

2

edl 2 OF 1968
No.....

Supreme Court of Ceylon,
No. 6 (Final) of 1963.

District Court of Colombo,
Case No. 19842/T

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

BETWEEN

DR. NATARAJAN SITHAMPARANATHAN of
No. 292, Deans Road, Maradana (Respondent-Appellant)
Appellant

AND

RAMANATHAN MATHURANAYAGAM of No. 96,
Vauxhall Street, Colombo (Petitioner-Respondent)
Respondent

RECORD
OF
PROCEEDINGS

UNIVERSITY OF LONDON
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6-DEC 1971
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INDEX—PART I

Serial No.	Description of Document	Date	Page
1	Journal Entries	12.4.61 to 28. 6.66	1
2	Order Absolute in the First Instance	12. 4.61	14
3	Petition of Dr. N. Sithamparanathan with annex marked " A "	12. 4.61	15
4	Affidavit of Dr. N. Sithamparanathan	10. 4.61	19
5	Affidavit of C. K. Koruthu	10. 3.61	21
6	Affidavit of Dr. V. Ketharanathan and J. M. Caderamanpulle	13. 3.61	21
7	Petition of R. Mathuranayagam with annex marked " X "	24. 5.61	22
8	Affidavit of R. Mathuranayagam	24. 5.61	27
9	Affidavit of Dr. A. Kanakaratnam and Dr. M. Kandasamy	24. 5.61	29
10	Statement of Objections of Dr. N. Sithamparanathan	22. 6.61	30
11	Proceedings before the District Court	28. 7.61	31
12	Petition of R. Mathuranayagam	1. 8.61	32
13	Affidavit of R. Mathuranayagam	1. 8.61	34
14	Order of the District Court	28. 8.61	36
15	Order Nisi	28. 8.61	36
16	Objections of Dr. N. Sithamparanathan	26.10.61	38
17	Affidavit of Dr. N. Sithamparanathan, J. M. Caderamanpulle and C. K. Koruthu	28.10.61	39
18	Issues Framed	—	39
19	Respondent's Evidence	—	40
20	Petitioner's Evidence	—	86
21	Addresses to Court	—	136
22	Judgment of the District Court	6.12.62	152
23	Petition of Appeal to the Supreme Court	13.12.62	166
24	Decree of the Supreme Court Dismissing Appeal	8. 5.66	171
25	Reasons for the Judgment of the Supreme Court	19. 4.67	172
26	Application for Conditional Leave to Appeal to the Privy Council	6. 6.66	176
27	Minute of Order granting Conditional Leave to Appeal to the Privy Council	16.11.66	178
28	Application for Final Leave to Appeal to the Privy Council	16.12.66	179
29	Minute of Order granting Final Leave to Appeal to the Privy Council	23. 1.67	180

INDEX—PART II (EXHIBITS)

DOCUMENTS OF THE PETITIONER (R. MATHURANAYAGAM)

Exhibit Mark	Description of Document	Date	Page
P1	Letter sent to Government Agent, Western Province by V. Natarajan	27. 1.61	192
P2	Last Will No. 1278 attested by J. M. Caderamanpulle, Notary Public	28.12.60	185
P3	Last Will No. 1283 attested by J. M. Caderamanpulle, Notary Public (same as the document marked " X " annexed to the Petition of R. Mathuranayagam dated 24.5.61—Item No. 7 in Index Part I)	2. 2.61	25
P4	Photostat copy of the Protocol of Last Will No. 1285 attested by J. M. Caderamanpulle, Notary Public (same as the document marked " A " annexed to the Petition of Dr. N. Sithamparanathan dated 12.4.61—Item No. 3 in Index Part I) ..	3. 3.61	17

DOCUMENTS OF THE RESPONDENT (Dr. N. SITHAMPARANATHAN)

Exhibit Mark	Description of Document	Date	Page
R1	Prescription of Dr. R. S. Thanabalasunderam	13. 2.61	193
R2	Prescription of Dr. R. S. Thanabalasunderam	—	194
R3	Prescription of Dr. R. S. Thanabalasunderam	12. 1.61	189
R4	Prescription of Dr. R. S. Thanabalasunderam	16. 1.61	190
R5	Copy of Prescription of Dr. R. S. Thanabalasunderam issued by the City Dispensary	9. 1.61	188

Journal Entries

IN THE DISTRICT COURT OF COLOMBO

Testamentary Jurisdiction No. 19842.	In the matter of the Estate of the late Velautham Natarajan <i>between</i> Dr. Natarajan Sithamparanathan. <i>and</i> <i>Deceased.</i> <i>Petitioner</i>
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This 12th day of April, 1961.

10 Mr. J. M. Caderamanpulle, Proctor and his Assistant Rita Caderamanpulle files proxy, affidavit, and a petition of the petitioner together with Last Will No. 1285 and affidavits of the Notary and the witnesses praying for Probate to the Estate of the above-named deceased, and moves that an Order Absolute in the first instance be entered declaring the status of the petitioner and his right to take out Letters of Administration to the Estate of the Intestate.

The motion is allowed, and it is hereby ordered that an Order Absolute be entered declaring that the petitioner is entitled to Probate to the Estate of the said Intestate, and that a copy of the said Order be published in the 20 Government Gazette and twice in the Daily News newspaper for 22.6.61.

(2) File proof of posting of declaration of property to Commissioner of Estate Duty.

(Sgd.) J. E. A. ALLES,
Additional District Judge.

Date : 20.4.61.

(3) Order Absolute in the first instance entered.

(Intd.) Illegibly.

(2) 26.4.61.

Proctor for petitioner files proof of posting of Declarations to 30 Commissioner of Estate Duty.
File.

(Intd.) J. E. A. A.,
Additional District Judge.
26.4.61.

(3) 9.5.61.

Proctor for petitioner files motion and moves that the sum of Rs. 112 .05 be added to the Schedule of Movables in the petition as item (10) and he undertakes to inform the Commissioner of Inland Revenue.

Allowed.

(Intd.) J. E. A. A.,
Additional District Judge.
9.5.61.

40

Done.

(Intd.) Illegibly.

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

(4) 25.5.61.

Proctor for petitioner files certified copy of the Last Will No. 1283 attested by Mr. J. M. Caderamanpulle, the original of which has already been filed in Court and moves Court do order that the copy be filed of record and original be deposited in safe custody.

Keep Last Will in safe.

(Intd.) J. E. A. A.,
Additional District Judge.

Done.

(Intd.) Illegibly.

10

(5) 25.5.61.

Proctor for petitioner files proxy and affidavit of the petitioner together with the petition, Last Will No. 1283 marked " X " and an affidavit from the witnesses to the Last Will and moves for reasons stated (a) to set aside the Order Absolute entered (b) dismiss the petition of the respondent (c) make order declaring the Last Will No. 1283 proved and the petitioner and respondent be declared the Executors and that Probate be issued to the petitioner and the respondent.

Call case on 22.6.61 to fix for inquiry.

(Intd.) J. E. A. A., 20
Additional District Judge.

(6) 8.6.61.

Deficiency on one affidavit.

Rs. 72/- (from Mr. Ranganathan's client).

(Intd.) Illegibly.

Mention on 22.6.61.

(Intd.) Illegibly.
Additional District Judge.

(7) 16.6.61.

Commissioner of Inland Revenue files Provisional Notice of Assessment 30 ED/863 N(4).

File.

(Sgd.) Illegibly.
for Assistant Secretary.

(8) 22.6.61.

Mr. J. M. Caderamanpulle for petitioner.

Mr. M. Ranganathan for Mathuranayagam.

(1) Proof of publications (Order Absolute).

Filed.

(2) Case called *vide* Journal Entry (5).

Counter objections of respondent to be filed.

40

(3) Rs. 72/- due from Mr. Ranganathan on affidavit.
Call 26/6 to fix Inquiry.

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

(Intd.) Illegibly.
Additional District Judge.
22.6.61.

(9) 26.6.61.

(1) Case called to fix date of Inquiry.
Inquiry on 28/7.

(2) Rs. 72/- due from Mr. Ranganathan on affidavit.

10 Tendered.

(Intd.) Illegibly.
Additional District Judge.
26.6.61.

(10) 30.6.61.

Assistant Government Agent, Colombo moves for a Deposit Note for Rs. 105/-.

Issue Deposit Note.

(Sgd.) Illegibly.
for Assistant Secretary.

20 (11) 11.7.61.

Deposit Note No. B 046685 for Rs. 105/- issued.

(12) 22.7.61.

Kachcheri Receipt No. Y/15—896539 of 17.7.61 for Rs. 105/- filed.

(13) 28.7.61.

Mr. J. M. Caderamanpulle for petitioner.

Mr. M. Ranganathan for Mathuranayagam.

Inquiry

Vide Proceedings.

Application dismissed with costs.

30

(Intd.) Illegibly.
Additional District Judge.
28.7.61.

(14) 1.8.61.

Proctor for petitioner files affidavit together with petition and moves

(a) to set aside the order Absolute entered in this case,

(b) dismiss the petition of the respondent and

(c) make order declaring the Last Will No. 1283 of 2.2.61 attested by
J. M. Caderamanpulle Notary Public and

(d) for costs of this application.

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

He moves to make order in terms of Section 377 of the Civil Procedure Code.

Support.

(Intd.) Illegibly.
Additional District Judge.
4.8.61.

(15) 14.8.61.

Proctor for respondents file Bill of Costs.

Proctor for petitioner receives notice.

Tax bill.

(Sgd.) ...
Additional District Judge.
15.5.61. 10

(16) 26.8.61.

Proctor for petitioner files objections to the Bill of Costs.

Secretary to note.

(Intd.) Illegibly.
Additional District Judge.

(17) 28.8.61.

Case called.

Mr. M. Ranganathan in support. *Vide* Journal Entry (14).

Vide proceedings.

Enter Order Nisi for 26.10.61.

Publications on 26.10.61.

(Intd.) Illegibly.
Additional District Judge.

(18) 14.9.61.

Mr. J. M. Caderamanpulle for petitioner.

Mr. M. Ranganathan for counter petitioner.

Proctor for petitioner tenders Order Nisi to be entered in this case together with stamps for Rs. 98/- and moves that Court be pleased to enter same. 30

Order Nisi entered.

(Intd.) Illegibly.
Additional District Judge.

(19) 23.9.61.

Proctor for respondent moves to certify the payment of Rs. 624.33 by the petitioner as costs due to the respondent.

Payment of Rs. 624.33 to original petitioner by respondent certified.

(Intd.) Illegibly. 40
Additional District Judge.

(20) 4.10.61.
Notice of Order Nisi issued to Fiscal Colombo.

(Intd.) Illegibly.

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

(21) 26.10.61.

(1) Proof of publications. Filed.

(2) Notice of Order Nisi served on the respondent.

Objections of respondent filed.

(3) Await certificate.

Inquiry 2.3.62.

10 Mr. E. G. Wikramanayake Q.C. with Mr. T. N. Wikramanayake for respondent.

(Intd.) Illegibly
Additional District Judge.
26.10.61.

(22) 6.11.61.

Proctor for respondent moves to file affidavit of the petitioner, the Notary and the witness of the Last Will No. 1285 dated 3.3.61 in support of the objections already filed on 26.10.61.

File.

20

(Intd.) Illegibly.
Additional District Judge

(23) 6.12.61.

As the 2nd March, 1962, fixed for the inquiry is not suitable to both counsel, proctor for petitioner moves Court to fix any one of the dates namely 23rd, 28th or 29th March, 1962.

Inquiry refixed for 23.3.62.

Take off Inquiry roll for 2.3.

(Intd.) Illegibly.
Additional District Judge.
13.12.

30

(24) 2.3.62.

Proctor for respondent files list of witnesses for respondents and moves for summons. Received notice by proctor for petitioner.

Issue summons on deposit of batta.

(Intd.) Illegibly.
Additional District Judge.

(25) 2.3.62.

Proctor for petitioner files petitioner's list of witnesses and documents and moves for summons on them.

40 Issue summons on deposit of batta.

(Intd.) Illegibly.
Additional District Judge.

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

(26) 5.3.62.

Proctor for petitioner files petitioner's additional list of witnesses in this case and moves for summons on them.

(1) File and issue summons on 1, 2, 3, and 5.

(2) *Re* witness No. 4 have certified copies been obtained.

(Intd.) Illegibly.

Additional District Judge.

(27) 7.3.62.

(1) 4 summons on witness issued to Fiscal, Western Province.

(2) 1 summons on witness issued to Fiscal, Kandy

10

(Intd.) Illegibly.

(28) 7.3.62.

