joseph Mel a son of Velun Baas.

20 Q. What happened then? A. The deceased came to know of it. He told me to go along with his wife to the College and bring Millie back.

Q. Shortly what happened thereafter? A. After she was brought home Mr. Fernando got the police to guard the house.

30 Q. What else? Anything happened? What happened in the night? A. The house was guarded till daybreak. Then after a few days Millie was placed as a boarder in a school near the Galapalliya. Then I drove a Plymouth for the deceased. That car was sold after Millie Nona married a son of Mr. C.P. Silva. Thereafter the deceased bought another car which I drove. After driving that car for about 6 months I wanted an increase of my salary which Mr. Fernando was not in a position to pay me at that time and I left his services. He promised to take me back when he required me again. I returned to his service after the last war. At that time my salary was Rs.75/-.

40 Q. And what else? A. And a house to live in.

Q. What else? A. Nothing else.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Examination.

- continued.

Q. At that time when you were employed after the war where was your master residing? A. At Matale at Nowgala Estate.

Q. Who else lived with your master on that estate? A. Marina Fonseka.

Q. Who was cooking for the master? A. There was a girl, Nandawathie.

Q. Do you know Aloe Nona? A. Yes.

Q. Where was she? A. Aloe Nona was not there.

Q. Was not at Matale at Nowgala? A. About five months after I went to Nowgala Estate Aloe Nona came there as cook. 10

Q. During that time did Millie Nona and her children visit the old gentleman during the holidays? A. Used to come.

Q. Was Millie Nona's husband Mr. Silva alive or dead at the time? A. Dead.

Q. Did Millie Nona come to pay the father a visit? A. For the holidays she used to come to reside in the estate called High Walton belonging to my master and visit him. 20

Q. Tell us what happened on one of those visits? A. The old gentleman saw Millie Nona being ..... (Mr. Navaratnarajah objects to this evidence unless the witness is personally aware of the incident)

My master the old gentleman saw Millie Nona being held by her hand by the driver Banda and being led down the steps for a bath to the bathing place. Seeing which my master shouted out. I was on the verandah. I ran up and I also saw this incident. 30

(To Court - I cannot remember in which year this was. This was about 4 months previous to the deceased's death. Not before his death. About 4 months before he came to the village to live.

Q. How long prior to his death? A. The deceased came to the village to live about 3 years before his death and this incident took place while he was living on Nowgala Estate.) 40



Q. When the deceased saw this did you hear the deceased say anything to Millie Nona thereafter?  
 A. Yes. After Millie Nona came after the bath the master told Millie Nona "Dont behave in this uncalled for manner and dont be dancing here as you dance in Colombo".

In the  
 District Court  
 of Colombo

Petitioner's  
 Evidence

No. 37

G.J. Appuhamy.  
 Examination  
 - continued.

Q. What did Millie Nona say to that? A. She did not say anything.

Q. She remained silent? A. Yes.

10 Q. After that did Millie Nona come to the estate to see master? A. No.

Q. Then you say (you have already told the Court) your master returned to Kaldemulla? A. Yes. This was about 3 years before his death.

Q. What happened after the master returned to Kaldemulla? A. One day he asked me to go and fetch Millie Nona. I went and fetched her.

20 Q. What happened after you brought Millie Nona to Master's house? A. I brought Millie Nona and she took her seat under the portico. There were 4 or 5 other gentlemen who also took seats under the portico. Then the old gentleman said "Millie, that driver is not a good man. I will give you a good driver and also pay his hire". Then Millie Nona said "Father, in whatever way you may ask me I am not going to discontinue Banda driver".

Q. What happened after that? A. Then he said "You go immediately and dress him in trousers", and asked me to take her away at once.

30 Q. Was the deceased pleased with Millie's reply?  
 A. He got annoyed. I continued to be the deceased's driver till his death. This spell was about 10 years.

Q. Altogether you served the deceased for about 18 years in two spells? A. Yes.

Q. You remember an occasion when the retired headman of Kaldemulla went with the deceased to Colombo? A. Yes.

40 Q. What happened on that occasion? A. When my master, myself and one John Aiyah were returning from Colombo, my master had bought some things, we stopped on the way and he requested John Aiyah to take the things and give them to Millie Nona

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Examination  
- continued.

and come. Then the Village Headman who was with us asked my master why he was not going to that house. He said as long as that driver was there he will not visit that house.

Q. What is the name of that driver? A. Banda.

Q. You used to drive the car for the master?  
A. Yes.

Q. After this incident under the portico, to your knowledge, did the master ever go to Millie Nona's house? A. No.

10

Q. When the master came to reside at Kaldemulla do you know if Dulcie visited the master? A. Yes.

Q. How often? A. In the evening she came of her own accord sometimes to see him. Sometimes she was sent for by my master.

Q. After this incident under the portico did Millie Nona come to see the master? A. She came on 3 occasions before my master's death.

Q. Did she come on the occasion of the master's last illness? A. Yes.

20

Q. Who attended on the master in his last illness? A. Millie Nona came home and stayed over for about four days in his house.

Q. That was just prior to his death? A. Yes.

Q. Had the master a safe in the house? A. Yes.

Q. Do you know what the master put in the safe?

A. Yes. He put his cash, deeds, notes and valuable articles.

Q. Who had the key of the safe? A. Millie Nona had it with her.

30

Q. The master was taken to hospital? A. Yes.

(To Court - Q. How did she get the keys?

A. They were given to her by the deceased)

I know the Nilammahara Priest.

Q. What do you know about him? A. I drove my master in the car to the Nilammahara Priest.

Q. To take treatment? A. Yes.

Q. After that what happened? A. After that at the request of my master I had been taking the car and bringing the priest to the house on four or five occasions.

40

Sgd. V. Siva Supramaniam

A.D.J.

Further Hearing tomorrow.

10.2.56

In the  
District Court  
of Colombo

Trial resumed.

Same appearances.

G. John Appuhamy, Affirmed. Recalled.Petitioner's  
EvidenceExamination-in-chief continued.

No. 37

Q. Were you the eldest servant under William Fernando, the deceased? A. Yes. He knew me very well. My daughter is G. Darling. She was adopted by the deceased and Marina Fonseka on 8.5.53. I produce P21 a writing signed by the deceased and Marina Fonseka adopting my daughter. My name is Gamagodage Appuhamy and my wife is Sally Margaret Fernando. When the child was taken it was about 3 years old. She was taken for adoption when they were living on Nowgala Estate Matale. P21 was signed by the deceased and Marina Fonseka and the witness is Simon Perera. This was done in my presence. Simon Perera was the Kangany of the deceased.

G.J. Appuhamy.  
Examination  
- continued.

Q. Were you a trusted servant of the deceased? A. Yes. I have four children. This girl Darling is the second. The child is with me now. I got her back after Marina Fonseka died. Marina Fonseka died about 6 months after the deceased died. The deceased died in 1954. The day after the corpse was brought to the house I was discontinued by Millie Nona.

Q. How and why? A. She found fault with me for having worked for Mr. Austin Peiris the day after the deceased died. That is, when Mr. Austin Peiris went out to have obituary notices etc. printed I drove him in my car and she found fault with me for that and discontinued my services.

(Shown P21) The last portion says "on the 8th day of June 1953 at Kaldemulla". This document was written at Kaldemulla and not at Matale. He gave me this document after he came to Kaldemulla on 8.6.53. My child was actually given for adopting at Matale.

Q. You now know you are a devisee of Rs.1,000 under the will P11? A. The child Mr. William Fernando was telling me "Now I am old. I won't give you anything now. But I will make arrangements that you will get something after my death".

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.  
Examination  
- continued.

(Mr. Navaratnarajah wishes to show the document P21 to Simon Perera whom he will be calling as a witness.

Sir Lalitha has no objection provided the document is shown within the precincts of the Court.

The document is shown to the witness by Mr. Jayasooria in Court.

Mr. Navaratnarajah states that Simon Perera admits that he has signed the document as a witness).

10

After my services were discontinued I was unemployed for about 4 months. Then Mr. Austin Peiris bought a car and I became his driver. Up to date I am his driver.

Q. After you got service under Mr. Austin Peiris what did you do with Mr. Austin Peiris or at Mr. Austin Peiris' request? A. Before he bought the car Mr. Austin Peiris sent for me and asked me whether it was possible for me to point out the offices of the proctors who were the deceased's proctors when he was alive. I said I could do so. Two months thereafter he sent for me again. I came and along with him I went in a car belonging to a brother of his to Matale and showed him the proctor's office.

20

Q. Where else did you go? A. From there to Avissawella two days later. Two days thereafter I went to Navinna and about 3 or 4 days after that we came to Colombo.

30

Q. Anywhere else? A. No.

Q. Those were the offices of the proctors that your master had dealings with during his life time? A. Yes.

Q. Did you know the names of the Proctors?

A. Some I knew and some I did not know. I knew Samarasekera in Matale, Wijesekera of Moratuwa. I did not know the names of the other gentlemen.

Mr. Austin Peiris pays me a salary of Rs.100 and he has also provided me with a house for which I pay rent and also gives me coconut.

40

Cross-examined

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Cross-  
examination.

10 Q. The deceased told you that he would make arrangements so that you would get something after his death? A. He told me that he had already made arrangements for me to get something and that I will get it. He told me this at Kaldemulla when he was lying ill. This was a few months before his death. It is difficult to be exact in regard to the number of months as I cannot remember. The deceased died in February 1954. I know the house at Melbourne Avenue in which Millie Nona lives. I know that the deceased bought that house. The deceased did not buy the house when he was residing at Matale. He was residing at Kaldemulla at the time.

20 Q. How long prior to the purchase of the house did the deceased come to Kaldemulla? A. He came to Kaldemulla 3 years prior to his death. (Question repeated) He bought the house after he came to Kaldemulla. I cannot remember how long after he came to Kaldemulla he purchased that property. Whether it was a few years or months I cannot say.

30 Q. Having regard to the date of purchase of this house at Melbourne Avenue, can you tell us when the deceased told you about making arrangements so that you might get something after his death? A. I cannot say. I do not know that the deceased gifted the house at Melbourne Avenue to Millie Nona.

Q. To whom does that house belong? A. I know this fact, that I drove the car in which the deceased gentleman went when he went to buy the house, and he bought it.

Q. You still do not know how that was gifted to Millie Nona? A. I do not know. I referred to a meeting at Kaldemulla soon after the deceased arrived there.

40 Q. And do you say that after that meeting the deceased was angry with Millie Nona? A. Yes. He did not visit her. At the time of the meeting Millie Nona was living at Melbourne Avenue. I cannot be definite how long after the deceased came to Kaldemulla that meeting took place. Roughly it was about 3 weeks to a month or 2 months after he arrived at Kaldemulla.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Cross-  
examination  
- continued.

Q. So that the deceased was angry with Millie Nona until his death? A. Yes. No.

Q. Which is correct? A. When the deceased was seriously ill Millie Nona came there. The deceased was angry with Millie Nona till a few days before his death. I do not know that the deceased had gifted about Rs.25,000 to Mrs. Austin Peiris. I have not even heard of it. I cannot remember Ebert Fernando. The deceased had a brother called Henry. Henry's son is now dead. I do not know when he died. I cannot remember when he died where the deceased was living. I was not present at the time of his funeral. I was working under the deceased during this time.

10

Q. You understood from what the deceased told you that he had left a last will by which you were going to get some money? A. No. I did not understand like that. He did not tell me like that. From his statement I understood that after his death I would get from some source. He mentioned an amount of Rs. 1,000.

20

Q. On the day the deceased's corpse was brought to Nancy Villa there was a dispute about the car between Millie Nona and Mr. and Mrs. Peiris and the deceased's widow? A. No. Until I left the place there was no dispute about the car. The body was brought to Nancy Villa the night he died. I left the day after the body was brought to the house. That is the 23rd. I left at about 4 p.m. until 4 p.m. that day there was no dispute about the car to my knowledge, nor did the police arrive. I did not hear of the existence of a will left by the deceased. Now I know that a deed had been left by the deceased. I came to hear of a deed left by the deceased for the first time after I was employed by Mr. Austin Peiris as driver.

30

Q. That is the deed which Mr. Austin Peiris obtained from Mr. Tudugala? A. I do not know. It is under the deed that I have been given Rs.1000. Mr. Austin Peiris told me that there was a sum of Rs.1,000 left to me by the deceased. I have heard of the name of Tudugala after I got employed under Mr. Austin Peiris. I drove Austin Peiris in his brother's car to a Walauwa at Sedawatta. There I asked Mr. Austin Peiris who lived in this Walauwa. I said that I came here once before with the deceased William Fernando. Mr. Austin Peiris told me that proctor Tudugala lived in this house.

40

Q. Was that the first occasion Austin Peiris was meeting Mr. Tudugala? A. Yes. It was on the first occasion he went that I asked him.

In the  
District Court  
of Colombo

(Question repeated) Yes. No. Yes. Yes. I know the Sinhalese New Year. I took employment under Mr. Austin Peiris four months after the deceased's death. I cannot say how long after the Sinhalese New Year I took employment under Mr. Austin Peiris. Whether it was roughly one month, 2 months or 3 months I cannot say.

Petitioner's  
Evidence

No. 37

10

(Shown a document dated 1.4.54 R24) This is my signature.

Cross-  
examination  
- continued.

Q. Who typed this letter? A. I want to know what this is. I admit my signature but I do not know what the letter refers to. I cannot remember on how many occasions I sent typed documents. I sent a letter to Millie Nona asking for my salary. I do not know whether that was a typed letter. I requested the proctor to ask Millie Nona for my salary. The letter I sent to Millie Nona - I sent the letter to Millie Nona. I signed that letter. That letter was in English. The letter I sent to Millie Nona was typed. That letter was typed by my proctor Mr. Paul Pillai. I instructed Mr. Paul Pillai to send a letter to Millie Nona. After I got employed under Mr. Austin Peiris I came to Mr. Proctor Paul Pillai. I instructed Mr. Paul Pillai to send a letter to Millie Nona about a month after the deceased died. I met Mr. Paul Pillai for the first time after I took employment under Mr. Austin Peiris. Before I took employment under Mr. Austin Peiris I told Mr. Austin Peiris that there was salary due to me from Millie Nona. Then he told me to inform Mr. Paul Pillai who was his proctor.

20

30

Q. Mr. Paul Pillai then sent a letter to Millie Nona on your instructions? A. I asked him to write. I cannot remember whether I did sign that letter. I do not know Messrs. de Silva & Mendis. I have not heard of their name. Now I know of that firm. That is, after this inquiry commenced. I did not write to Messrs. de Silva & Mendis. Mr. Paul Pillai told me that he had sent a letter to the proctors of Millie Nona. I instructed Mr. Paul Pillai to write to Millie Nona demanding salary, and Mr. Paul Pillai sent a letter to the Proctor for Millie Nona.

40

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Cross-  
examination  
- continued.

(Shown a document R25) This is my signature.

(The witness is informed that this letter is dated 6.5.54 and the address is 207/8 Kaldemulla)

This is the house which had been rented out by my father.

(The witness is informed that R24 is a letter sent to Messrs. de Silva & Mendis).

(Mr. Navaratnarajah states that there was no letter sent at any time to Mrs. Millie Silva.

Sir Lalitha states that R24 and R25 were drafted by Mr. Paul Pillai and signed by this witness.)

10

(Para 1 of R24 put to witness) The first statement is correct. That is what I came to know now. What I told the Proctor was to send a letter asking for my salary.

Q. Was that statement correct as at that date?

A. I told my proctor and he said he wrote. I cannot remember the date.

(Para 4 of R24 put to witness)

20

Q. Is this correct: "Moreover I have been promised a sum of Rs.3,000 by my late Master which he must have intimated to his eldest daughter Mrs. Silva amongst others"? A. That is correct. The deceased promised a sum of Rs.3,000: before his death he told me of a sum of Rs.3,000 and he brought a car to give me.

(Sir Lalitha wants the witness to be allowed to complete his statement and witness continues:-)

He told me that he brought that car for Rs.3,000 to give me but if the car was given to me at that time I would leave his services. Therefore he was not giving the car to me now, but he had set apart a sum of Rs.1,000 which I will get after his death. He brought a Wolseley car to the house which was registered in the name of a driver. The deceased did not buy that car. The car was brought to his house for him to buy. He inspected the car and sent the driver away saying that he will send for him later. He later spoke to me and said that if he bought the car for me now I will leave his services. He wanted me to

30

40



live with him until he died. He said he had Rs.1,000 which I will get after his death. After the car was brought he asked that person for how much he was going to sell it. That person said he would give it for Rs.3,000. I cannot remember how long prior to the deceased's death this incident took place. This happened after deceased came to live at Kaldemulla. Roughly it was about 2 years prior to his death. I cannot say. (pressed again) I cannot remember.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Cross-  
examination  
- continued.

10 Q. So, the only statement the deceased made to you was that a sum of Rs.1,000 would be given to you after his death? A. Yes.

Q. Not 3,000? A. No.

20 Q. Then why did you instruct your proctor in R24 to say that "you had been promised Rs.3,000 by the deceased"? A. What I told my proctor was, the deceased wanted to buy a car for me for Rs.3,000. Now I have lost the car and my salary. So write that. I also mentioned the Rs.1,000 to my proctor. I received a reply to R24.

(Mr. Navaratnarajah moves to mark a copy of the reply sent by Messrs. de Silva and Mendis to the witness.

Sir Lalitha objects.

He later says he has no objection as it is a copy of a letter sent by Messrs. de Silva and Mendis Proctors for the respondent. The document is marked R26.)

30 The reply was in English. I did not take it to Mr. Paul Pillai. I got it read and explained to me by a gentleman who knew English. He is a gentleman of Moratuwa. I do not know his name. I know the gentleman. I did not take that reply to Mr. Paul Pillai because I wanted to wait until this case was over. When I received the reply from Messrs de Silva and Mendis I did not know of this Testamentary case. Yes, Yes, I knew.

40 Q. Did you know at the time you received the reply from Messrs. de Silva and Mendis of that deed by which the deceased devised to you Rs.1,000?

A. No.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Cross-  
examination  
- continued.

Q. You said you did not reply to R26 because you were awaiting the result of this case? A. Yes.

Q. How is the decision of this case going to help you to reply to R26? A. I did not wait until after this case was over. I was waiting till the case was over. I heard that there was litigation going on, so I thought I will wait. I did not know what the case was. The villagers in the village told me about the case. Mr. Paul Pillai did not tell me of the case. After I came under Mr. Austin Peiris he told that I was put down as a witness.

10

After I received the reply from Messrs. de Silva and Mendis Mr. Austin Peiris did not tell me of a case. In R26 they may have said that they were acting for Mrs. Silva who was executrix under her father's last will. I cannot remember whether Messrs. de Silva and Mendis referred to a last will or testamentary proceedings.

Q. Do you know even now that the deceased left a last will by which he left all his property to Millie Nona? A. No.

20

Q. Did Messrs. De Silva and Mendis write to you that you left her services voluntarily? A. I cannot remember.

Q. Did they write to you that all salary that was due to you was paid for which you gave a receipt? A. Without referring to the letter I cannot say. I did not give a receipt for salary before I left.

Q. Did Messrs. de Silva and Mendis tell you that Mrs. Millie Nona can only pay claims which are legally due? A. I cannot remember.

30

(The witness is told that R25 is a reply dated 26.5.54 by this witness to a letter received from Messrs. de Silva and Mendis)

In May 1954 I was driving Austin Peiris' car. I cannot be definite about this. I was out of employment for four months without receiving any salary. I commenced to receive a salary after May when I went under the employ of Austin Peiris. I commenced to get a salary in July. In July I received Rs.100/- out of which I paid Rs.15/- for house rent and Rs.5/- for coconuts which were deducted. I was employed under him from about the

40

middle of May and at the end of June I was paid the salary. My earlier statement that my first salary was in July was wrong.

2 or 3 months after the deceased William Fernando died and when I was remaining without employment Mr. Peiris sent for me. I went to him. It was thereafter I went to Proctor Samarasekera. I cannot remember the month.

10 Q. Did you take Mr. Austin Peiris to Samarasekera after you took employment under Mr. Austin Peiris or before? A. Before. I cannot remember the month, whether about 3 or 4 months of my being unemployed I was sent for or not. I cannot remember in what month we went to see Proctor Samarasekera. I remember the Sinhalese New Year of 1954. I cannot remember whether it was before or after the Sinhalese New Year of 1954 I went to see Proctor Samarasekera.

20 Mr. Austin Peiris did not ask me for the names of the Proctors who had done work for the deceased. He asked me to show the offices of the Proctors who had done work for the deceased. I did not ask Mr. Austin Peiris why he wanted this information. At the time he made this request of me I did not know that Millie Nona was claiming the entire estate of the deceased under a will. At that time I did not know that there was any will left by the deceased under which Millie Nona was executrix. We went  
30 to Samarasekera's office in Mr. Austin Peiris' elder brother's car. I showed Mr. Peiris a certain office at Matale. I did not enter the office with Mr. Peiris. That was Mr. Samarasekera's office. In the place where Mr. Samarasekera has his office that was the only office. Next to that was a tea boutique and a liquor shop and other offices. Thereafter Mr. Peiris did not ask me to show him the other proctors' offices. I showed him. Three days after we went to an office at Avissawella. I do not know the name of that proctor. I know that  
40 is the office to which my master went to get work done. I pointed out to Mr. Peiris the house of a proctor at Navinna. I do not know the name of this proctor. Then I took Mr. Peiris to Mr. Wijesekera's office at Colombo.

Q. Mr. Wijesekera's office is at Moratuwa?

A. Yes, he has an office in his house at Moratuwa.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.  
Cross-  
examination  
- continued.