Proctor for petitioner refers Court Order dated 5.3.62. Certified copies have been applied for to the Public Trustee and will be produced on the date of inquiry and moves for summons on him.

Allowed. Issue summons.

(Intd.) Illegibly.

Additional District Judge.

(29) 9.3.62.

Summons on Public Trustee issued to Fiscal Western Province.

20

(Intd.) Illegibly.

(30) 20.3.62.

Proctor for petitioner files petitioner's additional list of witnesses in this case and moves for summons on them. Proctor for respondent received notice.

File.

(Intd.) Illegibly.

Additional District Judge.

(31) 20.3.62.

Proctor for petitioner files petitioner's additional list of witnesses and moves for summons on him. Proctor for respondent, received notice.

File.

(Intd.) Illegibly.

Additional District Judge.

(32) 20.3.62.

Rita Caderamanpulle, Proctor S.C. files revocation of proxy granted by the petitioner to Mr. J. M. Caderamanpulle with minute of consent of the petitioner and the proctor and moves to file his proxy for petitioner.

Accept and file.

(Intd.) Illegibly. 40

Additional District Judge.

(33) 21.3.62.

I *Subpoena* by petitioner issued to Fiscal, Western Province.

(Intd.) Illegibly.

(34) 21.3.62.

Petitioner's additional list of witnesses filed. Proctor for respondent received notice.

File.

(Intd.) Illegibly.

Additional District Judge

10 (35) 21.3.62.

Public Trustee notifies that arrangements have been made for an officer to be present in Court on 23.3.62.

File.

(Intd.) Illegibly.

Additional District Judge

(36) 23.3.62.

Mr. M. Ranganathan for petitioner.

Miss Rita Caderamanpulle for respondent.

Inquiry

20 Mr. Advocate Navaratnarajah with Mr. Advocate N. E. Weerasooriya Jnr. and Miss Sebastian instructed for petitioner.

Mr. Advocate E. G. Wikremanayake, Q.C. with Mr. Advocate Candappa instructed for respondents.

I am in a partly heard case. Inquiry postponed for 6th, 7th and 8th August, 1962.

(Intd.) Illegibly.

Additional District Judge.

(37) 23.3.62.

30 This case should be called on 11.4.62 to fix fresh dates of Inquiry as it is now found that the dates already given come within the Court Vacation.

Proctors to be notified.

(Intd.) Illegibly.

Additional District Judge.

(38) *Eo die.*

Proctor for petitioner files petitioner's additional list of documents in the case.

Proctor for respondent received notice.

File.

(Intd.) Illegibly.

Additional District Judge.

40

(39) 11.4.62.

Mr. M. Ranganathan for petitioner.

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

Mr. J. M. Caderamanpulle for respondent.
Case called to fix fresh dates of inquiry.
Inquiry refixed for 7.9.62, 17.9 and 19.9.62.

(Intd.) Illegibly.
Additional District Judge.

(40) 21.8.62.

3 *Subpoenas* by respondent issued to Fiscal, Western Province.

(Intd.) Illegibly.

(41) 23.8.62.

Proctor for petitioner files petitioner's additional list of witnesses and 10 documents and moves for summons on him. Proctor for respondent received notice.

Allowed on deposit of batta.

(Sgd.) Illegibly.
Additional District Judge.
23.8.62.

(42) 27.8.62.

2 *Subpoenas* by petitioner issued to Fiscal, Western Province.

(Intd.) Illegibly.

(43) 7.9.62.

20

Mr. M. Ranganathan for petitioner.
Mr. J. M. Caderamanpulle for respondent.

Inquiry

Mr. Advocate P. Navaratnarajah with Mr. Advocate N. E. Weerasooriya (Jnr.) instructed for petitioner.

Mr. E. G. Wikramanayake, Q.C., with Mr. Advocate Candappa instructed for respondent.

I am in a partly heard case.

Inquiry refixed for 23.10.62, 26.10.62 and 30.10.62.

(Intd.) Illegibly. 30
Additional District Judge.

2.10.62.

I removed summons on Dr. Balendra and Koruthu, witnesses, for reissue as they were not served.

(Intd.) Illegibly.

(44) 3.10.62.

Summons on 3rd and 4th witnesses by petitioner reissued to Fiscal, Western Province.

(Intd.) Illegibly.

(45) 18.10.62.

Proctor for petitioner files petitioner's additional list of witnesses and moves for summons on him. Proctor for respondent received notice.

Allowed. Issue summons on deposit of batta.

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

(Intd.) Illegibly.
Additional District Judge.

(46) 19.10.62.

3 summons to witnesses by petitioner issued to Fiscal, Western Province.

(Intd.) Illegibly.

10 (47) 23.10.62.

Mr. M. Ranganathan for petitioner.

Miss Rita Caderamanpulle for respondent.

Inquiry

This case has been mentioned to me in Chambers by Counsel appearing for the parties, and counsel move that this case be taken up for hearing on 26.10.62 which is one of the dates for inquiry and continued on 30.10.62.

(Intd.) Illegibly.
Additional District Judge

(48) 26.10.62.

20 (i) Inquiry.

(ii) Proctor for petitioner files list of witnesses and documents.

Vide proceedings.

Further hearing on 30.10.62 and 7.11.62.

(Intd.) Illegibly.
Additional District Judge.

Eo-die.

Additional list of witnesses of petitioner filed.

(Intd.) Illegibly.

Proceedings filed.

30

(Intd.) Illegibly
30.10.

(49) 30.10.62.

(i) *Inquiry* Further hearing.

(ii) Mr. Ranganathan for petitioner files additional list of witnesses and moves for summons. Miss Caderamanpulle receives notice and objects.

Summons to issue.

Vide proceedings

Further hearing 7.11.62.

(Intd.) Illegibly.
Additional District Judge.

40

No. 1
Journal Entries
12.4.61 to
28.6.66-
Continued

- Proceedings filed. (Intd.) Illegibly.
- (50) 1.11.62.
3 summons to witnesses by petitioner issued to Fiscal, Western Province.
(Intd.) Illegibly.
- (51) 7.11.62.
Mr. M. Ranganathan for petitioner.
Miss Rita Caderamanpulle for respondent.
Inquiry : Further hearing.
Vide proceedings 10
Further hearing 13.11.62.
(Intd.) Illegibly.
Additional District Judge.
- Proceedings filed.
(Intd.) Illegibly.
- (52) 13.11.62.
Inquiry Further hearing.
Vide proceedings.
Further hearing 14.11.62.
(Intd.) Illegibly. 20
Additional District Judge.
- Proceedings filed.
(Intd.) Illegibly.
- (53) 14.11.62.
Inquiry Further hearing.
Vide proceedings
Judgment on 6.12.62.
(Intd.) Illegibly.
Additional District Judge.
- Proceedings filed. 30
(Intd.) Illegibly
17.11.
- (54) 16.11.62.
Miss Caderamanpulle tenders documents marked R1 to R4.
Mr. Ranganathan tenders documents marked P1, P2 and P4. (P3 filed
of record).
(Intd.) Illegibly.
- (55) 6.12.62.
Mr. M. Ranganathan for petitioner.

Miss Caderamanpulle for respondent.

Judgment delivered in open Court in the presence of proctors for parties.

(Intd.) Illegibly.

Additional District Judge.

6.12.62.

(56) 13.12.62.

Mr. M. Ranganathan for petitioner.

Miss Rita Caderamanpulle for respondent.

Miss R. Caderamanpulle, Proctor for respondent-appellant files petition
 10 of appeal of the respondent-appellant against the Order of this Court dated 6.12.62 and moves that Court be pleased to accept same. She also tenders uncanceled stamps to the value of Rs. 98/- for Secretary's Certificate in Appeal and Rs. 288/- for the Supreme Court Decree. She also tenders Notice of tender of security for costs of the petitioner in appeal for service on him.

She also moves for a paying-in-voucher for Rs. 25/- to deposit fees for typewritten copies.

Stamps Rs. 288/- cancelled and kept in Secretary's safe.

Stamps Rs. 98/- affixed to Secretary's Certificate in Appeal form and
 20 cancelled.

1. Petition of Appeal accepted.

2. Issue paying-in-voucher.

(Intd.) Illegibly.

Additional District Judge.

Stamps in safe.

(Intd.) Illegibly.

14.12.

(57) 13.12.62.

Proctor for respondent-appellant tenders for issue through Court to be
 30 served by the Fiscal Western Province Notice of tendering Security signed by the respondent-appellant stating that the petition of appeal presented by the respondent-appellant in this action on 13th December, 1962, against the order of this Court dated 6th December, 1962, having been received by Court, his Counsel on his behalf will on 21st December, 1962, at 10.45 o'clock in the forenoon or soon thereafter move to tender security by depositing a sum of Rs. 250/- for costs which may be incurred by the petitioner-respondent in appeal and will on the said day deposit in Court a sufficient sum of money to cover the expenses of serving notice of appeal on the petitioner.

40 The said sum of Rs. 250/- will be hypothecated by bond.

Issue notice.

(Intd.) Illegibly.

Additional District Judge.

(58) 13.12.62.

Paying-in-voucher for Rs. 25/- issued.

(Intd.) Illegibly.

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

(59) 13.12.62.

Proctor for respondent-appellant files application for typewritten copies of the record in this case as per particulars therein and files Kachcheri Receipt bearing No. C/16-235516 of 13.12.62 for Rs. 25/- being fees for typewritten copies.

File.

(Sgd.) Illegibly.
Additional District Judge.

(60) 14.12.62.

Notice of tending security on petitioner issued to Fiscal, Western 10 Province, Colombo.

(Intd.) Illegibly.

(61) 21.12.62.

Notice of tendering security served on the petitioner-respondent R. Mathuranayagam.

Allowed.

Accept security.

Issue Deposit Note for Rs. 250/-.

Issue notice of Appeal for 7.2.63.

(Intd.) Illegibly. 20
21.12.62.

(62) 21.12.62.

Paying-in-voucher for Rs. 250/- issued.

(Intd.) Illegibly.

(63) 22.12.62.

Proctor for respondent-appellant tenders Bond in Rs. 250/- together with Kachcheri Receipt No. C/16—236539/2808 of 21.12.62 for Rs. 250/-. She also tenders Notice of Appeal on petitioner-respondent's Proctor.

1. Bond accepted.

2. Issue notice of Appeal.

(Sgd.) Illegibly. 30
Additional District Judge.

(64) 22.12.62.

Notice of Appeal issued to Fiscal, Western Province.

(Intd.) Illegibly.

(65) 22.12.62.

Proctor for petitioner moves for a Deposit Note for Rs. 1,310.40 in favour of the Superintendent, Money Order Department, McCallum Road to enable him to deposit the money to the credit of this case.

Issue Deposit Note.

(Sgd.) Illegibly. 40
Assistant Secretary.

Deposit Note 059779 issued.

(66) 22.1.63.

Kachcheri receipt No. C/16—241225/1345 of 11.1.63 for Rs. 1,310·40 filed.

(67) 7.2.63.

Notice of appeal served on Proctor for petitioner-respondent.
Forward record to Supreme Court.

(Sgd.) Illegibly.
Additional District Judge.

(68) 14.2.63.

10 Proctor for petitioner-respondent moves for a Deposit Note for Rs. 25/- being cost of two copies of Appeal Brief in this case.
Issue Paying-in-voucher.

(Sgd.) Illegibly.
Additional District Judge
16.2.63.

Paying-in-voucher issued.

(Intd.) Illegibly.
25.2.

(69) 4.3.63.

20 Proctor for respondent files an application for typewritten copies together with a Kachcheri Receipt for Rs. 25/-.
File.

(Sgd.) Illegibly.
Additional District Judge
5.3.63.

(70) 15.5.66.

The Registrar, Supreme Court returns the case record along with Supreme Court decree dismissing the Appeal.

Last Wills Nos. 1283 and 1285 are also annexed.

30 Call case on 21.6.66.

Inform Proctors.

(Intd.) Illegibly
Additional District Judge.
15.5.66.

(71) 19.5.66.

So informed by letters—*vide* copy.

(Intd.) Illegibly
19.5.

(72) 21.6.66.

40 I. Case called—mentioned Journal Entry (70).

No. 1
Journal Entries
12.4.61 to
28.6.66—
Continued

2. Registrar Supreme Court states that an application for Conditional Leave to Appeal to Privy Council has been filed and he calls for the Record. Forward record to Supreme Court.

(Sgd.) Illegibly.
Additional District Judge.
21.6.

(73) 28.6.66.

Record forwarded to Registrar Supreme Court.