Q. Closer to the residence of Mr. Austin Peiris than this Colombo office? A. Yes.

Q. Why didn't you take him to the office at Moratuwa? A. Because the deceased gentleman used to come to the office at Colombo. The deceased had been to the office at Moratuwa. The deceased had been more often to the Colombo office of Mr. Wijesekera than to his house. I pointed out the office in Colombo to Mr. Peiris and told him it was Mr. Wijesekera's office. I brought Mr. Austin Peiris to the Colombo Office of Mr. Wijesekera on one occasion. I know Mr. Wijesekera. I cannot say whether Mr. Peiris met Mr. Wijesekera in Colombo Office. I did not see whether Mr. Wijesekera was in the office at the time. I did not ask Mr. Peiris why he was trying to meet the proctors who worked for the deceased. 10

Q. And you did not get that information from any person whatsoever? A. No. During the time that Mr. Peiris was going round these proctors' offices I did not know that there was a last will in favour of Millie Nona. I cannot remember whether I instructed my proctor to state in R25 that Mrs. Millie Nona was inheriting so much from the deceased. 20

I know Aloe Nona. I went to her house with Mr. and Mrs. Peiris. I went to her house after the visit to the proctors' offices. I cannot remember whether I went to her house before or after I received my salary for June. I went along with Mr. and Mrs. Austin Peiris. I know why they went to Aloe's house. It was in order to find out anything she knew that would be useful for the case. They did not tell me in regard to which case or who the parties to it were. At the time I went with them to see Aloe Nona they did not tell me in which Court the case was instituted. 30

Q. Did you know whether Aloe Nona knew anything regarding this case? A. No. I know Marina Fonseka. I did not go to her house in September 1954 with Mr. Peiris. I had gone to Marina Fonseka's house to meet my child. I know the evidence Aloe Nona gave in this case. I knew of her evidence before she gave evidence. 40

Mr. Austin Peiris first asked me to give evidence in this case after I went to work in his

car. This was after the visit to Aloe Nona. The following day he asked me to give evidence in this case. He asked me to tell the Court with regard to what I knew and what I had seen at the time I was employed under the deceased. At that time I did not ask Mr. Austin Peiris between whom this case was. I knew that Millie Nona and Dulcie Nona were having a case. At that time I was not told what the case was about. I was only asked to give evidence of matters I knew.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Cross-  
examination  
- continued.

10 Q. You never told Mr. Peiris or his wife or the widow what you knew about the case? A. No. I mentioned it to the proctor and advocate after having told Mr. Peiris. I did not tell Mr. Peiris on that occasion that Aloe Nona will be able to corroborate my story. There were four gentlemen present at the meeting at Kaldemulla. I know 2 gentlemen; Mr. Darling and the head clerk of Millie Nona's father in law. I had seen the other 20 two before at the deceased's house. They had been to the deceased's house occasionally. They had been to the deceased's house even after the meeting. I do not know whether they attended the deceased's funeral.

30 Q. What did you understand by the statement: Go immediately and dress him in trousers? A. What I understood from that was that they could behave like lady and gentleman (husband and wife). The statement was made in my presence. He called me and said "Take her and leave her". The statement was made in the presence of those four gentlemen. I did not mention this incident to Mr. Peiris. When I was asked to give evidence of what I knew I told him what I knew and mentioned this incident as well and said that I will give that in my evidence. The four gentlemen who were present took part in the meeting.

40 Q. Were they annoyed? A. I understood that they also felt hurt when Mrs. Silva said she could not discontinue the driver. I know the Nowgala Estate. I do not know that it was sold. At the time the deceased came to Kaldemulla the estate belonged to him. It continued thereafter to belong to him. I do not know whether it belonged to him at the time of his death. Because of his illness he did not go to the estate and I do not know what happened. I know Highwalton Estate. When the

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 37

G.J. Appuhamy.

Cross-  
examination  
- continued.

deceased was at Matale he had sold blocks of High Walton, and also after he returned to Kaldemulla.

Q. Did that meeting take place before the Melbourne Avenue house was bought or after? A. The meeting was after the Melbourne Avenue house was bought. I can identify signatures of the deceased placed in my presence. For example, the signature on P21. Not the others. I know that even his cheques had been returned as the signatures of my master were not identical with the signature he had given to the bank. 10

Q. Do you know whether the deceased paid moneys regularly to Millie Nona? A. No.

Q. Do you know whether the deceased consulted Dr. Wijerama? A. I do not know to whom Wijerama refers.

Q. Did Millie Nona take the deceased to any doctor in Colombo during 1953? A. I do not know, I cannot remember Barnes Place.

Q. Did you discuss the meeting you referred to with Aloe Nona at any time? A. No. Aloe Nona, Marina Fonseka were in the hall and saw the meeting. 20

Q. So, you knew that Aloe Nona and Marina Fonseka knew what transpired at that meeting? A. Yes. I referred to a bathing incident.

Q. Was it before or after the sale of High Walton Estate that the incident took place? A. Before.

Q. Was it before the Melbourne House was bought? A. Before.

Q. How long before he came to Kaldemulla to reside permanently? A. About a week or two or 10 days before. 30

Q. Was that one of the reasons which provoked him to come to Kaldemulla? A. No. When the deceased shouted at her for her behaviour she kept silent and showed that she was accepting that she had done a wrong. Therefore he was not annoyed over it. Marina Fonseka and Aloe Nona saw this incident. There were also the servant boy in the house. Everybody did not see this incident. The four or five of us saw the incident. We were 40

not close together when this incident took place. Marina Fonseka came running from the kitchen. Aloe Nona was also in the kitchen. She came running out of the kitchen. The boy was on the verandah. When I came up to see why the master was shouting they also came up. Marina Fonseka, Aloe Nona, the boy and I came up. Aloe Nona knew of this incident. I did not mention to Mr. Austin Peiris that Aloe Nona knew of this incident. When I was  
 10 telling him what evidence I could give he asked who else was present at the time.

The spout is about 10 or 12 fathoms from the bungalow. It was about 10 or 15 yards from the bungalow. I saw Millie Nona go with the driver. When I saw them they were closer to the bungalow than to the spout. When they were getting down the steps they were visible to the bungalow. I do not know whether both were going for a bath. After  
 20 leaving Millie Nona at a spot beyond the steps after her bath Banda went for a bath. Millie Nona came to the bungalow with Banda, the babies and the servant girl.

I spoke of an incident relating to John Aiya. This was after the deceased had come to Kaldemulla. This incident occurred when the deceased was in good health and was returning in the car from Colombo.

Dulcie Nona used to visit her father during his illness. She had been coming to see her father when he was in the house lying ill before he was  
 30 removed to hospital. On the day he was removed to hospital Dulcie did not come there. She came on the previous day. I do not know whether Dulcie knew that the keys of the safe were with Millie Nona. When Dulcie came she stayed a little while. She inquired from her father what his condition was and how he was getting on and then she would go.

Re-examination Nil.

Sgd: V. Siva Supramaniam.  
 A.D.J.

In the  
 District Court  
 of Colombo

Petitioner's  
 Evidence

No. 37

G.J. Appuhamy.

Cross-  
 examination  
 - continued.

In the  
District Court  
of Colombo

No. 38

C. A. PEIRIS

Petitioner's  
Evidence

CHARLES AUSTIN PEIRIS. Sworn. 43. Importer,  
Laxapathiya.

No. 38

C.A. Peiris.  
Examination.

I married Evelyn Letitia who is known at home as Dulcie in 1940. The deceased Mr. Fernando was not in favour of our marriage. Neither was the mother. I eloped with her and married her with the permission of Court. She was 18 years old at the time of the marriage. At that time I was a typist clerk employed under Messrs. Julius & Creasy, Proctors. I had been a typist clerk for about 4½ years and my salary was Rs.60/-. 10

Mrs. Millie Silva is my wife's step sister. Mrs. Silva was married to an architect.

After marriage I went to live at Korawalawella. I belonged to the same caste as my wife. A sister of mine had married Dulcie's uncle.

When I ran away with Dulcie I learned later that the deceased left her mother and went to Matale. After my marriage I went first to Korawalawella to stay, which is about 2 or 3 miles from Kaldemulla, also in Moratuwa. For some time thereafter Dulcie's mother lived at Nancy Villa at Kaldemulla. After some time my wife and I returned to Laxapathiya on a message received from Dulcie's mother saying that her father had written to her to send for Dulcie and live in that house. Thereafter my wife, my mother in law and I resided in the house at Laxapathiya, which is about ½ mile from the house at Kaldemulla. 20 30

Interval.

Sgd. V. Siva Supramaniam.  
A.D.J.

10.2.56.

After Lunch. Appearances as before.

Charles Austin Peiris - Recalled - Sworn:Examination-in-Chief continued:

I said that my father-in-law got angry and went to Matale and that I, my mother-in-law and my 40



wife stayed in the house at Laxapathiya. I came to know the retired headman of Kaldemulla after I got married to Dulcie.

In the  
District Court  
of Colombo

Q. Did you get any message from the headman?

A. I did not receive any messages from him, but he used to come and give messages to my wife and my mother-in-law. They were messages from my father-in-law. I know that when my father-in-law was in Matale his wife filed a divorce action. I assisted my mother-in-law in those divorce proceedings. Those divorce proceedings were settled at a stage. I remember a jewellery box which was in possession of Mrs. de Silva and given to my wife. The deceased came from Matale to settle down in Kaldemulla in 1951. The deceased fell ill some time prior to his death. I know from whom the deceased took treatment for his illness. It was from Nilammahara Buddhist Priest.

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Examination  
- continued.

10

20

Q. After your father-in-law came to Kaldemulla in 1951 did your wife visit him in his house?

A. Yes and before also.

Q. After he came to reside in Kaldemulla in 1951 what was the relationship between your wife and her father? A. After he came to reside at Kaldemulla he received her with affection and kindness whenever she went to meet him. The feelings were cordial between the daughter and the father unlike the feelings he had soon after the marriage.

30

Q. Do you know personally about the feelings between Mrs. de Silva and her father? A. Yes.

Q. What were the state of feelings between Mrs. de Silva and her father? A. After he came to live at Kaldemulla he did not receive her with such cordial feelings as he had done before.

40

Q. How do you know that and why do you say that? A. My wife who was on visiting terms with the father used to come and tell me that her elder sister was behaving in such and such a way with the driver and her father's feelings had got hurt over that. I said that the deceased was well disposed towards my wife.

Q. That you must have seen with your eyes?

A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Examination  
- continued.

Q. Do you know personally the feelings the deceased had towards Mrs. de Silva? A. Yes.

Q. Tell us what you know? A. I knew personally that the deceased did not have the affection towards her which he had before and that Mrs. de Silva was friendly with the driver.

Q. You know that the deceased got seriously ill and was removed to hospital before he died?

A. My wife had received a letter on the day he was taken to hospital that the deceased was well and asking her not to go there. 10

Q. After your father-in-law died a complaint was made with regard to that letter to the headman?

A. Yes.

Q. That was the letter P10? A. Yes.

Q. Your father-in-law died at the hospital and was brought to his house? A. Yes.

Q. What happened after his death? A. On the 23rd my mother in law and I were using the Car.

Q. 23rd is the day after his death? A. Yes. 20

Q. Then? A. The car was used for making arrangements for the funeral. On the 23rd at about 4 or 4.30 Mrs. de Silva had requested the driver to garage the car and had taken the switch key from the driver. She took the key from the driver. The driver was John. He is the man who gave evidence and who is presently my chauffeur. Then my mother-in-law saying that she had some more work to be attended to asked for the switch key from Mrs. Silva. It was not given to her. After that Mr. Bertram Fernando, Proctor, and a party of police officers had come there. Mr. Bertram Fernando is a proctor of the firm of Messrs. de Silva & Mendis. They came at about 7.30 or 8 p.m. to the funeral house where the corpse was. Then at about 11 p.m. in the night a party of policemen and Inspector Caldera came there in a van. 30

There were 8 or 10 police officers. They threatened my mother-in-law saying that they wanted to take the car and the iron safe. Then my mother-in-law said "Why gentlemen do you want to take them I have not disputed about the car or created any trouble here". Then he said "who are 40

you? Are you not the woman who is being kept as mistress by William Fernando"? Then I went up to them. Then I told him "why are you gentlemen speaking like that? Without knowing don't speak in that manner". Then he said "If you speak too much I will take you and your mother-in-law to the Police Station". He said "I have not come here to listen to you, I have come here to do my duty" and so saying threatened me and my mother-in-law and attempted to take the car and the iron safe. When he was making arrangements to take the iron safe, my mother-in-law asked for a list of the articles which were in the iron safe if he was going to take the iron safe. He said "I have not come here to give you a list I will take it away". There was a discussion like that. In red ink a receipt was written out. Then my mother-in-law said that there were some rings and a gold watch chain and asked for them so that she may put them on the corpse. The Inspector said the things cannot be given. Mrs. Silva brought those articles and gave them to the Inspector's hands. There was a silver waist chain belonging to the deceased which was at the time worn round the waist of Simon Perera. Mrs. Silva got it removed and brought it, gave it to the Inspector. Simon Perera is the Kangany of the deceased. After giving a list they were taken away at about 3 a.m. on 24.2.54. (Shown P13) This is the red ink document that was given.

10

20

30

40

Q. Before the deceased died did Dulcie go to the Hospital to see the deceased? A. She went on the 21st morning on receipt of a message from the driver. Dulcie and I went to the hospital.

Q. Was Dulcie able to see the father? A. Yes.

Q. She saw the father? A. Yes. The Inspector gave the list to my mother-in-law and removed the things immediately. The car and the iron safe were taken away by the Police and some jewellery a list of which is written here.

Q. Did the deceased speak to you and Dulcie when you went to see him at the hospital? A. Yes.

Q. What did the deceased say? A. He was not conscious enough to speak. Inspector Caldera removed the safe, the car and other things on the 24th morning.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Examination  
- continued.

Q. What happened after that? A. On the 24th morning myself and my mother-in-law went to the village headman's house and made a complaint. The burial was on the 24th in the evening. So I had to attend to decorations and the funeral arrangements in the Church and in the house and the decorations along the path. On the 25th at about 8 or 9 a.m. I went along with my mother-in-law and my proctor, Mr. Paul Pillai, to the Ratmalan Police Station. From there we went to the Colombo South Magistrate's Court. The Police Station is where Inspector Caldera was. From there we went to the Colombo South Magistrate's Court. Inspector Caldera told the proctor that he had brought those articles to be produced in a Court-house but the Colombo South Court had not accepted it, but that he would be producing them in a Court. On the 25th in my presence as well as in the presence of my mother-in-law Inspector Caldera told Mr. Paul Pillai to come to the Police Station as the A.S.P. would be calling at the Police Station at 9 a.m. We went there at 9 a.m. The A.S.P. had either come there before us or he came shortly after we went there. The Inspector said that these things will be taken today to the District Court of Colombo and some steps would be taken. He was unable to tell us as to what steps will be taken till 12 noon. He requested the three of us to come to the District Court of Colombo. I now know that on 26.2.54 papers were filed by Messrs. De Silva & Mendis in this Testamentary case together with petition and affidavit moving for an order directing the Inspector of Police, Mount Lavinia, to deposit the car and other things in the Court. I now know that they asked for probate of the will.

Q. What did you do thereafter? A. A writing had been left leaving the properties for both the daughters. As that writing was not to be found I tried to trace the writing. I refer to Journal Entry dated 8.4.54. Upon the orders of the court the safe was opened in my presence on the next day. There were some promissory notes, cash Rs.800/- and 2 or 3 deeds in the safe.

Q. Did you find what you, the widow and your wife were looking for? A. No.

Q. What were you looking for? A. We were looking for the writing according to which the property was said to be left to the two daughters and

it was missing. Then I sent word to the driver who was then employed under my father-in-law and presently employed under me. That is the John driver. I asked him whether it was possible for him to show the offices of the proctors to which my father-in-law had been going. He said he would show all the offices that he knew to which my father-in-law had been. I requested him to come the following day and along with him I went to Matale to the office of Samarasekera, Proctor. I did not meet him there. I met only his clerk. I could not get any benefit by that visit and I came away. About 2 or 3 days after that I went to Avissawella to the office of Mr. Velupillai, Proctor. I met him.

10

Q. Was your search successful there ? A. No.

Q. What were you trying to find out when you went with the driver to these places? A. To find out whether there was any writing which had been left by my father-in-law. Then I came home to Laxapathiya. The driver took me to Nawinna to Mr. W. Sathasivam, Proctor's house. I made inquiries there. I was not successful. From Mr. Sathasivam's house I came back to Laxapathiya. A few days after that the driver brought me to Colombo to the office of Mr. Wijesekera, Proctor, which is on the other side of the Court house. I did not meet Mr. Wijesekera. I met Mr. Tudugala, Proctor. I refer to the minute made by the Administrative Secretary in the record dated 9.4.54 which states that the keys of the safe were returned to the party who produced same. I spoke to Mr. Tudugala. I said "I am Austin Peiris, a son-in-law of Mr. William Fernando. Has William Fernando left a writing with you". He asked me who would be the heirs. I said there were two daughters called Millie Agnes de Silva and Evelyn Letitia Peiris.

20

30

Q. What did he say then? A. He asked me to come the following day as he will have to refer to his books and papers and tell me and that they were not here with him in the office.

40

Q. What did you do the next day? A. I went to the house of Mr. Tudugala.

Q. Did you speak to Mr. Tudugala when you went on the following day? A. Yes.

Q. What did he say? A. He said "The matter that you have told me is correct". Then I asked

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Examination  
- continued.

him for a copy. He asked me what had happened to the copy that had been given to my father-in-law. I said as that is not to be found I am asking you for a copy.

Q. Did he give you a copy? A. He said he could not give me a copy as the copy had been given to my father-in-law and asked me to trace it from that.

Q. What did you do thereafter? A. Again I went to Mr. Tudugala's house. 10

Q. About how many days thereafter? A. About 3 or 4 days later. I am not sure.

Q. What happened when you went to see him on that third occasion? A. He asked me "is your father-in-law dead?"

Q. What did you tell him? A. I said No.

Q. Then what did he say? A. "If that be so I cannot give you anything". He said "go and get the copy which is with your father-in-law".

Again 2 or 3 days after that I went to him. On that occasion I told him that the father-in-law was dead. Then he told me "how do I know that you are William Fernando's son-in-law for me to give it to you". Then I told him "You inquire from any proctor coming from Moratuwa, inquire from Mr. Paul Pillai, Mr. Herman Perera, Mr. Herbert Jayawickrema, Mr. Wijesekera who comes from Moratuwa to find out who I am". 20

Some days later I got a copy from Mr. Tudugala. I consulted my Proctor. Then I took steps to intervene in this action. Mr. Paul Pillai worked for me in this case. 30

Q. Thereafter did you go with your proctor to get an affidavit from Mr. Tudugala and from Mr. Devapuraratne? A. I did not go with my proctor. He told me that two affidavits ought to be obtained. Then I went to Mr. Devapuraratne to speak to him in order to get an affidavit from him.

Q. Mr. Devapuraratne you found was the first witness of the copy of the last will Pll? A. Yes. I took the certified copy that had been given to 40

me to Mr. Devapuraratne and told him that he had signed as a witness to that writing and wanted an affidavit from him to be produced in Court.

In the District Court of Colombo

Q. Did you eventually get an affidavit from him?  
A. Yes.

Petitioner's Evidence

Q. And did you get an affidavit from Mr. Tudugala?  
A. Yes.

No. 38

Q. Who prepared the affidavit? A. My lawyers.

C.A. Peiris.

10 Q. You took those affidavits to Mr. Devapuraratne and Mr. Tudugala and got them to swear to those affidavits? A. Yes. Those affidavits are P14 and P15.

Examination - continued.

Q. Did you tell Proctor Tudugala that there was a testamentary case when you obtained this certified copy of the protocol of the last will P11? A. No.

Q. Why didn't you tell him? A. Thinking that he would charge me a high fee.

Q. What fee did you pay for obtaining this copy?  
A. I paid Rs.100/-.

20 Millie Agnes had filed an application to Court on 26.2.54. I now know it. Mr. Paul Pillai filed papers in this case asking for probate of the last will P11.

Cross-examined

Cross-examination.

Q. The statement that you made to Mr. Tudugala that your father-in-law was alive was a false statement? A. Yes.

Q. Why did you make that false statement?  
A. Thinking that he would charge me a large fee.

30 Q. You had met Tudugala for the first time on what date roughly? A. As far as I could remember I think on a date in May 1954.

Q. On the first occasion no question was raised as to whether William S. Fernando was alive or not?  
A. No.

Q. The conversation between you and Tudugala on the first occasion lasted for about how many minutes? A. Not more than 5 or 10 minutes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

Q. On the second occasion for how long did you talk to Mr. Tudugala? A. About 10 minutes.

Q. On that occasion too the question as to whether William S. Fernando was alive or dead was not raised? A. No.

Q. Did you know Mr. Tudugala before you met him in connection with this matter? A. No.

Q. Had you heard about him? A. No.

Q. Did you take the view as a result of the talk you had with Mr. Tudugala on the first and second occasions that Mr. Tudugala was not an honest person? 10

(Sir Lalitha objects on the ground that it is improper.)

ORDER:-

I allow the question)

A. I did not understand that question.

Q. Question repeated? A. I could not say that.

Q. Did you tell Mr. Devapuraratne on the first occasion that you met him that the original Will was missing? A. No. 20

Q. Why didn't you tell him? A. It did not become necessary.

Q. Did you tell Mr. Devapuraratne that there was a testamentary case in respect of the estate of the deceased at that time? A. No.

Q. Why not? A. It was also not necessary.

Q. In the result you never told Mr. Devapuraratne at any time that the original Will was missing? A. I did not. 30

Q. Did you tell Mr. Tudugala that the original Will was not in existence? A. At the time I obtained the certified copy from Mr. Tudugala I got it because the original will could not be traced.

Q. Question repeated? A. When I asked him for



a certified copy he asked me as to where the original Will was. Then I told him "I am asking you for a certified copy because the original Will cannot be traced".

In the  
District Court  
of Colombo

Q. This conversation took place, was it on the first second or third occasion or on which occasion? A. I think it ought to have taken place on the fourth occasion, that is to say, on the occasion when a certified copy was given to me.

Petitioner's  
Evidence

No. 38

C.A. Peiris.

10 Q. I want to know when it took place? A. This conversation took place on the day when I obtained the certified copy.

Cross-  
examination  
- continued.

(Shown P10) Q. Do you know what P10 is? A. I think it is marked P10 because it is a document that has been produced in Court. I know what P10 is and I had seen it before.