(Sgd.) Illegibly.
Assistant Secretary. 10

No. 2
Order Absolute
in the First
Instance—
12.4.61

No. 2

Order Absolute in the First Instance

IN THE DISTRICT COURT OF COLOMBO

No. 19842/T.

In the matter of the Last Will and Testament of Velautham Natarajan of 292, Deans Road, Maradana.

Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana. . . . *Petitioner.*

This matter coming on for disposal before J. E. A. Alles Esquire, 20 Additional District Judge, Colombo on the 12th day of April, 1961, in the presence of Mr. J. M. Caderamanpulle and his assistant Miss Rita Caderamanpulle, Proctors on the part of the petitioner and the affidavit of the petitioner dated the 10th day of April, 1961, and the affidavits of the Notary and witnesses dated the 13th day of March, 1961, and 10th day of March, 1961, having been read.

It is ordered that the Last Will and Testament bearing No. 1285 made by the deceased abovenamed on the 3rd day of March, 1961, and attested by Mr. J. M. Caderamanpulle of Colombo, Notary Public, the original of which has been produced and is now deposited in this Court be and the 30 same is hereby declared proved and that the petitioner abovenamed is the executor named therein and that he is hereby declared entitled to have probate thereof issued to him accordingly on his payment of Estate Duty and taking Oath of Office.

(Sgd.) J. E. A. ALLES,
Additional District Judge.

The 12th day of April, 1961.

No. 3

Petition of Dr. N. Sithamparanathan (with Annex Marked " A ")

IN THE DISTRICT COURT OF COLOMBO

No. 3
Petition of
Dr. N. Sitham-
paranathan—
12.4.61

In the matter of the Last Will and Testament of Vela-
utham Natarajan of 292, Deans Road, Maradana.

No. 19842/T
Testamentary.

Dr. Natarajan Sithamparanathan of 292, Deans Road,
Maradana. Petitioner.

This 12th day of April, 1961.

The petition of the petitioner abovenamed appearing by J. M.
10 Caderamanpulle and his assistant Rita Caderamanpulle, his proctors states as
follows :—

1. The deceased abovenamed died at 292, Deans Road, Maradana,
Colombo, within the jurisdiction of this Court on 5th March, 1961.

2. The deceased abovenamed duly executed his Last Will No. 1285
dated 3rd March, 1961, and attested by J. M. Caderamanpulle of Colombo
Notary Public. The said Will is annexed herewith marked " A ".

3. To the best of petitioner's knowledge the heirs left by the said
deceased are his three children the petitioner abovenamed (his son) and
Mrs. Manonmani Ponnusamy and Mrs. Rajeswari Shanmugarajah (his
20 daughters). The deceased's wife predeceased him.

4. Full and true particulars of the properties left by the deceased are
given in the Schedule hereto.

5. The petitioner claims probate as executor named in the said Last
Will.

6. The petitioner does not apprehend any opposition to the grant of
probate of the said Will to him.

Wherefore the petitioner prays :—

(a) that probate be issued to him as executor named in the said Last
Will and

30 (b) for costs of these proceedings and for such other and further relief as
to this Court shall seem fit.

(Sgd.) J. M. CADERAMANPULLE,
Proctor for Petitioner.

SCHEDULE

ASSETS :

Immovables

1. Premises No. 29, Church Street, Slave
Island, Colombo, in extent 3 perches Rs. 5,000 .00

No. 3
Petition of
Dr. N. Sitham-
paramathan
12.4.61—
Continued

2.	Premises No. 88, 94 to 98 and 90/5, to 16, Vauxhall Street, in extent 31.6 perches	Rs. 20,000 .00
3.	Premises No. 288/1, Deans Road, Maradana in extent 3.61 perches.. .. .	7,500 .00
4.	Premises No. 292, Deans Road, Maradana in extent 22.81 perches	30,000 .00
5.	Property in India—An old house in South Street, Ramnad	5,000 .00

Rs. 67,500 .00 10

Movables

1.	Pawn Brokers Business carried on at 292, Deans Road, Maradana to wit :		
	(i) Money lent on pawns	Rs. 262,584 .50	
	(ii) Business furniture	1,000 .00	
2.	Cash in hand	1,863 .32	
3.	Sum due from Mrs. Manonmany Ponnusamy	8,150 .00	
4.	Money in National & Grindlays Bank.. .. .	333 .43	
5.	Money in Bank of Ceylon	1,386 .58	20
6.	Car No. CL 3014 Morris Eight	1,500 .00	
7.	Car No. 3 Sri 6686 Peugeot 203	9,000 .00	
8.	Household Furniture	1,000 .00	
9.	Personal Jewellery Gold Rings and Buttons	750 .00	Rs. 287,567 .83
			Rs. 355,067 .83
	(Journal Entry 3)		
10.	Amount due from C. R. Colombo Case No. 76850		112 .05

LIABILITIES

30

1.	Money due to :—	
	(i) T. V. Servai of Deans Road, Maradana	4,000 .00
	(ii) R. Shunmugarajah of Gatagahawela Group, Rangala	8,000 .00
	(iii) Kenneth Hall of Kotahena	5,000 .00
	(iv) Vernon Hall of Kotahena	3,000 .00
	(v) Beatrice Sithamparanathan of Kurunegala	4,000 .00

2.	Salaries and Fees due to :		
	(i) T. Veriah, Clerk of deceased	„	1,110.80
	(ii) O. Sinnathamby, Clerk of deceased	„	91.65
	(iii) A. Venugopal, Accountant of New Chetty Street .	.. „	4,450.00
3.	Funeral expenses	.. „	1,075.75
4.	Medical expenses	„	575.00
5.	Amount due on Pawns sold by Public Auction	„	581.12 Rs. 31,884.32
10		Net value	<u>Rs. 323,183.51</u>

No. 3
Petition of
Dr. N. Sitham-
paranathan
12.4.61—
Continued

(Sgd.) J. M. CADERAMANPULLE,
Proctor for Petitioner.

Documents filed with the petition.

1. Proxy.
2. Two affidavits of witnesses and the Notary.
3. Affidavit of the petitioner.
4. Last Will No. 1285 dated 3rd March, 1961, marked " A ".

Annex to the Petition Marked " A "

Annex
Marked " A "—
(3.3.61)

This is the identical Will referred to in } (Sgd.) C. K. KORUTHU.
20 my affidavit of this date.

Before me.

(Sgd.) Illegibly.
J.P. 10.3.61.

This is the identical Will } (Sgd.) Illegibly.
referred to in our affidavit of } (Sgd.) J. M. CADERAMANPULLE.
this date.

Before me.

(Sgd.) Illegibly.
J.P. 13.3.61.

30 This is the identical Last Will }
referred to in my affidavit of this } (Sgd.) N. SITHAMPARANATHAN.
date.

Before me.

(Sgd.) A. V. PUSHPADEVI JOSEPH,
C.O.
10.4.67.

No. 3

Petition of
Dr. N. Sitham-
paranathan
12.4.61—
Continued

Annex
Marked ' A '
(3.3.61)—
Continued

No. 1285

I, Velautham Natarajan of 292, Deans Road, Maradana, Colombo, being of a sound and disposing mind memory and understanding, hereby revoke and annul all wills codicils and other testamentary acts heretofore made by me and declare this my Last Will and Testament.

I bequeath and devise all my properties movable and immovable and of what nature or kind soever and wheresoever situate or whether the same be in possession reversion remainder or expectancy nothing excepted to my three children, Dr. Natarajan Sithamparanathan and Manonmani Natarajan wife of S. Ponnusamy and Rajeswari Natarajan wife of D. 10 Shunmugarajah, in equal shares absolutely.

I hereby appoint my said son, Dr. Natarajan Sithamparanathan to be the executor of this my Last Will and Testament.

In Witness Whereof I, the said Velautham Natarajan have set my hand to this and another of the same tenor and date as these presents at Colombo on this third day of March One thousand Nine hundred and Sixty-One.

Signed by the testator as and for this }
Last Will and testament in the presence }
of us present at the same time who at } (Sgd.) V. NATARAJAN.
his request in his presence and in the } (Sgd.) V. NATARAJAN.
presence of each other have hereunto }
subscribed our names as witnesses.

(Sgd.) V. KETHARANATHAN.

(Sgd.) C. K. KORUTHU.

20

(Sgd.) J. M. CADERAMANPULLE,
N.P.

I, JOSEPH MARIAN CADERAMANPULLE of Colombo, Notary Public do hereby certify and attest that the foregoing Last Will having been duly read over and explained by me to Velautham Natarajan the testator who has signed as " V. Natarajan " and who is known to me in the presence of Dr. Vettivelpillai Ketharanathan of Uduvil, Chunnakam presently of Lady Ridgeway Hospital and Chempothrail Koruthu Koruthu of 57/8, Flower Road, Colombo 7, the subscribing witnesses who are not known to me the same was signed by the said testator and also by the said witnesses 30 and by me the said Notary in my presence and in the presence of one another all being present at the same time at 292, Deans Road, Maradana, on this third day of March One thousand Nine hundred and Sixty-One.

(Sgd.) J. M. CADERAMANPULLE,
Notary Public.

Date of attestation.

3rd March, 1961.

(Seal)

No. 4

Affidavit of Dr. N. Sithamparanathan

IN THE DISTRICT COURT OF COLOMBO

No. 19842/T. In the matter of the Last Will and Testament of Vela-
utham Natarajan of 292, Deans Road, Maradana
(Deceased).
Dr. Natarajan Sithamparanathan of 292, Deans Road,
Maradana.. .. . *Petitioner.*

No. 4
Affidavit of
Dr. N. Sitham-
paranathan—
10.4.61

I, Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana,
10 being a Hindu solemnly sincerely and truly declare and affirm as follows :—

1. I am the petitioner abovenamed.
2. The deceased abovenamed died at 292, Deans Road, Maradana,
Colombo within the jurisdiction of this Court on 5th March, 1961.
3. The deceased abovenamed duly executed his Last Will No. 1285
dated 3rd March, 1961, and attested by J. M. Caderamanpulle of Colombo,
Notary Public. The said Will is annexed herewith marked " A "
4. To the best of my knowledge, the heirs left by the said deceased are
his three children, Mrs. Manonmani Ponnusamy and Mrs. Rajeswari Shan-
mugarajah (his daughters) and myself (his son). The deceased's wife pre-
20 deceased him.
5. Full and true particulars of the properties left by the deceased are
given in the Schedule hereto.
6. I claim probate as executor named in the said Last Will.
7. I do not apprehend any opposition to the grant of probate of the
said Will to me.

SCHEDULE

ASSETS :

Immovables

30	1. Premises No. 29, Church Street, Slave Island, Colombo, in extent 3 perches.	Rs. 5,000 ·00	
	2. Premises No. 88, 94 to 98 and 90/5 to 16, Vauxhall Street in extent 31 ·6 per- ches	„ 20,000 ·00	
	3. Premises No. 288/1, Deans Road, Mara- dana in extent 3 ·61 perches.	„ 7,500 ·00	
	4. Premises No. 292, Deans Road, Mara- dana in extent 22 ·81 perches	„ 30,000 ·00	
	5. Property in India—An old house in South Street, Ramnad	„ 5,000 ·00	Rs. 67,500 ·00

40 **Movables**

1. Pawn Brokers business carried on at
292, Deans Road, Maradana to wit :

No. 4
Affidavit of
Dr. N. Sitham-
paranathan
10.4.61—
Continued

(i) Money lent on Pawns	Rs. 262,584 ·50	
(ii) Business furniture	„ 1,000 ·00	
2. Cash in hand	„ 1,863 ·32	
3. Sum due from Mrs. Manonmany Pon- nusamy	„ 8,150 ·00	
4. Money in National and Grindlays Bank	„ 333 ·43	
5. Money in Bank of Ceylon	„ 1,386 ·58	
6. Car No. CL 3014 (Morris Eight)	„ 1,500 ·00	
7. Car No. 3 Sri 6686 Peugeot 203	„ 9,000 ·00	
8. Household furniture	„ 1,000 ·00	10
9. Personal Jewellery gold rings and but- tons	„ 750 ·00	Rs. 355,067 ·83

LIABILITIES :

1. Money due to :		
(i) T. V. Servai of Deans Road, Mara- dana	„ 4,000 ·00	
(ii) R. Shanmugarajah of Galagaha- wela Group, Rangala	„ 8,000 ·00	
(iii) Kenneth Hall of Kotahena	„ 5,000 ·00	
(iv) Vernon Hall of Kotahena	„ 3,000 ·00	20
(v) Beatrice Sithamparanathan of Kurunegala	„ 4,000 ·00	
2. Salaries and fees due to :		
(i) T. Veriah, clerk of deceased	„ 1,110 ·80	
(ii) O. Sinnathamby, clerk of deceased	„ 91 ·65	
(iii) A. Venugopal, Accountant of New Chetty Street	„ 4,450 ·00	
3. Funeral expenses	„ 1,075 ·75	
4. Medical expenses	„ 575 ·00	
5. Amount due on pawns sold by Public Auction	„ 581 ·12	Rs. 31,884 ·32 30
Net value of Estate	„	Rs. 323,183 ·51

(Sgd.) N. SITHAMPARANATHAN.