Q. When did you see it for the first time? A. On 20.2.54.

Q. Who showed this document to you? A. My wife.

20 Q. Did your wife tell you who had handed to her that document? A. Yes.

Q. Who? A. Sethan, the man who was working under my father-in-law.

Q. Did she tell you at that time that that letter was a false letter? A. Not on that day.

Q. When did she tell you? A. After my father-in-law was dead and buried my wife and I doubted the genuineness of this letter.

30 Q. How many days after the burial of the deceased did you and your wife doubt the genuineness of the letter? A. I think about 5 or 6 days after.

Q. A complaint was made to the village headman in regard to this letter? A. Yes.

Q. How long prior to the date of the complaint did you and your wife commence doubting the genuineness of this letter? A. 5 or 6 days.

Q. Did your wife on 20.2.54 tell you in whose writing the letter was? A. I cannot remember.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

Q. Did she tell you that at any time? A. I cannot remember.

Q. Were you present at the time the complaint was made by your wife to the village headman?

A. Yes.

Q. Do you recall what she said on that occasion?

A. I remember a little.

Q. Did she tell the village headman in whose writing that letter was? A. No.

Q. Because she did not know in whose writing it was? A. Yes, but because she doubted this letter she went and complained to the headman. 10

(The evidence of Mrs. Peiris re P10 at page 20 put to witness "I do not know whose handwriting this is. I cannot say whether this is Simon's handwriting".)

Q. Do you know that your wife had given evidence in Court in regard to P10? A. I do not know.

Q. You are really the person who is giving instructions for the conducting of this case? 20

A. I am assisting my wife.

Q. Your wife signed the complaint that was made by her to the headman? A. Yes.

Q. You were present right through when that complaint was made? A. Yes.

Q. She talked to the headman in Sinhalese?

A. Yes.

Q. The statement was recorded in Sinhalese?

A. Yes.

Q. Did you read over the statement before your wife signed it? A. No. My wife read it. 30

(Shown P16. Witness reads it.) Q. After reading P16, do you still say that your wife told the headman that she did not know who wrote the letter P10? A. Yes.

(Mr. P.V.H.F. Perera's evidence at page 187 put to the witness) Q. P.V.H.F. Perera is the headman to whom the complaint was made? A. Yes.

I do not know his initials correctly.

Q. The witness Perera has said this: "She also told me that she knew on the 20th that this letter had not been written on the authority of her father". Did she make that statement? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

Q. You told us earlier that you and your wife started doubting the genuineness of the letter only five days after the burial of the deceased? A. Yes.

No. 38

C.A. Peiris.

10 Q. Do you still abide by that answer that you and your wife started doubting the genuineness of this letter only about five days after the burial of the deceased? A. Yes.

Cross-  
examination  
- continued.

Q. Did the headman question your wife as to why the complaint was not made on 20th February but on 3rd March? A. I think he asked that question.

20 Q. What reply did your wife give? A. The letter was sent on the 20th. That day in the evening my father-in-law was taken to the hospital. The following day he was operated on. On the day after at 12 he died. On the date of his death itself the corpse was brought home. It was two days after the corpse was brought to the house that it was buried. There was harassing by the police and there was lot of trouble and I could not pursue about this letter. It was because my father-in-law was taken suddenly to hospital and a sudden operation was performed on him that I started doubting this letter.

30 Q. The reason she gave for not making a complaint on the 20th of February was that her father was taken to the hospital and she was worried about it? A. Yes.

Q. So that she knew on the 20th that this letter was a false letter? A. No.

Q. On 2nd March an application had been made to Court by your mother-in-law? A. Yes.

40 Q. Can you tell us the date on which Mr. Paul Pillai was consulted by your mother-in-law on this matter? A. 25.2.54. I also went with her.

(Further Hearing on 20.2.56)

Sgd: V. Siva Supramaniam  
A.D.J.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

Mr. Navaratnarajah states that there are certain I.O.U. chits, promissory notes etc., belonging to the deceased produced in Court and that on some of the documents actions will have to be filed early as they will be prescribed. Since his client will be the executrix in whichever way this case is decided, he moves that she be allowed to withdraw the documents in order to file action.

Sir Lalitha states that he has no objection to the application.

10

ORDER - I allow the application.

The safe should be opened in the presence of both Proctors.

Sgd. V. Siva Supramaniam.  
A.D.J.

20.2.56.

Appearances as before.

Charles Austin Peiris - Recalled - Sworn:

Cross-examination Continued:

Q. You worked under Mr. Valentine Perera for about five years? A. I had worked as a clerk in the Law Society for a period of less than a year. Mr. Valentine Perera was its Secretary. 20

Q. Did you work under Mr. Valentine Perera as a Court clerk for 5 or 6 years? A. No.

(To Court: Q. At no stage had you worked under Mr. Valentine Perera personally as a Court clerk? A. While I was employed as a clerk in the Law Society I had been typing some of Mr. Valentine Perera's personal letters as proctor.) 30

I must have been working in the Law Society in 1936. I cannot remember the exact date. It was prior to my joining Messrs. Julius & Creasy. I was educated at St. Sebastian's College, Moratuwa. When I left college I was about 22 years old. After that I was learning shorthand and typewriting at the Rodrigo Business College, Dambalapitiya, for about eight months. It was after that that I came to Mr. Valentine Perera for work. 40

Q. How much did Mr. Valentine Perera pay you?  
 A. Mr. Valentine Perera paid me at the rate of Rs.40/- a month. He used to get the money from the Law Society, but the payment was made to me as if it was payment from him.

In the  
 District Court  
 of Colombo

Petitioner's  
 Evidence

No. 38

C.A. Peiris.

Cross-  
 examination  
 - continued.

(To Court: Q. You were employed as Mr. Valentine Perera's clerk? A. Mr. Valentine Perera was the Secretary of the Law Society. He was getting an allowance as such and out of that he was paying me a sum of Rs.40/- for the work I was doing for the Law Society and himself)

10

When I left the services of Mr. Valentine Perera I was about 24 years old. Then I joined Messrs. Julius & Creasy. I was under Messrs. Julius & Creasy for  $3\frac{1}{2}$  -  $4\frac{1}{2}$  years. I left Messrs. Julius & Creasy and joined the bus business of my brothers in which I also had a share. I was doing that business for about four years. Thereafter I started importing goods. Even now I do that business.

20

Q. What was your job when you eloped with your wife? A. I was a typist under Messrs. Julius & Creasy. At the time I was working under Mr. Valentine Perera, his office was opposite the Magistrate's Court, Colombo.

Q. Did you not come to know Mr. Tudugala then?  
 A. No.

Q. Never heard of his name? A. No. The body of the deceased was brought to Nancy Villa on the 22nd night. Myself and my wife both followed the body to the house from the hospital.

30

Q. Was there any trouble at Nancy Villa that night?  
 A. Nothing.

Q. On the following day was there any trouble?  
 A. Yes.

Q. About the car? A. Yes.

Q. The car was locked up in the garage? A. Yes. The key of the garage was with Mrs. Millie de Silva.

Q. Did you threaten to break open the garage?  
 A. No.

40

Q. Your wife? A. No.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.  
Cross-  
examination  
- continued.

Q. Your mother-in-law? A. No.

Q. You asked Mrs. Millie Silva for the use of the car? A. I did not.

Q. Did anyone ask for it? A. My mother-in-law asked.

Q. In your presence? A. I am not sure whether I was present or not.

Q. In your presence did anyone ask Mrs. Millie Silva for the use of the car? A. While I was there I knew there was some discussion arising out of a request for the car for its use in the evening.

10

Q. Mrs. Millie Silva refused to give the car? A. Yes.

Q. She offered to give you her own car? A. No. This discussion took place about 6 or 7 p.m.

Q. Were you annoyed that Mrs. Millie Silva had refused to give the car of the deceased? A. No.

Q. Was your mother-in-law annoyed? A. I cannot say.

20

Q. You were there right through the whole evening? A. I was there after 7 p.m. right through. My mother-in-law and my wife were there.

Q. Can you tell us whether your mother-in-law was annoyed because Mrs. Millie Silva refused to give the car? A. I think she must have got hurt.

Q. But not annoyed? A. No.

Q. Your wife? A. I cannot say that she was annoyed.

Q. At the time did you go on the basis that the deceased had left a last will in favour of both of his children? A. No, not at that time.

30

Q. When did you start working on the basis that the deceased had left a last will by which his two daughters were to take equally? A. After the iron safe was opened.

Q. That is, opened in Court? A. Yes.

Q. So that on the 23rd night, according to you, the only discussion which took place between Mrs. Millie Silva and your mother-in-law was about the car? A. Yes.

In the  
District Court  
of Colombo

Q. Did you attempt to open the safe that night?  
A. No.

Petitioner's  
Evidence

Q. Your wife? A. No.

No. 38

Q. Your mother-in-law? A. No.

C.A. Peiris.

10 Q. So that there was no discussion about the safe that night? A. Until the police came there and wanted forcibly to remove the iron safe and my mother-in-law requested the police to give a list of the contents of the iron safe, there was no talk about it before. At about 7.30 p.m. along with Mr. Bertram Fernando, Proctor a party of Police officers came.

Cross-  
examination  
- continued.

20 Q. Had you brought rowdies to the house that night before the police arrived? A. No. I was from the morning concerned about making arrangements for the funeral only.

Q. So that between 7 p.m. and 12.30 a.m. that night there was no threat of violence in the house?  
A. No.

(Sir Lalitha states that no question was put to either Evelyn Letitia or her mother in regard to any attempt of violence that night.)

30 Q. Had Mrs. Millie Silva any reason to suspect that you, your wife or your mother-in-law would open the garage by force? A. No. But I know that only the key of the garage was asked for.

Q. Had Mrs. Millie Silva any reason to suspect that either you, your wife or your mother-in-law would attempt to break open the safe? A. I do not think so. The car and the safe were removed to the Police Station at the instance of Mrs. Millie Silva.

Q. Can you tell us why it was that Mrs. Silva, when the body of her father was in the house, wanted the safe and the car to be taken charge of by the Police Officers? A. I cannot say.

40 Q. You took your mother-in-law to the headman to make a complaint? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.  
Cross-  
examination  
- continued.

Q. Why? A. I went with my mother-in-law and made a complaint to the effect that early morning the Police forcibly took away the car and the iron safe without giving a list of the articles in the safe although it was asked for.

Q. How was your mother-in-law interested in the car or the safe? A. Why, she was the deceased's wife.

Q. She took up the position that as widow of the deceased she was entitled to a share of the car and to a share of the safe? A. I cannot say whether she acted at that time on the basis that half share of the car and the iron safe belonged to her as widow of the deceased, but I know that she asked for the car in order to make arrangements for the funeral. 10

Q. Did she make a complaint that she claimed the car as the widow of the deceased? A. I cannot remember.

Q. Who suggested that a statement should be made by your mother-in-law to the headman? A. My mother-in-law called me to go to the headman to make a complaint. 20

Q. You know Victor Silva, headman? A. There is no headman by the name of Victor Silva.

Q. Did you know one V.H.B. Fernando? A. I do not know the initials. I know a person called Victor Fernando. He is the retired headman.