Read, signed and affirmed to at Colombo }
on this 10th day of April, 1961.

Before me,

(Sgd.) A. V. PUSHPADEVI JOSEPH,
Commissioner for Oaths.

No. 5**Affidavit of C. K. Koruthu**

No. 5
Affidavit of
C. K. Koruthu
—10.3.61

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of
Velautham Natarajan of 292, Deans Road,
Maradana (deceased).

I, Chempothrail Koruthu Koruthu of 57/8, Flower Road, Colombo 7,
being a Christian make oath and state as follows:—

1. I knew and I was well acquainted with the late Velautham
10 Natarajan of 292, Deans Road, Maradana, who died on 5th March, 1961.

2. On 3rd March, 1961, I was present and I saw the said deceased
signing the paper writing No. 1285 dated 3rd March, 1961, and annexed
herewith marked "A" and declaring the same as his Last Will in my
presence as attesting witness.

3. I signed the said Will as attesting witness at the request and in
the presence of the said deceased and in the presence of the other witness,
Dr. Vettivelpillai Ketharanathan, and the Notary, J. M. Caderamanpulle,
and in the presence of one another all being present at the same time at
292, Deans Road, Maradana, on 3rd March, 1961.

20 4. The signature, "V Natarajan", on the said Will is the signature
of the said deceased.

5. I state that the signature, "C. K. Koruthu", on the said Will is my
signature as witness.

6. I further state that the said deceased at the time of signing the
said Will was of sound mind memory and understanding.

Read, signed and sworn to at Colombo }
on this 10th day of March, 1961. } (Sgd.) C. K. KORUTHU.

Before me.

(Sgd.) Illegibly

Justice of the Peace.

30

No. 6**Affidavit of Dr. V. Ketharanathan and J. M. Caderamanpulle**

No. 6
Affidavit of
Dr. V. Kethara-
nathan and
J. M. Cadera-
manpulle—
13.3.61

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of
Velautham Natarajan of 292, Deans Road,
Maradana (deceased).

We, Dr. Vettivelpillai Ketharanathan of Uduvil, Chunnakam presently
of Lady Ridgeway Hospital, Colombo, being a Hindu solemnly sincerely and
truly declare and affirm and Joseph Marian Caderamanpulle of 37, Belmont
40 Street, Colombo, being a Christian make oath and state as follows:—

No. 6
Affidavit of
Dr. V. Kethara-
nathan and
J. M. Cadera-
manpulle
13.3.61—
Continued

1. We knew and we were well acquainted with the late Velautham Natarajan of 292, Deans Road, Maradana, who died on 5th March, 1961.

2. On 3rd March, 1961, we were present and we saw the said deceased signing the paper writing bearing No. 1285 dated 3rd March, 1961, and annexed herewith marked " A " and declaring the same as his Last Will in our presence as witness and Notary respectively.

3. We signed the said Will as witness and notary at the request and in the presence of the said deceased and in the presence of the other attesting witness, Chempothrail Koruthu Koruthu and in the presence of one another all being present at the same time at 292, Deans Road, Maradana, on 3rd 10 March, 1961.

4. The signature, " V. Natarajan " on the said Will is the signature of the said deceased.

5. We state that the signatures, " V. Ketharanathan " and " J. M. Caderamanpulle " on the said Will are our signatures as witness and notary respectively.

6. We further state that the said deceased at the time of signing the said Will was of sound mind memory and understanding.

Read, signed and affirmed to by }
the affirmant and sworn to by the } (Sgd.) V. KETHARANATHAN.
deponent at Colombo on this } (Sgd.) J. M. CADERAMANPULLE. 20
thirteenth day of March, 1961. }

Before me,

(Sgd.) Illegibly.
Justice of the Peace.

No. 7

**Petition of R. Mathuranayagam
(With annex Marked " X ")**

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament
of Velautham Natarajan of 292, Deans Road,
Maradana (deceased). 30

In the matter of an application under 536 and
537 of the Civil Procedure Code.

No. 19842/T

Ramanathan Mathuranayagam of 96, Vauxhall
Street, Colombo.... *Petitioner.*

vs.

Dr. Natarajan Sithamparanathan of 292, Deans
Road, Maradana... .. . *Respondent.*

On this 24th day of May, 1961.

The petition of the petitioner abovenamed appearing by Muthucumaran Ranganathan his proctor states as follows :— 40

1. In these proceedings the respondent made an application to Court to have the Last Will of the aforesaid deceased bearing No. 1285 dated 3rd March, 1961, attested by J. M. Caderamanpulle of Colombo Notary Public, appended to the petition proved and for an order that he be declared the executor of the said Last Will and that probate thereof be issued to him.

2. The Court on the said application made the Order Absolute in the first instance under the provisions of section 529 of the Civil Procedure Code.

3. The petitioner states that the said Last Will ought not to have been held proved and that grant of probate of the said Last Will should not have
10 been made.

4. The petitioner states that the said Last Will No. 1285 aforesaid is not the act and deed of the deceased Velautham Natarajan. The said deceased executed a Last Will and Testament bearing No. 1283 dated 2nd February, 1961, also attested by J. M. Caderamanpulle of Colombo Notary Public which is annexed hereto marked " X ". The petitioner and the respondent were both appointed the executors of the said Last Will. The petitioner has an interest in the estate of the deceased as entitles him to make an application to have the Order Absolute entered in this case set aside and the petition of the respondent to have the Last Will No. 1285
20 proved to be dismissed.

5. The petitioner claims probate of the aforesaid Last Will No. 1283 dated 2nd February, 1961, attested by J. M. Caderamanpulle of Colombo Notary Public as Executor thereof.

6. To the best of the petitioner's knowledge the heirs left by the said deceased are his three children the petitioner abovenamed (his son) Mrs. Manonmani Ponnusamy and Mrs. Rajeswari Shanmugarajah (his daughters). The deceased's wife predeceased him.

7. Full and true particulars of the properties left by the deceased are given in the Schedule hereto.

30 Wherefore the petitioner prays :

- (a) that the Order Absolute entered in this case be set aside ;
- (b) that the petition of the respondent that the Last Will No. 1285 dated 3rd March, 1961, attested by J. M. Caderamanpulle, Notary Public be dismissed ;
- (c) for an order declaring the Last Will No. 1283 dated 2nd February, 1961, attested by J. M. Caderamanpulle, Notary Public proved and the petitioner and the respondent be declared the executors thereof and that probate thereof be issued to the petitioner and the respondent ;
- 40 (d) for costs ; and
- (e) for such other and further relief as to this Court shall seem meet.

(Sgd.) M. RANGANATHAN,
Proctor for Petitioner.

No. 7
Petition of
R. Mathura-
nayagam
24.5.61—
Continued

SCHEDULE

ASSETS :

Immovables

1. Premises No. 29, Church Street, Slave Island, Colombo in extent 3 perches ..	Rs.	5,000	·00	
2. Premises No. 88, 94 to 98 and 90/5 to 16, Vauxhall Street in extent 31·6 perches ..	„	20,000	·00	
3. Premises No. 282/1, Deans Road, Maradana in extent 3·61 perches .	„	7,500	·00	
4. Premises No. 292, Deans Road, Maradana in extent 22·81 perches .	„	30,000	·00	Rs. 62,500 ·00 10

Movables

1. Pawn Brokers business carried on at 292, Deans Road, Maradana to wit :				
(i) Money lent on pawns .	Rs.	262,584	·50	
(ii) Business furniture .	„	1,000	·00	
2. Cash in hand ..	„	1,863	·32	
3. Sum due from Mrs. Manonmany Ponnusamy ..	„	8,150	·00	
4. Money in National & Grindlays Bank.	„	333	·43	20
5. Money in Bank of Ceylon	„	1,386	·58	
6. Car No. CL 3014 Morris Eight .	„	1,500	·00	
7. Car No. 3 Sri 6686 Peugeot 203	„	9,000	·00	
8. Household furniture ..	„	1,000	·00	Rs. 286,817 ·83
				Rs. 349,317 ·83
9. Private jewellery gold rings and buttons	Rs.	40,000	·00	
10. Private cash in hand ..	„	60,000	·00	„ 100,000 ·00
				Rs. 449,317 ·83

LIABILITIES

Funeral expenses .	Rs.	1,075	·75	30
Medical expenses .	„	575	·00	„ 1,650 ·75
Net value ..	Rs.	447,667	·08	

(Sgd.) M. RANGANATHAN,
Proctor for Petitioner.

(Annex Marked "X" to Petition of R. Mathuranayagam dated 24.5.61)

J. M. CADERAMANPULLE

*Proctor & Notary
Hultsdorf.*

19842/T.

This is the identical Last Will referred to in our affidavit of this day.

Colombo, 24th May, 1961.

(Sgd.) A. KANAKARATNAM.

(Sgd.) M. KANDASAMY.

10

Before me,

(Sgd.) A. V. PUSHPADEVI JOSEPH.

C.O.

This is the identical Last Will referred to in my affidavit of this day.

Colombo, 24th May, 1961.

(Sgd.) R. MATHURANAYAGAM.

Before me,

(Sgd.) A. V. PUSHPADEVI JOSEPH,

C.O.

20

No. 1283

THIS is the Last Will and Testament of me Velautham Natarajan of 292, Deans Road, Maradana, Colombo.

I hereby revoke and cancel all Last Wills and Codicils heretofore made by me and declare this my Last Will and Testament.

I appoint my son Dr. Natarajan Sithamparanathan and my nephew Ramanathan Mathuranayagam of 96, Vauxhall Street to be the Executors and Trustees of this my Last Will and Testament.

I give and bequeath unto my grand-daughter Manjula Sugumari daughter of Manonmany Ponnusamy Rupees Ten Thousand (Rs. 10,000/-) which amount shall be paid to her at the time of her marriage.

I give to my said son Dr. N. Sithamparanathan a sum of Rupees Thirty Thousand (Rs. 30,000/-) for furthering his studies abroad. This sum of Rupees Thirty Thousand (Rs. 30,000/-) shall be paid by monthly instalments of Rupees Five Hundred (Rs. 500/-) by the Trustees from the Trust Fund.

I give and devise all my properties movable and immovable to wit my pawn brokers business my personal jewels my motor cars and household furniture articles and effects Premises Nos. 88, 94, 96, 98, 90/5 to 90/16, Vauxhall Street, Slave Island, Premises No. 29, Church Street, Slave Island, Premises No. 292, and 288/1, Deans Road, Maradana and my house at South Street, Ramnad, South India (which property in India I inherited from my father) to my said Trustees upon trust that the said trustees shall out of the income of the said properties and business pay the bequests hereinbefore mentioned and shall stand possessed of the said properties and business in trust for the following charitable purposes :—

No. 7

Petition of
R. Mathura-
nayagam
24.5.61—
Continued

Annex
Marked X—
(2.2.61)

No. 7
 Petition of
 R. Mathura-
 nayagam
 24.5.61—
Continued

Annex
 Marked X
 (2.2.61)—
Continued

(1) To erect a Madam at Kataragama Ceylon and feed the pilgrims and the poor.

(2) To open a Madam in Palani South India or in any other part of India if the Trustees desire.

(3) To repair any Hindu temples they desire.

(4) To give free medical aid to the poor.

If the said Trustees think these charitable works mentioned by me cannot be executed owing to any circumstances beyond their control I give power to them to do any other charitable works as they think good.

The said Trustees shall have the power to sell my properties or any 10 part thereof and invest the said proceeds in any other investment or investments. They shall also have power to sell my said business and do any other business out of the proceeds of such sale or continue my business of Pawn Broker.

The said Trustees shall appoint new trustee or trustees in place of the deceased or retiring trustee or in place of trustee or trustees failing or refusing to act. Such new trustee or trustees shall be selected by the surviving trustee from the children of the said Trustees, Dr. Sithamparanathan and R. Mathuranayagam or their descendants generation to generation. If there are no children or grand-children or further descendants of 20 the said Trustees the surviving trustee is at liberty to choose as trustee or trustees any third party except my daughters or their descendants or any relation of mine.

It is my desire that the said Trust be named Velautham Natarajan Trust.

I also declare that only the income of my said properties and my said business or any investment representing the same shall be utilised for the purpose of executing the trust hereby created.

It is my desire that the trust be always carried on jointly by only two trustees or their successors as aforesaid at a time. 30

As I have given my two daughters Manonmany Natarajan wife of S. Ponnusamy and Rajeswari Natarajan wife of D. Shunmugarajah adequate dowries at their marriage and even afterwards my said daughters will not be entitled to any claim or share out of my estate after my death.

I also direct that premises Nos. 292 and 288/1, Deans Road, shall not be rented out to anybody but shall be used for the occupation of my Trustee or Trustees or their successor or successors in office at that time or for the use of the charities intended.

In Witness whereof I the said Velautham Natarajan have set my hand to this and another of the same tenor and date as these presents at Colombo 40 on this Second day of February One thousand Nine hundred and Sixty-one.

Witnesses who signed this Last Will at }
 the request of the testator who is known } (Sgd.) V. NATARAJAN.
 to us. }

(Sgd.) A. KANEKARATNAM.

(Sgd.) M. KANDASAMY.

(Sgd.) J. M. CADERAMANPULLE,
 N.P

I, Joseph Marian Caderamanpulle of Colombo Notary Public do hereby certify and attest that the foregoing Last Will having been duly read over by Velautham Natarajan the testator who has signed as "V. Natarajan" and who is known to me in the presence of Dr. Arumugam Kanakaratham of 117, Galle Road, Bambalapitiya and Dr. Murugesupillai Kandasamy of 40, Moor Road, Wellampitiya the subscribing witnesses who are also known to me the same was signed by the said testator and also by the said witnesses in my presence and in the presence of one another all being present at the same time at 292, Deans Road, Maradana, Colombo, on this second day of 10 February, One thousand Nine hundred and Sixty-one.

I further certify and attest that in the original on page 2 line 3 the word "charitable" was interpolated before the said Last Will was read and signed as aforesaid.

(Sgd.) J. M. CADERAMANPULLE,
Notary Public.

Date of attestation.

2nd February, 1961.

SEAL.

No. 7
Petition of
R. Mathura-
nayagam
24.5.61—
Continued

Annex
Marked X
(2.2.61)—
Continued

No. 8

20

Affidavit of R. Mathuranayagam

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of Velautham Natarajan of 292, Deans Road, Maradana (deceased).

In the matter of an application under Sections 536 and 537 of the Civil Procedure Code.

No. 19842/T. Ramanathan Mathuranayagam of 96, Vauxhall Street, Colombo 2. *Petitioner.*

vs.

30

Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana. *Respondent.*

I, Ramanathan Mathuranayagam of 96, Vauxhall Street, Colombo 2, being a Hindu do hereby solemnly sincerely and truly declare and affirm as follows :—

1. I am the petitioner abovenamed.
2. In these proceedings the respondent made an application to Court to have the Last Will of the aforesaid deceased bearing No. 1285 dated 3rd March, 1961, attested by J. M. Caderamanpulle of Colombo, Notary Public, appended to the petition proved and for an order that he be declared the 40 executor of the said Last Will and that probate thereof be issued to him.
3. The Court on the said application made the Order Absolute in the first instance under the provisions of section 529 of the Civil Procedure Code.

No. 8
Affidavit of
R. Mathura-
nayagam—
24.5.61

No. 8
Affidavit of
R. Mathura-
nayagam
24.5.61—
Continued

4. I state that the said Last Will ought not to have been held proved and that grant of probate of the said Last Will should not have been made.

5. I state that the said Last Will No. 1285 aforesaid is not act and deed of the deceased Velautham Natarajan. The said deceased executed a Last Will and Testament bearing No. 1283 dated 2nd February, 1961, also attested by J. M. Caderamanpulle of Colombo, Notary Public which is annexed with the petition marked "X". I and the respondent were both appointed the executors of the said Last Will. I have an interest in the estate of the deceased as entitles him to make an application to have the Order Absolute entered in this case set aside and the petition of the respondent 10 to have the Last Will No. 1285 proved to be dismissed.

6. I claim probate of the aforesaid Last Will No. 1283 dated 2nd February, 1961, attested by J. M. Caderamanpulle of Colombo Notary Public as executor thereof.

7. To the best of my knowledge the heirs left by the said deceased are his three children, myself abovenamed, Mrs. Manonmani Ponnusamy and Mrs. Rajeswari Shanmugarajah. The deceased's wife predeceased him.

8. Full and true particulars of the properties left by the deceased are given in the schedule hereto.

SCHEDULE

20

ASSETS :

Immovables

1. Premises No. 29, Church Street, Slave Island, Colombo in extent 3 perches	Rs. 5,000 .00	
2. Premises No. 88, 94 to 98 and 90/5 to 16, Vauxhall Street in extent 31 .6 perches	„ 20,000 .00	
3. Premises No. 282/1, Deans Road, Maradana in extent 3 .61 perches.	„ 7,500 .00	
4. Premises No. 292, Deans Road, Maradana	„ 30,000 .00	Rs. 62,000 .00

30

Movables

1. Pawn Brokers business carried on at 292, Deans Road, Maradana to wit :		
(i) Money lent in pawns	Rs. 262,584 .50	
(ii) Business furniture	„ 1,000 .00	
2. Cash in hand	„ 1,863 .32	
3. Sum due from Mrs. Manonmany Ponnusamy	„ 8,150 .00	
4. Money in National & Grindlays Bank	„ 333 .43	40
5. Money in Bank of Ceylon	„ 1,386 .58	
6. Car No. CL 3014 Morris Eight	„ 1,500 .00	

7. Car No. 3 Sri 6686 Peugeot 203	. ,,	9,000 .00	
8. Household furniture	. ,,	1,000 .00	
9. Private jewellery gold rings and buttons	.. ,,	40,000 .00	
10. Private cash in hand	.. ,,	60,000 .00	Rs. 386,817 .83
			Rs. 449,317 .83

No. 8
Affidavit of
R. Mathura-
nayagam
24.5.61—
Continued

LIABILITIES :

Funeral expenses	.. ..	..	1,075 .75	
Medical expenses	.. ..	..	575 .00	Rs. 1,650 .75
			Net value	Rs. 447,667 .08

10 Affirmed and signed at Colombo }
this 24th day of May, 1961. } (Sgd.) R. MATHURANAYAGAM.

Before me,

(Sgd.) A. V. PUSHPADEVI JOSEPH,
Commissioner for Oaths.

No. 9

Affidavit of Dr. A. Kanakarathnam and Dr. M. Kandasamy

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of Velautham Natarajan of 292, Deans Road, Maradana (deceased).

20

No. 19842/T.

In the matter of an application under 536 and 537 of the Civil Procedure Code.

Ramanathan Mathuranayagam of 96, Vauxhall Street, Colombo. *Petitioner.*

vs.

Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana.... *Respondent.*

No. 9
Affidavit of
Dr. A. Kanaka-
ratnam and
Dr. M. Kanda-
samy—
24.5.61

We, Dr. Arumugam Kanakarathnam of 117, Galle Road, Bambalapitiya and Dr. Murugesupillai Kandasamy of 40, Moor Road, Wellawatte, being
30 Hindus do hereby solemnly, sincerely and truly declare and affirm as follows :—

1. We knew and we were well acquainted with the late Velautham Natarajan of 292, Deans Road, Maradana, who died on 5th March, 1961.

2. On the 2nd day of February, 1961, we were present and we saw the said deceased sign the paper writing bearing No. 1283 dated 2nd February, 1961, attested by J. M. Caderamanpulle of Colombo, Notary Public

No. 9
Affidavit of
Dr. A. Kanakar-
atnam and
Dr. M. Kanda-
samy
24.5.61—
Continued

and annexed hereto marked letter " X " and declaring the same as his Last Will in our presence as witnesses and in the presence of J. M. Caderamanpulle as the Notary respectively.

3. We signed the said Last Will as witnesses at the request and in the presence of the said deceased and in the presence of the said Notary Mr. J. M. Caderamanpulle and in the presence of one another all being present at the same time at No. 292, Deans Road, Maradana on 2nd February, 1961.

4. The signature " V. Natarajan " on the said Last Will is the signature of the said deceased.

5. We state that the signatures " A. Kanakarathnam " and " M. Kandasamy " on the said Last Will are our signatures as witnesses and the signature " J. M. Caderamanpulle " is that of Mr. J. M. Caderamanpulle the aforesaid Notary respectively.

6. We further state that the said deceased at the time of signing the said Last Will was of sound mind, memory and understanding.

Read, signed and affirmed to by the }
affirmants abovenamed at Colombo on this } (Sgd.) A. KANAKARATNAM.
24th day of May, 1961. } (Sgd.) M. KANDASAMY.

Before me,

(Sgd.) A. V. PUSHPADEVI JOSEPH,

Commissioner for Oaths. 20

No. 10
Statement of
Objections of
Dr. N. Sitham-
paranathan—
22.6.61

No. 10

Statement of Objections of Dr. N. Sithamparanathan

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of Vela-
utham Natarajan of 292, Deans Road, Maradana
(deceased).

In the matter of an application under 536 and 537 of
the Civil Procedure Code.

No. 19842/T. Ramanathan Mathuranayagam of 96, Vauxhall Street,
Colombo 2. *Petitioner. 30*

vs.

Dr. Natarajan Sithamparanathan of 292, Deans Road,
Maradana. *Respondent.*

The 22nd day of June, 1961.

The statement of objections of the respondent abovenamed appearing by J. M. Caderamanpulle and his assistant, Rita Caderamanpulle his Proctors states as follows :—

1. As matters of law in limine that

(a) the application of R. Mathuranayagam, the petitioner, is bad in law,

(b) in any event, it cannot, in law, be maintained in the present form.

2. This respondent further and without prejudice to the above matters of law denies the averment of fact made by the said petitioner that the Last Will No. 1285 of 3rd March, 1961, attested by J. M. Caderamanpulle N.P. was not the act and deed of the deceased, Velautham Natarajan.

Wherefore this respondent prays :—

- (a) that the said application of R. Mathuranayagam be dismissed,
- (b) for costs and for such other and further relief as to this Court shall seem fit.

10

(Sgd.) J. M. CADERAMANPULLE,
Proctor for Respondent.

Settled by :

- (Sgd.) T. N. WIKREMANAYAKE.
- (Sgd.) E. G. WIKREMANAYAKE, Q.C.

No. 11

Proceedings Before the District Court

28.7.61.

Mr. Advocate Navaratnarajah instructed for the petitioner.

Mr. Advocate E. G. Wickramanayake, Q.C., with Advocate Mr
20 Wickramanayake instructed for the respondent.

Counsel for the respondent states that the application has been made for proof of the Last Will in March, 1961. Cites section 537 of the Civil Procedure Code dealing with the powers of Court to recall probate and section 536 which is the enabling section. Section 537 shows how they must move to recall probate. The rules of summary procedure are very clearly laid down. Cites section 665 and 666 of the Civil Procedure Code. Counsel also cites section 377, 379 and 384 of the Civil Procedure Code and 30 New Law Reports—283. In this case the petitioner has filed a petition and affidavit and made an application.

30 At this stage, Counsel for the petitioner Mathuranayagam states that his Proctor had failed to move Court to make an order under section 377 of the Civil Procedure Code on the petition and affidavit filed by him but had filed a motion asking the Court to fix the matter of his petition and affidavit for inquiry and the Court accordingly has made such an order.

In the circumstances Proctor for the petitioner Mathuranayagam moves that his petition be dismissed reserving his right to file another petition.

The application is, therefore dismissed with costs.

(Sgd.)
Additional District Judge.

28.7.61.

40

No. 10
Statement of
Objections of
Dr. N. Sitham-
paramathan
22.6.61—
Continued

No. 11
Proceedings
before the
District Court
28.7.61

No. 12
Petition of
R. Mathura-
nayagam—
1.8.61

No. 12

Petition of R. Mathuranayagam

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of Velautham Natarajan of 292, Deans Road, Maradana (deceased).

No. 19842/T.

In the matter of an application under sections 536 and 537 of the Civil Procedure Code.

Ramanathan Mathuranayagam of 96, Vauxhall Street, Colombo. *Petitioner.* 10

vs.

Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana. *Respondent.*

On this 1st day of August, 1961.

The petition of the petitioner abovenamed appearing by Muthucumaran Ranganathan his Proctor states as follows :—

1. In these proceedings the respondent made an application to Court to have the Last Will of the aforesaid deceased bearing No. 1285 dated 3rd March, 1961, attested by J. M. Caderamanpulle of Colombo Notary Public, appended to the petition, proved and for an order that he be declared the 20 executor of the said Last Will and that probate thereof be issued to him.