Q. Had he ever spoken to you about the affairs of the deceased? A. No. 30

Q. To your wife? A. Yes.

Q. To your mother-in-law? A. He had been speaking to my wife and my mother-in-law in my presence.

Q. And did he tell your wife and your mother-in-law that the deceased had left a last will by which his two daughters would take equally? A. No.

Q. What did he say exactly? A. He told my mother-in-law and my wife that the deceased will 40



be writing for the two daughters to get his property after his death in equal shares. He said that during the time of the divorce case and also afterwards and also produced a letter to that effect.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

Q. To the effect that the deceased would be leaving a writing by which his property would go to the two daughters equally after his death?

10 A. No. By the letter the deceased had asked Victor Fernando with regard to his depositing some money in the name of my children.

Q. Did you tell us earlier that the deceased had given a letter to Victor Fernando to the effect that he would be leaving a writing by which his two daughters would take equally after his death?

A. If I said so it is incorrect. In the letter the deceased was telling Mr. Fernando that he was going to deposit some money in the name of my children.

20 Q. Did it strike you that the writing was a last will? A. I thought that it would be a last will or it would be a deed.

Q. Did Victor Fernando at any time tell you or your wife or your mother-in-law that the deceased had told him that he had executed such a writing?

A. I think that after my father-in-law's death Victor Fernando told us.

Q. Not before his death? A. Both before and after.

30 Q. How long after his death? A. About a week or ten days after I think.

Q. You took your wife to the village headman to make a complaint? A. To the headman who is functioning now. I remember the date,

Q. Was it before you took your wife to the village headman or afterwards did Victor Fernando tell you that the deceased had told him that he had executed such a writing? A. I think it must be after that date. I am not sure.

40 Q. Did anyone else tell you after the death of the deceased about what the deceased had done with his property? A. The Nilammahara Priest and Rev. Wickremanayake told me after his death.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.  
Cross-  
examination  
- continued.

Rev. Wickremanayake had told me once before the deceased died.

Q. How long before the deceased died?

A. I cannot say exactly, about 1952.

Q. You were very anxious about what the deceased had done with his property after the death of the deceased? A. Yes, as I had been told earlier.

Q. You had been told earlier by Victor Fernando, Nilammahara Priest and Rev. Wickremanayake?

A. Yes.

10

Q. About when did you come to know from the Nilammahara Priest? A. About three weeks afterwards in his temple.

Q. You went there to see the Priest? A. Yes.

Q. Why did you go there? A. As my wife started to suspect about the letter and also was anxious to know why her father had been suddenly taken for an operation, she wanted to find out from the Buddhist priest for what disease he had been treating him.

20

Q. You went to the Buddhist Priest three weeks after his death? A. In about three weeks.

Q. Was it before your wife made the complaint to the headman or afterwards? A. Afterwards. The Nilammahara Priest told me that he was treating the deceased for some piles trouble and if he continued without an operation he may have lived a year or two more, but it may have been possible to have cured the deceased after an operation and so whatever it is one day or other he will have to lie as this was his fate and asked how are the two daughters getting on; are they getting on happily. Then I asked the Priest why he was putting that question. Then he told me that when the deceased was living he had told him that the two daughters were not getting on well together, he was leaving the property for both the daughters and he would be happy to see them getting on cordially during his lifetime.

30

Q. The object of your visit to the Nilammahara Priest was to find out whether Millie Silva had hastened the death of the deceased? A. No.

40

Suspicion was aroused with regard to that letter. The deceased was taken to the hospital without informing us. Soon after that an operation was carried out. The deceased died. Therefore, I wanted to find out from the priest as to what he was suffering from.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.  
Cross-  
examination  
- continued.

10 Q. What was your suspicion when you went to the Buddhist Priest? A. I thought that an operation was not necessary for a person of that age. Therefore I wanted to find out why an operation became necessary. The discussion with the Buddhist priest did not take more than ten minutes. I met the Buddhist Priest thereafter in the Courts. I did not meet him thereafter.

Q. I put it to you the Nilammahara Priest says he never spoke to you after the death of the deceased?  
A. That is not correct if he has said like that.

20 Q. The Nilammahara Priest says he has never told you about a writing left by your father-in-law by which the two daughters would take equally?  
A. If he has said so it is not correct. The safe was opened in Court sometime in March or April 1954. I expected that writing to be inside the safe. I did not find the writing in the safe.

Q. Did you go and tell the priest "look here you told me there is a writing, there is no writing in the safe?" A. No.

30 Q. Did you go to the Priest to find out as to where and when the deceased had executed that writing?  
A. No.

Q. Victor Fernando also spoke to you about the writing after the death of the deceased? A. Yes. As far as I could remember he did not speak to me but he spoke to my wife and mother-in-law.

Q. Do you say Victor Fernando was a great friend of your father-in-law? A. Yes.

40 Q. Then did you go and tell Victor Fernando that the writing was not there, "tell me when and where the writing was executed?" A. No. He is not so friendly with me.

Q. He was very friendly with your mother-in-law?  
A. They were acquaintances.

In the District Court of Colombo

Petitioner's Evidence

No. 38

C.A. Peiris.

Cross-examination - continued.

Q. The reason why you did not go and ask Victor Fernando was because he was not so friendly with you? A. It did not become necessary to go and ask him. Rev. Wickremanayake spoke to me about the writing before and after the death of the deceased.

Q. Did you go and ask Rev. Wickremanayake whether he can give you information about the writing? A. No.

Q. You thought the person who could help you was the driver John? A. It was through John I was able to trace the offices to which my father-in-law had gone. 10

Q. When you took your mother-in-law to the headman on the 24th you knew the deceased had left a writing by which the two daughters would take equally? A. It is true that I was informed in a writing, but I had not seen it with my eyes to believe it.

Q. Was that the reason why you did not ask your mother-in-law to mention anything about the writing to the headman? A. No. 20

Q. Did you expect at that time that the writing would be in the safe? On the 23rd night? A. Yes.

Q. Did you ask your mother-in-law to tell the headman "Well I expect a writing to be there by which these two daughters are to take equally"? A. Although I expected a writing to be there I did not know where it is. Therefore my mother-in-law asked that a list of the contents of the safe be given. As the list was not given then the suspicion became firm. 30

Q. The list was given to you the following day? A. On the same day a list written in red ink was given. I saw the list being given to my mother-in-law. I could not read the list.

Q. Did your mother-in-law show the list to you and ask you whether the writing is in the safe? A. I cannot say because that was a date when there was lot of excitement. The Police were threatening to take me and my mother-in-law to the Police. So I could not say what happened. 40

Q. On the 24th morning before you went to the headman did you look at that list? A. Yes.

Q. Did you find whether the writing was there or not? A. There was nothing to show that a writing was in the safe. The list given by the Police officer was to the effect that the police had taken such and such articles.

Q. Mrs. Millie Silva had made a complaint to the Police on the 24th morning? A. I do not know.

Q. Mr. Caldera came there on the 24th in the afternoon? A. I do not know.

10 Q. Were you there? A. I do not know.

Q. Were you there on the 24th afternoon when Mr. Caldera questioned your mother-in-law? A. No.

Q. To your knowledge did Mr. Caldera ever question your mother-in-law? A. I cannot say.

(Shown R14) Q. This is a statement which your mother-in-law is alleged to have made? A. I was not there.

20 Q. In this statement your mother-in-law had claimed a share of the property as widow of the deceased? A. Yes.

Q. And also she was not aware whether the deceased had made a last will? A. If it is there it must be so. I was not present.

Q. The statement by Caldera in R14 that you advised your mother-in-law not to make a statement is false? A. Yes.

Q. You consulted a lawyer on the 25th? A. Yes. The deceased was living in Navagala Estate from 1940-1951 when he came to Kaldemulla.

30 Q. Which part of 1951 do you say the deceased left Navagala Estate and came to live in Kaldemulla? A. I am unable to say whether he came to Kaldemulla early in 1951 or in the middle of 1951, but I am perfectly certain that he was living in Kaldemulla at the time of 1951 Christmas.

Q. You cannot tell us how long prior to Christmas the deceased had come to reside at Kaldemulla? A. I cannot say. I know Rev. Wickremanayake.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.  
Cross-  
examination  
- continued.

Q. Rev. Wickremanayake states that in October 1952 he attempted to bring a reconciliation between your wife and the deceased? A. I do not agree with that.

Q. Do you know that he has given that evidence? A. I do not know.

Q. In October 1952 what was the relationship between the deceased and your wife? A. They were on very good terms. Even I visited my father-in-law during Christmas 1951. 10

Q. Did your wife know that you had visited your father-in-law during Christmas 1951? A. It was with my wife and children that I visited him. That is the first Christmas I visited him. My mother-in-law knew about that visit.

Q. The deceased was angry with your wife over the elopement? A. Yes, soon after we eloped.

Q. In 1940 he had executed a last will by which he had devised his entire property to Millie Silva? A. May have been because my wife had eloped with me. 20

Q. On 5.5.50 he had executed another last will by which he left his entire property to Millie Silva? A. I do not know.

Q. Even now? A. I now know it.

Q. That is the will, dated 15.5.50 probate on which has been granted to Millie Silva? A. Yes.

Q. Under that will Millie Silva is the sole beneficiary? A. Yes.

Q. So that in May 1950 do you admit that the relationship between your wife and the deceased was one of hatred? A. No. 30

Q. Do you say that the relationship between Dulcie and the deceased justified the will, the probate of which has been granted to Mrs. Millie Silva?

(Sir Lalitha objects.  
Mr. Navaratnarajah withdraws it.)

Q. In May 1950 what was the relationship between your wife and the deceased? A. They were getting on well. 40

Q. Even in May 1950? A. Yes. In May 1950  
the deceased was living in Matale.

In the  
District Court  
of Colombo

Q. Did your wife ever go to Matale? A. No.

Q. Do you tell us that sometime before 1950 the  
deceased and your wife got reconciled? A. Yes.

Petitioner's  
Evidence

Q. When according to you were your wife and the  
deceased reconciled? A. After 1944.

No. 38

Q. Roughly when? A. I cannot say the exact  
time, but I know that they were reconciled after  
the divorce case, i.e. after 1944.

C.A. Peiris.

Cross-  
examination  
- continued.

Q. From 1944 or 1945 onwards you say your wife and  
the deceased were reconciled? A. Yes, they  
were very good.

Q. Can you tell us why your wife had not visited  
the deceased at Matale? A. As the deceased was  
keeping Marina Fonseka as his mistress my mother-  
in-law did not like my wife visiting her father.

Q. But the deceased used to come from Matale to  
Kaldemulla once a month? A. Yes.

20 Q. Did your wife visit the deceased when he came  
to Kaldemulla? A. Yes.

Q. Did you visit the deceased? A. No, as he was  
not on very good terms with me.

Q. According to you the reconciliation between  
father and daughter took place in 1944? A. Yes,  
after the divorce case.

(Shown P2) This is a letter sent by the deceased to  
Victor Fernando dated 22.5.50.

Q. Do you know what is in the letter? A. I re-  
member a little.

30 Q. As far as you can recall what is in that letter?  
A. By this letter he had asked Victor Fernando to  
find out from my wife and my mother-in-law their  
consent of his wish to deposit some money with the  
Public Trustee for my children.

Q. At that time you say your wife was on very good  
terms with the deceased? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

Q. This letter was handed to you by the village headman soon after he received it? A. I think so.

Q. You saw the letter yourself? A. Yes.

Q. Can you tell us why it is if the deceased was on good terms with your wife that he did not ask your wife directly the information he had asked from Victor Fernando? A. Even before this letter he had written to A.V. Fernando stating that he was going to transfer a land to my children. I do not know why he wrote this letter. Perhaps he had not transferred that land. 10

Q. Question repeated? A. I cannot say why he had written to the headman to get the consent of my wife and my mother-in-law instead of his writing direct to my wife.

Q. Did the deceased ever talk to your wife direct about this matter? A. I do not know.

Q. In 1950 you were not too well off? A. I was well off. 20

Q. By that date your wife had sold one of her dowried properties to pay off your debts? A. No.

Q. Did your wife sell any of her properties to settle your debts? A. My wife sold a property. That was to redeem her debts and not to redeem my debts.

Q. Is it to pay the debts incurred by your wife? A. Not only debts incurred by my wife but debts incurred by my wife and her mother.

(Witness reads P2) Q. In this letter he says he would deposit certain moneys in favour of your children? A. Yes. 30

Q. That such moneys would be forfeited if trouble is caused to him? A. Yes.

Q. Trouble by your wife and your mother-in-law? A. (Witness looks at the letter) No.

Q. Is there any reference to moneys being forfeited if trouble was caused to him? A. Yes.

Q. By whom? A. It is not stated in the letter.



Q. In P2 the deceased wants the village headman to explain this to your wife? A. Yes.

Q. Can you tell us why it is the deceased himself did not discuss this directly with your wife?

A. I cannot say. The maiden name of my mother-in-law is Nancy Catherine Charlotte Perera. (Shown R13) (Witness reads it)

Q. R13 is a complaint made by the deceased to the police? A. Yes, but I was not aware of the complaint.

Q. Nancy Catherine Charlotte Perera referred to in R13 is your mother-in-law? A. Yes.

Q. And the name Dulcie Charlotte Perera is the name of your wife? A. No. My wife is Evelyn Letitia Peiris. She is called Dulcie affectionately.

Q. By P2 he had promised to deposit the moneys within six months time? A. The letter says so.

Q. Did your wife at any time raise the question of these deposits with the deceased to your knowledge? A. No.

Q. Your mother-in-law? A. No.

Q. A sum of Rs.15,000 was paid to your wife on 29.10.52? A. Yes.

Q. Not one cent was paid before that date? A. Why she had been given presents for Christmas.

Q. Prior to that date had your wife been given any presents? A. I cannot say. I think she had been given monetary presents before.

Q. Did your wife tell you she had received moneys from her father prior to 29.10.52? A. Yes.

Q. Large sums? A. No.

Q. How much? A. Rs.40, Rs.50; sometimes a saree.

Q. Rev. Wickremanayake spoke to the deceased sometimes in October 1952? A. Yes.

Q. After that did your wife apologise to her father? A. No.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

10

20

30

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

Q. Can you tell us why it was that the deceased did not carry out the undertaking given in P2, namely that he would deposit the moneys within six months time? A. I cannot say. The deceased owned High Walton Estate. I do not know that it was sold in September or October 1951. I did not know when he purchased High Walton Estate. After the deceased came to reside in Kaldemulla I came to know he had sold High Walton Estate. The deceased himself told me.

10

Q. That is, you used to visit the deceased after his arrival in Kaldemulla? A. On three or four occasions. The first occasion was in December 1951. I had visited him during Christmas 1952 and in between.

Q. Do you know whether the deceased bought a property in Melbourne Avenue? A. I knew he had bought a property but I did not know when.

Q. When did you come to know that? A. About 1952. I cannot give the exact date.

20

Q. The property was thereafter gifted to Mrs. Millie Silva? A. I now know it, not before.

Q. The deceased sold Navagala Estate before his death? A. I did not know.

Q. Is it correct to state that the deceased came to reside at Kaldemulla permanently after he had sold Navagala Estate? A. I did not know.

Q. You never heard about the sale of Navagala Estate during his lifetime? A. After he came to reside in Kaldemulla I knew it.

30

Q. You knew he had sold it? A. Yes, I knew after 1951.

Q. And he came to reside in Kaldemulla after the sale of Navagala Estate? A. I did not know that he had sold the property and had come to Kaldemulla to reside, but after he came to reside in Kaldemulla I knew he had sold the property.

Q. Your wife told you that the deceased had mentioned to her that Mrs. Millie Silva was behaving in such and such a way with the driver? A. Yes. My wife told me that and the deceased also had told me that.

40

Q. Was this statement made by the deceased to your wife in your presence? A. No.

In the  
District Court  
of Colombo

Q. How long after he arrived in Kaldemulla was that statement made to your wife? A. I cannot say. It was on a day when my wife visited her father for the birthday of one of my children.

Petitioner's  
Evidence

Q. Was it before the sum of Rs.15,000 was paid by the deceased to your wife? A. Before.

No. 38

Q. How long before? A. I cannot say.

C.A. Peiris.

10 Q. That you say is one of the reasons why the deceased altered the Will executed by him in May 1950? A. Must be so. I cannot say.

Cross-  
examination  
- continued.

20 Q. When did he tell you about the conduct of Millie Silva with the driver? A. For the first time I visited my father-in-law for the Christmas of 1951 and asked him for his pardon. Before that my wife had gone to him and asked his permission to take me. Then he had told her that he was not angry with me but he was not visiting us because of his wife being with us. He must have told me about the conduct of Millie Silva and the driver after Christmas. It may have been when I visited him for the new year in 1952 January.

Q. Your father-in-law had a bank account with the Bank of Ceylon? A. Yes.

(Shown R27 counterfoil book bearing Nos.G356001-G356025. Shown Counterfoil No.G356017 (R27a)

(Allowed subject to proof)

I do not know whose writing this is.

30 Q. I put it to you this counterfoil is in the writing of the son of Millie Silva? A. I do not know.

(Shown R28 Counterfoil book G676451. G676500. Shown R28a Counterfoil G676490)

(Allowed subject to proof)

There is a writing in pencil.

Q. What does the writing show? A. I cannot read it. There is some scratch there.

Q. R28a contains the numerals 250? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

Q. You see Singhalese words below 250? A. Yes.

Q. That is Millie? A. I cannot say whether it is Millie or Willie. It can be either Willie or Millie.

(Shown R28b counterfoil dated 22.8.53) It is for Rs.250 for Millie. I cannot say who this Millie is.

(Allowed subject to proof.)

I cannot say whose counterfoil book this is. I can identify some of the deceased's handwriting and some I cannot.

10

Q. Go through the book and see whether the deceased's writing is in this counterfoil book?

A. I cannot say they are his writing. There is writing which appears like his. I cannot say whether there is any writing of the deceased in this counterfoil book. There is no writing of my wife in this counterfoil book.

Q. Go through R27 and tell us whether you find the writing of the deceased in it? A. I cannot say. 20

Q. Is there the writing of your wife in R27?  
A. No.

(Shown R29 counterfoil book F546376 - F546400.  
Shown counterfoil F546379 (R29a)

(Allowed subject to proof)

Q. In whose writing is that counterfoil? A. I do not know.

Q. What is the payee's name? A. There is Willita. It is in favour of Willie. There is no "M". "V" cannot be taken for "M".

30

Q. Do you know whether in 1951, 1952 and 1953 the deceased had paid small sums of money to Millie Silva? A. I do not know.

Q. Did the deceased give any money to your wife after October 1952 after the payment of Rs.15,000?  
A. I do not remember.

Q. Millie was living with the deceased 2 to 3 weeks before his death? A. No. She went there

about 3 or 4 days previous to his last illness.  
He died on the 22nd.

Q. Since according to you was Millie living there?

A. About 18th or 19th as far as I think.

Q. Your wife never lived in Nancy Villa?

A. Never.

Q. Do you know in whose charge the safe keys were  
when Millie Silva was living in the house?

10 A. I do not know. I know Proctor Wijesekera.  
I have known him for about four years.

Q. In 1952 November he attested an agreement be-  
tween the deceased and his wife? A. Yes.

Q. You knew that Proctor Wijesekera had been doing  
work for the deceased? A. No. I came to know  
Mr. Wijesekera for the first time on the day the  
agreement was executed. Mr. Wijesekera attested  
the agreement at the request of the deceased. I  
knew that Mr. Wijesekera was one of the deceased's  
Proctors. Mr. Wijesekera lives in Moratuwa about  
20 2½ miles from my house.

Q. You tell us you expected that writing to be in  
the safe? A. Yes.

Q. And only on the day the safe was opened in Court  
you knew that the writing was not there? A. Yes.

Q. Did you take the view at the time you found that  
the writing was not there or earlier that the writ-  
ing was one which ought to have been attested by a  
proctor? A. I did not know whether that writing  
had been attested by a proctor or otherwise but I  
30 thought there ought to be a writing. I cannot  
remember the exact date the safe was opened in  
Court. It was opened on 9.4.54.

Q. When the writing was not in the safe you took  
the view that you must contact the proctors who  
had done work for the deceased during his lifetime?  
A. Yes.

Q. You knew Mr. Wijesekera was a proctor who had  
done work for the deceased? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.  
Cross-  
examination  
- continued.

Q. You spoke to Mr. Wijesekera? A. Yes.

Q. When? A. I think it must be after June.  
The safe was opened on 9th April. On the 9th I  
found that the writing was not there. I made up  
my mind that I should contact the proctors who had  
acted for the deceased in order to find out whether  
there was such a writing or not. I knew Mr.  
Wijesekera was one of those proctors. I went to  
see Mr. Wijesekera. I went to meet Mr. Wijesekera  
on several days but could not meet him. Even after 10  
I found the last will I went to Mr. Wijesekera and  
asked him whether he had attested a last will for  
my father-in-law. Then he told me he had not.

(To Court:-

Q. Why did you ask him after you found the  
last will? A. As Mr. Wijesekera had been  
working for my father-in-law till his death  
I thought that he might have executed another  
will.

Q. What further will did you expect? 20  
A. In order to find out whether he had left  
any writing by which he had written particu-  
lar properties to these two daughters.)

I met Mr. Tudugala for the first time about the  
end of May.

Q. Between 9 April and before you met Tudugala had  
you gone in search of Mr. Wijesekera? A. On  
three or four occasions.

Q. Alone? A. With the driver.

Q. Where to? A. To his house at Moratuwa and 30  
to his office in Colombo. That is the office in  
Belmont Street. I came only once to the office  
in Belmont Street, and about three times to the  
house in Moratuwa. The driver is John Appuhamy.

Q. John Appuhamy says he never took you to the  
house of Mr. Wijesekera in Moratuwa? A. To Mr.  
Wijesekera at Moratuwa I did not go with John  
Appuhamy. John Appuhamy took me to the out-  
station proctors and to the Colombo office.

Q. Did you tell earlier that you went to the house 40  
of Mr. Wijesekera in Moratuwa with John Appuhamy?  
A. If I said so it is incorrect.