2. The Court on the said application made the Order Absolute in the first instance under the provisions of section 529 of the Civil Procedure Code.

3. The petitioner states that the said Last Will ought not to have been held proved and that grant of probate of the said Last Will should not have been made.

4. The petitioner states that the said Last Will No. 1285 aforesaid is not the act and deed of the deceased Velautham Natarajan. The said deceased executed a Last Will and Testament bearing No. 1283 dated 2nd February, 1961, also attested by J. M. Caderamanpulle of Colombo, Notary 30 Public, which said Will marked " X ", together with affidavit from the witnesses thereto have been already filed of record in this case. The petitioner and the respondent were both appointed the executors of the said Last Will. The petitioner has an interest in the estate of the deceased as entitles him to make an application to have the Order Absolute entered in this case set aside and the petition of the respondent to have the Last Will No. 1285 proved to be dismissed.

5. The petitioner claims probate of the aforesaid Last Will No. 1283 dated 2nd February, 1961, attested by J. M. Caderamanpulle of Colombo, Notary Public as joint executor thereof. 40

6. To the best of the petitioner's knowledge the heirs left by the said deceased are his three children Dr. Natarajan Sithamparanathan the respondent abovenamed (his son) Mrs. Manonmani Ponnusamy and Mrs. Rajeswari Shanmugarajah (his daughters). The deceased's wife predeceased him.

7. Full and true particulars of the properties left by the deceased are given in the Schedule hereto.

Wherefore the petitioner prays :—

- 10
1. (a) that the Order Absolute entered in this case be set aside;
 - (b) that the petition of the respondent to have Last Will No. 1285 dated 3rd March, 1961, attested by J. M. Caderamanpulle, Notary Public, proved be dismissed ;
 - (c) for an order declaring the Last Will No. 1283 dated 2nd February, 1961, attested by J. M. Caderamanpulle, Notary Public, proved and the petitioner and the respondent be declared the executors thereof and that probate thereof be issued to the petitioner and the respondent ;
 - (d) for costs ;
 2. for an Order under section 377(a) or 377 (b) of the Civil Procedure Code as the Court may be pleased to make against the respondent ordering him to show cause why the aforesaid reliefs prayed for by the petitioner be not granted ; and
 3. for such other and further relief as to this Court shall seem meet.

20

(Sgd.) M. RANGANATHAN,
Proctor for Petitioner.

SCHEDULE

ASSETS :

Immovables

1.	Premises No. 29, Church Street, Slave Island Colombo in extent 3 perches .	Rs.	5,000	·00
2.	Premises No. 88, 94 to 98 and 90/5 to 16, Vauxhall Street in extent 31·6 perches	„	20,000	·00
30	3. Premises No. 282/1, Deans Road, Maradana, in extent 3·61 perches..	„	7,500	·00
	4. Premises No. 292, Deans Road, Maradana in extent 22·81 perches	„	30,000	·00
			<u>Rs.</u>	<u>62,500</u> ·00

Movables

1.	Pawn Brokers business carried on at 292, Deans Road, Maradana, to wit :			
	(i) Money lent on pawns ..	Rs.	262,584	·50
	(ii) Business furniture ..	„	1,000	·00
2.	Cash in hand .	„	1,863	·32
3.	Sums due from Mrs. Manonmani Ponnusamy	„	8,150	·00
40	4. Money in National & Grindlays Bank..	„	333	·43
	5. Money in Bank of Ceylon .	„	1,386	·58

No. 12
Petition of
R. Mathura-
nayagam
1.8.61—
Continued

6. Car No. CL 3014 Morris Eight	..	1,500 .00	
7. Car No. 3 Sri 6686 Peugeot 203	..	9,000 .00	
8. Household furniture	..	1,000 .00	
9. Private jewellery gold rings and buttons	.. ..	40,000 .00	
10. Private Cash in hand	.	60,000 .00	.. 386,817 .83
			Rs. 449,317 .83
LIABILITIES :			
Funeral expenses	..	1,075 .75	
Medical expenses	..	575 .00	.. 1,650 .75 10
			Net Value Rs. 447,667 .08

(Sgd.) M. RANGANATHAN,
Proctor for Petitioner.

No. 13
Affidavit of
R. Mathura-
nayagam—
1.8.61

No. 13

Affidavit of R. Mathuranayagam

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of Velatham Natarajan of 292, Deans Road, Maradana (deceased).

In the matter of an application under Sections 536 and 537 of the Civil Procedure Code.

No. 19842/T.

Ramanathan Mathuranayagam of 96, Vauxhall Street, Colombo 2.*Petitioner.*

vs.

Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana.... ..*Respondent.*

I, Ramanathan Mathuranayagam of 96, Vauxhall Street, Colombo, being a Hindu do hereby solemnly, sincerely and truly declare and affirm as follows :—

1. I am the petitioner abovenamed.

30

2. In these proceedings the respondent made an application to Court to have the Last Will of the aforesaid deceased bearing No. 1285 dated 3rd March, 1961, attested by J. M. Caderamanpulle of Colombo, Notary Public, appended to the petition proved and for an Order that he be declared the executor of the said Last Will and that probate thereof be issued to him.

3. The Court on the said application made the Order Absolute in the first instance under the provisions of section 529 of the Civil Procedure Code.

4. I state that the said Last Will ought not to have been held proved and that grant of probate of the said Last Will should not have been made.

5. I state that the said Last Will No. 1285 aforesaid is not the act and deed of the deceased Velautham Natarajan. The said deceased executed a Last Will and Testament bearing No. 1283 dated 2nd February, 1961, also attested by J. M. Caderamanpulle of Colombo, Notary Public which said Last Will marked " X " together with affidavit from the witnesses thereto have been already filed of record in this case. I and the respondent were both appointed the executors of the said Last Will. I have an interest in
10 the estate of the deceased as entitles me to make an application to have the Order Absolute entered in this case set aside and the petition of the respondent to have the Last Will No. 1285 proved to be dismissed.

6. I claim probate of the aforesaid Last Will No. 1283 dated 2nd February, 1961, attested by J. M. Caderamanpulle of Colombo, Notary Public as joint executor thereof.

7. To the best of my knowledge the heirs left by the said deceased are his three children, Dr. N. Sithamparanathan the respondent abovenamed, Mrs. Manonmani Ponnusamy and Mrs. Rajeswari Shanmugarajah. The deceased's wife predeceased him.

20 8. Full and true particulars of the properties left by the deceased are given in the Schedule hereto.

SCHEDULE

ASSETS :

Immovables

	1. Premises No. 29, Church Street, Slave Island, Colombo in extent 3 perches	Rs. 5,000 ·00	
	2. Premises No. 88, 94 to 98 and 90/5 to 16, Vauxhall Street, Colombo in extent 31 ·6 perches	.. .. 20,000 ·00	
30	3. Premises No. 282/1, Deans Road, Maradana in extent 3 ·61 perches.	.. .. 7,500 ·00	
	4. Premises No. 292, Deans Road, Maradana	.. .. 30,000 ·00	Rs. 62,500 ·00

Movables

	1. Pawn Brokers business carried on at 292, Deans Road, Maradana to wit :	
	(i) Money lent in pawns	Rs. 262,584 ·50
	(ii) Business furniture	.. .. 1,000 ·00
	2. Cash in hand	.. .. 1,863 ·32
40	3. Sum due from Mrs. Manonmani Ponnusamy	.. .. 8,150 ·00
	4. Money in National & Grindlays Bank	.. .. 333 ·43
	5. Money in Bank of Ceylon	.. .. 1,386 ·58
	6. Car No. CL 3014 Morris Eight	.. .. 1,500 ·00

No. 13
Affidavit of
R. Mathura-
nayagam
1.8.61—
Continued

No. 13
Affidavit of
R. Mathura-
nayagam
1.8.61—
Continued

7. Car No. 3 Sri 6686 Peugeot 203	„	9,000 .00	
8. Household furniture	„	1,000 .00	
9. Private jewellery, gold rings and buttons	„	40,000 .00	
10. Private cash in hand	..	60,000 .00	Rs. 386,817 .83
			<u>449,317 .83</u>

LIABILITIES :

Funeral expenses	..	Rs. 1,075 .75	
Medical expenses	..	575 .00	Rs. 1,650 .75
			<u>Rs. 447,667 .08</u>

Signed and affirmed at Colombo this } (Sgd.) R. MATHURANAYAGAM. 10
1st day of August, 1961.

Before me,

(Sgd.) A. V. PUSHPADEVI JOSEPH,
Commissioner for Oaths.

No. 14
Order of the
District Court—
28.8.61

No. 14

Order of the District Court

28.8.61.

Mr. Advocate Navaratnarajah instructed in support.

I have heard counsel and I have also perused the petition and affidavit and I am satisfied that there is *prima facie* material to grant the order which the petitioner seeks. The petitioner moves that Order Nisi be entered in 20 terms of Section 377 (a). Enter Order Nisi accordingly. Order Nisi is to be published in the Times of Ceylon. Order Nisi returnable on 26.10.61.

(Sgd.)
Additional District Judge.

No. 15
Order Nisi—
28.8.61

No. 15

Order Nisi

ORDER NISI

IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of Vela-
utham Natarajan of 292, Deans Road, Maradana 30
(deceased).

Testamentary
Jurisdiction
No. 19842/T.

And in the matter of an Application under Sections 536
and 537 of the Civil Procedure Code.

No. 17

Affidavit of Dr. N. Sithamparanathan, J. M. Caderamanpulle and C. K. Koruthu.

IN THE DISTRICT COURT OF COLOMBO

No. 17
Affidavit of
Dr. N. Sitham-
paranathan,
J. M. Cadera-
manpulle and
C. K. Koruthu
— 28.10.61

In the matter of the Last Will and Testament of Vela-
utham Natarajan of 292, Deans Road, Maradana
(deceased).

No. 19842/T.

In the matter of an application under Sections 536 and
537 of the Civil Procedure Code.

10

Ramanathan Mathuranayagam of 96, Vauxhall Street,
Colombo..... .. *Petitioner.*

vs.

Dr. Natarajan Sithamparanathan of 292, Deans Road,
Maradana. *Respondent.*

I, Dr. N. Sithamparanathan of 292, Deans Road, Maradana, being a Hindu solemnly, sincerely and truly declare and affirm and we Joseph Marian Caderamanpulle of 47, College Street, Kotahena and Chempothrail Koruthu Koruthu of 57/8, Yalta Flats, Flower Road, Colombo 3, being Christians make oath and state as follows :—

20

(1) We deny the several averments in the petition and affidavit of the petitioner.

(2) We deny that the Will No. 1285 dated 3rd March, 1961, already admitted to probate was not the act and deed of the deceased.

(3) I, the first named affirmant affirm and the second and third named deponents swear that we were present at the execution of the said Last Will and that the said testator was at the time of sound mind, memory and understanding and that he knew that it was his Last Will that he was executing and also the contents thereof.

30

Read, signed and affirmed to by } (Sgd.) N. SITHAMPARANATHAN.
the 1st affirmant and sworn to by } (Sgd.) J. M. CADERAMANPULLE.
the 2nd and 3rd deponents this } (Sgd.) C. K. KORUTHU
28th day of October, 1961.

Before me,

(Sgd.) A. V. PUSHPADEVI JOSEPH,
Commissioner for Oaths.

No. 18

Issues Framed

No. 18
Issues Framed

26.10.62.

Mr. Advocate P. Navaratnarajah with Mr. Advocate N. E. Weerasooriya
40 (Junior) and Miss Advocate Sebastian instructed for the petitioner.

No. 18
Issues Framed
—Continued

Mr. Advocate E. B. Wickramanayake, Q.C. with Mr. Advocate E. G. Wickramanayake, Q.C., and Mr. Advocate Nimal Wickramanayake instructed for the respondent-executor.

Counsel for the respondent raises the following issues :—

1. Was the Last Will No. 1285 dated 3.3.61 the act and deed of the deceased V. Natarajan ?
2. Was the deceased competent to execute the Last Will ?

Counsel for the petitioner does not raise any further issues. I accept these issues.

(Sgd.) . . . 10
Additional District Judge.

No. 19
Respondent's
Evidence

No. 19

Respondent's Evidence

Counsel for the respondent calls :—

Evidence of
V. Shanmugam
Pillai—
Examination

VELAUTHAN SHANMUGAM PILLAI—Affirmed, 72 years, Government pensioner. Residing at No. 283/4, South Street, Ramnad, South India.