Q. Mr. Wijesekera is on the list of witnesses of the petitioner? A. I cannot say.

In the  
District Court  
of Colombo

(To Court:-

Q. You do not know? A. I cannot remember)

Petitioner's  
Evidence

Q. Was Mr. Wijesekera in attendance in Court for this inquiry on any date? A. Yes.

No. 38

Q. Why? A. In order to produce deeds I believe.

C.A. Peiris.

Q. Not to speak to the fact that you had gone to meet him in his house in Moratuwa on three occasions? A. When I had not met him on those occasions how can I say he was going to speak about my visits.

Cross-  
examination  
- continued.

Q. Did you tell anyone in the house you had come to meet Mr. Wijesekera? A. I inquired from the clerk there. I was anxious to find out about this Will. I was prepared to go to Matale and Avissawella.

Q. Still you say between 9 April and the end of May you could not meet Mr. Wijesekera in Moratuwa or in his office? A. I did not meet him in Moratuwa. I did not meet him anywhere else during that period. I went to Avissawella about 2 June.

Q. That is, after your visit to Mr. Wijesekera's office in Belmont Street? A. No. I think it is before.

Q. You told us that you came to Mr. Wijesekera's office first by the latter part of May 1954?

A. If I said that it is correct. If I said I went to Avissawella about 2 June it is incorrect. I met Mr. Velupillai there. I introduced myself as Austin Peiris, the son-in-law of William Fernando, and asked him whether he had attested any deeds for William Fernando. Driver John Appuhamy took me to Avissawella.

Q. Did you ask at any time driver John Appuhamy the names of the proctors who had done work for the deceased? A. Yes.

Q. What were the names he gave you?

A. Samarasekera, Wijesekera. I cannot remember whether he mentioned any other names.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.  
Cross-  
examination  
- continued.

Q. When did John Appuhamy take employment under you? A. About the middle of May.

Q. On what salary? A. Rs.100.

Q. Why did you require a driver in May 1954?  
A. Because it was in that month that I bought a car.

Q. For what purpose? A. In order to send my children to school and to attend office for urgent work.

Q. What was your income in May 1954? A. About 10  
Rs.600-Rs.700. I was paying the driver Rs.100.  
I used to pay him a rupee if I happen to come to Colombo, for his meals. From the Rs.100 I deduct Rs.15/- as house rent and Rs.5/- for coconuts supplied to him.

Q. Did you offer Mr. Tudugala a substantial fee if he gave you a copy of the last will? A. When he told me he had a protocol I told him I would give a reasonable amount for a copy.

Q. How much were you intending to give? 20  
A. I was prepared even to give Rs.300 - Rs.400 and get the copy.

Q. That is, at that time you were prepared to pay any amount demanded by Mr. Tudugala for a copy of the last Will? A. No.

Q. How much do you think a proctor should have charged to give a copy of the last will?  
A. I cannot say.

Q. You paid at the end how much? A. Rs.100/-.

Q. You told us that you suppressed from Mr. Tudugala the fact of your father-in-law's death because he would have charged a higher fee? A. Yes. 30

Q. What made you think he would charge a higher fee if he knew that your father-in-law was dead?  
A. Because the original was not found.

Q. Did you tell Mr. Tudugala on the second occasion when you met him that the original was not available? A. It was on the second occasion that he told me to obtain a copy from the original which he had given. 40



Q. Did you tell him on the third occasion when you met him that the original was not available?

A. I cannot say whether I told him about the original being missing on the second occasion or third occasion, but I told him once.

Q. Did you tell him that the original was missing before you informed him of your father-in-law's death. A. I cannot say.

Q. Did Tudugala find fault with you for not having mentioned to him about the testamentary Case?

A. After he gave me the copy and the affidavit he asked me why I had lied to him. I told him "thinking you would charge me a large amount of money I did not tell you".

Q. Why should he charge you a higher fee if he knew that a testamentary case was already pending?

A. Because the testamentary case had been filed on the last will that had not been attested by him. If the original of the last will that had been attested by him was available I would not have lied to him.

Q. Question repeated? A. Because the original of the last will attested by Mr. Tudugala was not found.

Q. Did Mr. Tudugala tell you soon after he gave you the affidavit that Pll would be contested on the ground that it is a forgery? A. No.

Q. Did Mr. Devapuraratne tell you that? A. No.

Q. The petitioner has listed McIntyre as one of the witnesses? A. The case has been entrusted to the proctor and my wife had asked me to act according to what he wants. I do not know what he has done.

Q. Up to date you do not know whether Mr. McIntyre is on the list of witnesses for the petitioner or not? A. I am unable to say without reference to the list of witnesses. There are several names of witnesses in that list.

Q. Was summons taken out on Mr. McIntyre at any time? A. Yes.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Cross-  
examination  
- continued.

10

20

30

40

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.  
Cross-  
examination  
- continued.

Q. Mr. McIntyre was in attendance in Court on the last day? A. I cannot remember.

Q. Did you pay him any fee? A. No.

Q. Did you tell Mr. Tudugala that Mr. McIntyre has been listed as one of the witnesses for the petitioner? A. I have not.

(To Court:

Q. You said that summons was issued on Mr. McIntyre? A. Yes.

Q. Then why do you say you do not know that Mr. McIntyre is on the list of witnesses? 10  
A. I do not know whose names are there in the list of witnesses filed by the proctor but I became aware of a summons being served on Mr. McIntyre.)

Q. Did you tell Mr. Tudugala at any time that a handwriting expert was listed as a witness for the petitioner? A. I have never told him.

Q. Did you tell Mr. Tudugala that you had got a handwriting expert to examine the signature of the deceased on the Will? A. I have not. 20

(Evidence of Mr. Tudugala at page put to witness)

" Q. Do you know whether a handwriting expert has been put down in the list of witnesses by Mrs. Peiris? A. I heard of it. I heard of it from Peiris. Peiris told me that he had got a handwriting expert to examine the signature of the deceased on my Will. Peiris told me of this some time ago. That was when these consultations were going on". Q. Is this statement true? A. I cannot remember whether I told him or not. 30

Q. Was the signature on the Will P11 examined by any handwriting expert at the instance of the petitioner? A. I do not know personally what my lawyers had done.

Q. Who is spending for the case? A. Myself and my wife.

Q. A handwriting expert would have to be paid if

he is to examine a signature? A. My wife has got money from me and has deposited a certain lump sum with my proctor for him to use for the necessary expenses to work up this case. He had never told us with regard to the details of his expenditure.

In the District Court of Colombo

Petitioner's Evidence

No. 38

C.A. Peiris.

Cross-examination - continued.

Q. He has never told you that the signature on P11 was examined by a handwriting expert at his instance? A. I cannot remember.

10 Q. Mr. McIntyre was in Court on the last occasion? A. I do not think he was here.

Q. Did you go with the process server to serve summons on him? A. No.

Q. Do you know who Mr. McIntyre is? A. Yes. I have heard that he is a handwriting expert.

Q. Did you ask your proctor why McIntyre was summoned to attend Court? A. I did not.

(Lunch)

Sgd. V. Siva Supramaniam  
A.D.J.

20

20.2.56.

After Lunch.

Charles Austin Peiris. Sworn, recalled.

Re-examined

Re-examination.

30

After leaving Messrs. Julius & Creasy I joined my brothers and carried on a bus business in which I had a share. My brother and I owned four buses. Thereafter I began to import goods such as textiles, shirts, socks, methylated spirits, grapes and apples. This is the business I do now.

The late Mr. William Fernando came to live at Kaldemulla definitely in the year 1951. I am unable to say whether he came at the beginning or in the middle of the year.

I have given evidence of the visits I paid to the different proctors' offices in the company of my driver.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Re-examination  
- continued.

Q. Are those all the proctors' offices that you went to? A. No. There were other offices to which I had been alone. I went to the house of Proctor Joseph P. Rodrigo at Dehiwala, the house of Mr. Herbert Jayawickrema at Moratuwa, the house of Proctor A.V. Fernando at Moratuwa and also another house of Proctor Cyril Stembo.

Q. Were those visits you paid to the proctors' offices alone before or after you went with the driver? A. Before.

10

Q. Were you successful in your search at those proctors' offices? A. No. I went to see Proctor Wijesekera on 3 or 4 occasions. I met him once. That was after I spoke to Mr. Tudugala and heard about this Will.

Q. Why did you go to Proctor Wijesekera after you ascertained from Proctor Tudugala about Will P11? A. Mrs. Silva had been given a gift of property in 1953 by the deceased. The deceased had promised my wife and me to give two lands at Eheliyagoda and Madampe. Therefore I went to see to find out whether he had gifted the two lands to my wife and if so the will would have been revised,

20

Q. Under the last Will P11 that Tudugala gave you information about all the properties were left half to your wife and half to Mrs. Silva? A. Yes.

Q. They would have shared all the properties? A. Yes.

Q. You wanted to find out as to whether the two specific properties in Madampe and Eheliyagoda had been transferred or given to your wife separately? A. Yes.

30

Q. That would have been advantageous to your wife? A. Yes.

(Sir Lalitha states that he will question the witness on documents R27, R28 and R29 on the understanding that the documents will be proved by the respondents.)

(Shown R27) Q. You state that you do not know whose writing was on R27a? A. Yes. R27 is a book of counterfoils, some of them are blank

40

and undated. There is written in pencil in some counterfoils the word "Nancy". There is one counterfoil undated, of the year 1952 No.G356022 in which is written in Sinhalese "Dulcie 75". Again, another counterfoil completely undated, neither the year nor the date, "Dulcie" No.356023 Rs.75. There is one of the 29 October 1952 to Evelyn Letitia Peiris Rs.8,000 No.356024. Another No. 356025 of 29 October 1952 to Evelyn Letitia Peiris Rs.6,000.

In the  
District Court  
of Colombo

Petitioner's  
Evidence

No. 38

C.A. Peiris.

Re-examination  
- continued.

(Shown R28) I cannot make out what R28A was. There are some Sinhalese letters which I cannot make out. They are written in pencil. There are some blank counterfoils without date or any entry.

(Shown R29) No.546379 (R29a) of 26.11.51, the Sinhalese words written on the counterfoil are "Williete". There are several blank pages undated.

There is counterfoil No. 67674 in book R28 of 19 March 1953 for Rs.10,000 to Vincent Corera. Vincent Corera is a broker at Matale. I also know that this Vincent Corera bought certain blocks of Highwalton Estate.

When the safe was opened only Rs.800 was found in it.

Q. To whom did High Walton belong?

A. 3/4ths of the estate, as far as I know belonged to my father-in-law and the other 1/4th to two other gentlemen.

I do not know Proctor Bertram Fernando well. I met him for the first time when he came to Nancy Villa after the deceased died.

Q. When Mr. Bertram Fernando was there did you in his presence or your wife or your mother-in-law create any disturbance?

A. No. But he came along with the Police party.

In the  
District Court  
of Colombo

---

Petitioner's  
Evidence

---

No. 38

C.A. Peiris.

Re-examination  
- continued.

Q. Was there any attempt at violence used by either you or your wife or your mother-in-law?  
A. No.

Q. Was there any question of a breach of peace being committed at that time in the house?  
A. No.

Sgd. V. Siva Supramaniam.

A.D.J.

Sir Lalitha closes his case reading in evidence P1 to P21.

10

Mr. Navaratnarajah calls :-

---