I am the eldest brother of the late Mr. V. Natarajan. He was about 61 years when he died. I live in India. I have been living in India since 1912. My brother the deceased was living in Colombo. At Deans Road 20 he had a pawn broker's business. I have paid him casual visits in Ceylon.

I know the petitioner in this case Mathuranayagam. I do not know his parents. He is not related to Mr. Natarajan.

I came to Colombo on 24.2.61. I went to see my brother. My brother was lying in bed. I was told that he was suffering from cancer in the liver. On 24.2.61 I arrived there and I exchanged greetings with my brother. I went to India on 15.3.61 and up to that time I was staying with my brother. From the 24th when I was staying with my brother Mathuranayagam was visiting my brother till about the 28th February.

Q. Did you have any discussions with your brother on this Last 30 Will ?

A. It was Mathuranayagam who told me first about this Last Will.

Q. The first time you discussed anything about the Last Will was with Mathuranayagam ?

A. Yes. About the 26th February, the third day of my visit, when his wife was talking to my brother he called me out to the portico. We both went out. He gave me a cigar and I lit the cigar. Then he told me about this Will and about his being made a trustee. I asked him where is the Will and he said it was in the bank. Then I asked him whether any others were included in the Will and he said that his son Dr. Sithampara- 40 nathan was also named in the Will, *i.e.* the son of the deceased. Mathuranayagam went away at about 10 o'clock with his wife. The following morning I asked Dr. Sithamparanathan. He said that his father told him

about a Will but he did not know the contents of the Will and that he did not see the Will.

Q. Did you speak to your brother about it ?

A. On the 27th February I spoke to my brother the deceased. I told him that Mathuranayagam had told me about a Will and I asked him the contents of the Will. He told me that he had given everything to charity. The previous night also Mathuranayagam told me that my brother had named two trustees and he was one of the trustees and that the property had been left to the trustees. On the 27th February I told my brother that I was
 10 sorry to hear that he had written everything to a trust and made Mathuranayagam a trustee. I said I did not know the relationship to Mathuranayagam and as far as I know he was not a relation. Then my brother kept quiet, and I explained to him that charity should be done by the children on behalf of the parents. I asked him what is the guarantee that an outsider would do it correctly.

Q. What did he say to that ?

A. He was patiently hearing it. Then we were speaking some other things and then I went to my room.

The following day, *i.e.* on the 28th February, during the day time there
 20 was some trouble between Mathuranayagam and my brother's daughter Manonmani in the presence of my brother with regard to some money transaction. At this time my brother was listening to what was going on. Some trouble arose and after that Mathuranayagam gave Rs. 400/-, I think, to Manonmani. My brother was watching this. That would have influenced my brother.

On that night Mathuranayagam came alone. At that time my brother told him that he had come to make mischief among his children and asked him not to come. At that time I was also seated there. I did not speak to my brother. Then I went to sleep. That was on the 28th.

On 1.3.61 my brother called his son Dr. Sithamparanathan and told
 30 him something about this Will and asked him to bring the proctor who wrote the previous Will. But during the interval I do not know what happened. On the 3rd March, suddenly I saw a proctor and some people in trousers assembled in the room. I was also by the side. My brother asked Proctor Caderamanpulle whether he had brought a new Will and asked him to read that. Proctor Caderamanpulle gave it first to my brother ; I saw that. My brother called for his spectacles and read it ; I saw his lips moving. After reading it he gave it to the notary and asked him to read it loud. At that time one Mr. Koruthu and another Doctor were by his side, and I was also
 40 by his side, and his children were all there. Then this Will was read. The Notary read it loud. I did not see the Will being signed. Mathuranayagam was outside ; he did not come inside. After that Mathuranayagam did not come. After the 28th he did not come except during the time of the funeral.

Cross-examined :

Q. The first time you saw Mr. Caderamanpulle was on the morning of the 3rd March ?

A. Yes.

No. 19
 Respondent's
 Evidence—
Continued

Evidence of
 V. Shanmugam
 Pillai
 Examination—
Continued

Evidence of
 V. Shanmugam
 Pillai—
 Cross-
 examination

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

Q. Was your visit to Colombo on 24.2.61 a casual one ?

A. Because my relatives and nephews had asked me to come I came.

Q. Who asked you to come ?

A. Dr. Sithamparanathan, Manonmani and Rajeswari.

Q. They wrote to you saying that the deceased had already executed a Last Will ?

A. No.

Q. Then they wrote to you that he was seriously ill ?

A. Yes and asked me to come.

Q. The deceased carried on the business of a pawn broker ? 10

A. Yes.

Q. Did anyone tell you that he had executed one Will in January, 1961 ?

A. No.

(Shown a letter dated 27.1.61). This letter has been signed by my brother. (Counsel marks this letter as P 1).

Q. This letter is addressed to the Government Agent, Western Province ?

A. Yes.

Q. Asking him to issue two pawn broker's licences in favour of 20 Sithamparanathan and Mathuranayagam who were joining him as partners of the pawn broker's business ?

A. That is what is stated there.

(Shown a document).

Q. This document is signed by Sithamparanathan ?

A. According to this one Sithamparanathan has signed it.

Q. Do you say that this has been signed by Sithamparanathan the executor named in the Will ?

A. I have not seen his signature.

Q. You have not seen Sithamparanathan's signature at any time ? 30

A. Yes.

Q. Did you tell earlier that Sithamparanathan wrote you a letter ?

A. Yes.

Q. Was that signed by him ?

A. Yes.

Q. Can you identify the signature on this document ?

A. I have not frequently seen his signature.

Q. You know one Wilbert ? (Shown Wilbert a witness).

A. I know him. He was there at the time of the Will that is the subject matter of this case was executed on 3.3.61. 40

Q. Wilbert came to see the deceased almost daily ?

A. I had seen him only twice or thrice after I came.

Q. You were living in the deceased's house ?

A. Yes.

Q. You never went out ?

A. I went out and came back.

Q. Who was the Doctor who was attending on your brother during the week prior to his death ?

A. I do not know the name ; a stout person came in a car and saw my 10 brother.

Q. That was how many days prior to his death ?

A. About 1 or 2 days prior to his death.

Q. That is he died on a Sunday ?

A. I cannot remember.

Q. He died on 5.3.61 ?

A. May be.

Q. The Doctor came to see him about 1 or 2 days prior to his death ?

A. Yes.

Q. That is either on the 3rd or 4th ?

20 A. I do not know the dates ; the day before or the next day.

Q. And the Doctor was a Burgher gentleman ?

A. Yes.

Q. At the time the Doctor came to see him your brother was very seriously ill ?

A. Certainly not until the 5th morning. The safe key and everything was by his side and he called his kanakapulle and he used to explain to him and only on the 5th that he collapsed. On the morning of the day he died he was sinking.

Q. The Doctor was called to see your brother ?

30 A. Yes.

Q. That was the first time you saw the Doctor in the house ?

A. Yes.

Q. He had come to see your brother ?

A. The Doctor came and examined my brother.

Q. Did he give any medicine ?

A. I did not see him giving any medicine. I saw him going out.

Q. You were interested in the health of your brother ?

A. Yes.

Q. Did you not find out as to why the Doctor came and as to what he 40 gave ?

No. 19
Respondent's
Evidence -
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination -
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

A. His son is a Doctor and therefore it was not for me to ask.

Q. You remember the day that this Will was read out in the house ?

A. I find there are so many Wills. Is it the Will written on the 3rd March.

Q. You remember the day on which a Will was read out in the house ?

A. That is on the 3rd March when I was there.

Q. Did the Doctor come to see the deceased on that day ?

A. The Burgher Doctor whom I mentioned did not come on that day.

Q. Did he come on the previous day ?

A. Did you ask me about the 5th. 10

Q. I asked you whether the Burgher Doctor came to see your brother on the day this Will was executed ?

A. No ; that Doctor did not come.

Q. I am asking you whether on that day he came to see your brother ?

A. Not on that day.

Q. Did he come on the previous day ?

A. May be ; I cannot say.

Q. 3rd March was a Friday ?

A. May be.

Q. The previous evening your brother vomited blood ? 20

A. No.

Q. You never saw him vomiting blood ?

A. I saw him vomiting blood on the 5th and Dr. Sithamparanathan showed me the blood.

Q. According to you, you saw him only on one occasion vomiting blood ?

A. Yes.

Q. Did Dr. Sithamparanathan ever treat your brother ?

A. He used to give what was prescribed and horlicks ; I do not know whether he treated him. The other Doctor was coming.

Q. Who is the Doctor who was coming ? 30

A. The Burgher gentleman.

Q. Then he had come to see your brother on more than one occasion ?

A. No ; on one occasion.

Q. From 24th February up to 5th March only one Doctor had come to see your brother ?

A. Yes.

Q. Blood transfusion was given to your brother from time to time ?

A. I did not see any blood transfusion being given.

Q. Did any one tell you that blood transfusion was given ?

A. No.

Q. On Friday morning at what time did you get into the room of the deceased ?

A. At about 8 a.m.

Q. At the time you went in the deceased was lying on the bed ?

A. Yes.

Q. Did you know that blood transfusion was given to him that morning ?

A. No blood transfusion was given to him.

10 Q. Wilbert was there in the morning from 7 a.m. ?

A. Between 8 and 9 a.m. he was there.

Q. Had Wilbert come there prior to the Will being written on that day ?

A. He was there at the time the proctor came in.

Q. You saw him only when the lawyer came there ?

A. Yes.

Q. You cannot say whether he was not there prior to that ?

A. About 10 minutes or so before he must have come.

20 Q. Were instructions given to Wilbert by any one to prevent Mathura-nayagam from coming into the house from 3rd March ?

A. I do not know.

Q. Did you see Mathuranayagam on 3rd March ?

A. He was outside the gate.

Q. The deceased was sleeping in a room adjoining the verandah ?

A. Yes.

Q. There is a window adjoining the verandah ?

A. There are many windows.

Q. Can you say whether there is a window opening out to the verandah ?

A. Yes there is.

30 Q. That window was shut when Proctor Caderamanpulle was in the room ?

A. No ; it was open.

Q. Mathuranayagam was outside on the road peeping into the house ?

A. At that time Mathuranayagam was outside and he said something which I did not hear.

Q. Was he outside on the road ?

A. No ; inside the garden.

Q. Peeping through the window ?

A. May be.

No. 19

Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Q. I am suggesting to you that the proctor asked that the window be shut when he was inside the room ?

A. I did not hear that.

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

Q. At the time that the proctor came to the house on 3rd March Koruthu had already arrived ?

A. Yes.

Q. It was Ponnusamy who brought the proctor in his car ?

A. I do not know.

Q. Can you tell us how proctor Caderamanpulle came to the house ?

A. I saw him in the room and I do not know how he came, whether 10 by car or otherwise.

Q. Koruthu works in the same office as Ponnusamy ?

A. Yes.

Q. And he is a friend of Ponnusamy ?

A. May be.

Q. Koruthu was seated in the verandah ?

A. No, inside the hall.

Q. As you enter the house there is a verandah first ?

A. Yes.

Q. Adjoining the verandah there is a hall ?

20

A. Yes.

Q. Adjoining the hall there is a room on one side ?

A. Yes, south of the verandah.

Q. Is there a door from the verandah to a room ?

A. One side of the verandah leads to a room. One side where my brother was there is a hall.

(Shown a sketch of the house). The portion marked A in this sketch is the verandah. My brother was lying down in the portion marked B in this sketch.

Q. The other witness to the Will is Dr. Ketharanathan ?

30

A. Yes.

Q. He is a friend of Dr. Sithamparanathan ?

A. I do not know.

Q. It was Dr. Sithamparanathan who had brought Dr. Ketharanathan to the house on that day ?

A. I do not know.

Q. Do you know in what order the witnesses had come to the house ?

A. I do not know.

Q. Was it Koruthu or Ketharanathan who came first ?

A. I do not know ; I was in a room.

40

Q. That is the room which is marked C on the sketch, *i.e.* where you were ?

A. Yes.

Q. Your brother was propped up on pillows that morning ?

A. Till he died he never had even a bed pan on his bed.

Q. You went into the room in which your brother was at some stage or other that morning ?

A. Yes ; that is on the morning of the 3rd.

Q. At that time you saw the proctor inside the room ?

10 A. Yes.

Q. Did you see any one else ?

A. I saw the proctor and others were seated.

Q. Will you mark on this sketch when you went into the room where was the proctor ?

A. They were all inside the room.

Q. Wilbert was also inside the room ?

A. Yes.

Q. At that time you saw your brother lying on the bed ?

A. Yes.

20 Q. Thereafter he was propped up on pillows ?

A. No ; pillows were there to assist him.

Q. The Will was placed on a book of account ?

A. Yes.

Q. The fan was working at that time ?

A. Yes.

Q. The proctor asked the fan to be stopped because the papers were being thrown off ?

A. Yes.

Q. Ponnusamy was holding the ledger book on which the Will was ?

30 A. I did not notice all that.

Q. Did Dr. Sithamparanathan say at that time : " Aiyah, aiyah, to give to charity sign this " ?

A. No.

Q. Did the deceased shout out the name of Mathuranayagam at that time ?

A. No.

Q. The deceased found it difficult to sign his name ?

A. His hand was shivering.

40 Q. And Ponnusamy was holding his hand to enable him to sign the document ?

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

A. No one held his hand.

Q. I suggest to you that the Will was never read out by anyone in that room on the 3rd ?

A. It was read out.

Q. You are attached to the children of the deceased ?

A. Yes.

Q. You arrived on the 24th February ?

A. Yes.

Q. You met Mathuranayagam for the first time on the 26th ?

A. No ; since I came he used to visit once or twice a day. 10

Q. The first information you had about a Will was from Mathuranayagam ?

A. Yes.

Q. He volunteered that information to you ?

A. Yes.

Q. Can you repeat what he told you on that day ?

A. He said that Natarajan (deceased) has written a Will appointing him as one of the trustees and all the properties are given to the trust and he is the manager. Then I asked him whether he was the only trustee and he said that Dr. Sithamparanathan was also included. 20

Q. Were you surprised when you had that information ?

A. Yes.

Q. Did you ask him whether anything had been left to anyone of the children ?

A. No ; he said all the property was for the trust.

Q. Were you anxious to see the Will ?

A. I asked him for the Will and he said it was in the bank.

Q. The Will was deposited in the bank on the instructions of the deceased—did you know that ?

A. I do not know. 30

Q. Did you make up your mind that very night that you should persuade your brother to revoke that Will ?

A. I wanted to consult my brother that morning after asking Dr. Sithamparanathan.

Q. Did you make up your mind when Mathuranayagam told you that the deceased had executed a Will leaving all property to charity to persuade your brother to revoke that Will ?

A. I did not know the contents of the Will. Without seeing the Will how can I do that.

Q. You did not accept what Mathuranayagam had told you ? 40

A. Yes.

Q. You thought that Mathuranayagam was telling you something that was false ?

A. I cannot say whether what he told me was right or not. I wanted to ask the interested parties.

Q. At what time was this information given to you by Mathuranayagam ?

A. At about 9 p.m.

Q. You did not want to disturb your brother at that time ?

A. No ; Mathuranayagam's wife was by his side.

10 Q. You did not want to talk to your brother when Mathuranayagam's wife was there ?

A. I wanted to do something about the children. I wanted to consult my brother later.

Q. You told us that you wanted to talk to your brother only after you spoke to Dr. Sithamparanathan ?

A. Yes.

Q. That is to verify from Dr. Sithamparanathan as to whether Mathuranayagam's story was true or not ?

A. Yes.

20 Q. You were keen to do something for the children because the children had asked you to come to Colombo ?

A. They wrote to me that he was ill.

Q. Dr. Sithamparanathan did not give you any information about the Will ?

A. No ; he said he did not know the contents of the Will.

Q. He did not even tell you that he and Mathuranayagam had been admitted as partners in the pawn broker's business ?

A. No.

30 Q. Dr. Sithamparanathan told you that he did not know the contents of the Will ?

A. Yes.

Q. On that occasion did he not tell you that he was admitted as a partner along with Mathuranayagam by the deceased ?

A. I was not concerned with the pawn broker's business ; I was only concerned with the Will.

Q. At what time did you have that discussion with Dr. Sithamparanathan ?

A. The following morning between 8 and 9.

Q. Dr. Sithamparanathan was working at Kurunegala at that time ?

40 A. Yes.

Q. He used to come to the house only in the evening ?

A. No.

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Q. That day when you had the discussion about the Will at what time he had come ?

A. He was there between 7 and 8 in the morning.

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

Q. You were not prepared to question your brother about the Will before you spoke to Dr. Sithamparanathan ?

A. Yes.

Q. On the 27th at what time did you talk to your brother about the Will ?

A. About 10 o'clock in the morning.

Q. That day he did not give you any indication that he was going to alter that Will ?

A. He did not.

Q. This discussion took place on the 27th, according to you ?

A. Yes.

Q. You were keen to get your brother to alter the Will ?

A. I was not keen, I explained to him the situation.

Q. You were not keen to get the Will altered ?

A. Yes.

Q. What you explained to him was this : that he should not leave all his property to charity but leave something for his children ? 20

A. I said charity must be done by your children and not by an outsider, and I asked him to trust his children and not to trust an outsider, I asked him how can his son watch the other trustee from Kurunegala, Trincomalee, Mannar, etc.

Q. You regarded Mathuranayagam as a complete outsider ?

A. Yes.

Q. You told your brother : " You have appointed Sithamparanathan and Mathuranayagam as trustees ; Sithamparanathan may be sometimes at Kurunegala and sometimes at Trincomalee and how can he control Mathuranayagam ? " 30

A. Yes.

Q. What you first told your brother was that if he wanted to appoint trustees the trustees must be his own children ?

A. What I said was to give the property to the children and they may do charity.

Q. You told your brother that if he wanted to appoint trustees the trustees must be his own children, and you advised him that instead of having Mathuranayagam he should have one of his children ?

A. What I said was : give it to the children and according to the income they get they can spend on charity. 40

Q. You advised your brother that the children would be able to do charity better than Mathuranayagam ?

A. Yes.

Q. Is it correct to say that your advice to your brother on that day was really to get Mathuranayagam out of the Will and allow the whole matter to be dealt with by his children ?

A. I asked him to think over the matter.

Q. Your object was to get Mathuranayagam out of the Will and to have the children substituted in his place ?

A. If he wanted to do any charity to get the children to do it.

10 Q. Did the deceased tell you that what Mathuranayagam had told you was false and that under the Will he had devised large sums of money to his son ?

A. He did not tell me.

Q. When you told the deceased that Mathuranayagam gave you the information that he had left all his property to charity, did the deceased tell you that is not correct and that he had left large sums of money to his son and his daughters ?

A. He never told me.

Q. Did he tell you on that occasion that he had already devised large sums of money to his daughters ?

20 A. He never told me that day.

Q. Do you know that he had given any dowries to his daughters ?

A. I do not know.

Q. In 1958 Rajeswari got married ?

A. Yes. I was present in Colombo.

Q. She was given a dowry of Rs. 50,000/- in cash ?

A. I do not know.

Q. You never cared to find out whether she was dowried or not ?

A. Why should I go and find out what he gives his daughters.

Q. Manonmani got married earlier than Rajeswari ?

30 A. Yes.

Q. Do you know whether any dowry was given to Manonmani ?

A. I did not interest myself in that.

Q. You did not interest yourself in finding out whether any dowry was given to Manonmani or Rajeswari ?

A. I did not.

Q. Up to date you do not know that any dowry was given to them ?

A. I do not know.

(Shown an earlier Will No. 1283 filed of record).

Q. Can you identify this Will ?

40 A. I can identify the signature.

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

Q. In this Will your brother has stated : “ As I have given my two daughters Manonmani and Rajeswari adequate at their marriages and even afterwards, my said daughters will not be entitled to claim a share out of the estate after my death ? ”

A. Yes.

Q. On the 27th when you talked to him did he not say : “ I have done well by my daughters ” ?

A. He did not tell me.

Q. He left you with the impression that he had not done anything by his children up to that date ? 10

A. I never asked him anything about that.

Q. Thereafter, according to you, you took no interest whatsoever in regard to how your brother reacted to your advice ?

A. Unless he asked me I did not speak to him about it.

Q. After the 27th you took no interest to find out your brother's reaction to your advice ?

A. I took no interest.

Q. And you did not know whether the deceased had accepted your advice or not ?

A. On the 28th his daughter Manonmani and Mathuranayagam had 20 some trouble about money.

Q. After the 27th you took no interest ?

A. I did not take any interest.

Q. When Proctor Caderamanpulle came on the 3rd and when you saw him in the room you did not know for what purpose he had come ?

A. At first I did not know.

Q. Nor did you ask any one as to why he had come ?

A. I did not.

Q. You came to know that Proctor Caderamanpulle's visit was about a Will when the Will was read out by Proctor Caderamanpulle ? 30

A. Before that I was also there and I saw the Will being signed.

Q. At the time you went to the brother's room you saw your brother signing the Will ?

A. I saw my brother signing the Will.

(To Court :

Q. Did your brother ask the notary to read the Will after he put his signature or before ?

A. Before.

Q. You are quite certain of that ?

A. Yes.) 40

Q. Why was it that he asked Proctor Caderamanpulle to read the Will ?

A. To satisfy his children who were by his side and also because I was there.

Q. You say that the Will was handed to the deceased by Proctor Caderamanpulle ?

A. Yes.

Q. He called for his glasses ?

A. My brother called for his glasses.

Q. He read the Will ?

A. Yes.

10 Q. And did he tell Proctor Caderamanpulle this Will is all right ?

A. I did not hear it.

Q. A ledger book was brought to him ?

A. A pad.

Q. The Will was placed on that ?

A. Yes.

Q. The deceased then signed it ?

A. Yes.

Q. Ponnusamy was there at the time the Will was signed ?

A. I did not notice.

20 Q. Dr. Sithamparanathan ?

A. He was there.

Q. Manonmani ?

A. She was there.

Q. Rajeswari ?

A. She was there.

Q. His hand was shivering ?

A. It was not shivering.

Q. As far as you were concerned he was writing with a very firm hand ?

30 A. Yes.

Q. Do you say that no one held him by the hand when he was writing ?

A. No one held him.

Q. No one held the pad when the Will was being signed ?

A. A pillow was kept and on it the pad and on that the Will was kept and no one held it.

Q. After he had signed the Will he wanted you all to know what he had signed ?

A. Yes.

Q. He got thereafter Proctor Caderamanpulle to read out the Will ?

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shammugam
Pillai
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Cross-
examination
Continued

A. Yes.

Q. The witnesses signed the Will in the verandah ?

A. No ; in that room.

Q. The Will was brought out to the verandah and it was signed there ?

A. No.

Q. As far as you were concerned you saw only one document being signed by the deceased ?

A. Yes.

Q. You saw the witnesses signing the Will ?

A. Yes. 10

Q. At what point of time did these two witnesses sign the document, *i.e.* whether the witnesses signed the document first ?

A. After reading it.

Q. The witnesses signed the document after the Will was read out by Proctor Caderamanpulle ?

A. Yes.

(To Court :

Q. Was it after the brother signed that the witnesses signed ?

A. Yes).

Q. Did Proctor Caderamanpulle point out to any witness that he had signed his signature in the wrong place ? 20

A. I do not know.

Q. You were in the room until Proctor Caderamanpulle left the room ?

A. Yes.

Q. Did Dr. Sithamparanathan tell you that he and Mathuranayagam had gone to Mr. N. E. Weerasooriya, Q.C., a few days prior to the death of your brother ?

A. I was not told that.

Q. Do you know one Jayatilleke who is an A.S.P ? 30

A. I do not know.

Q. On Friday 3rd March at about 12 or 1 were you in the house ?

A. Yes.

Q. Did any one come to see your brother that day ?

A. Visitors come and see him and go away.

Q. Was your brother able to talk freely and well the whole of Friday the 3rd March ?

A. He was able to talk.

Q. On Saturday he was able to talk ?

A. Yes.

Q. He experienced no difficulty whatsoever in talking ?

A. Yes.

Q. He talked as usual ?

A. Yes.

Q. As he talked a year prior to his death ?

A. As usual, as he talked about 5 or 6 years before his death.

Q. On Sunday he was able to talk ?

A. On Sunday his voice was sinking but he was able to talk slowly
10 when whispered to his ear.

Q. Never before that he was not able to talk ?

A. Never before that.

Q. Did Dr. Sithamparanathan at any time after you arrived tell you :
you must persuade my father to alter his Will ?

A. No ; he did not tell me.

Q. Although you had told Dr. Sithamparanathan on the 27th morning
that his father had executed a Will leaving all the property to charity ?

A. He never told me to alter the Will.

Q. Nor even Manonmani ?

20 A. No.

Q. Nor even Rajeswari ?

A. It was only when I told him that they knew.

Q. Did any one of the children ask you : please ask my father to alter
the Will ?

A. No. They said they only knew it after I put the question.

Q. After they came to know about it did they tell you : please get
our father to alter the Will ?

A. No.

Q. They gave you the impression that they were quite indifferent as
30 to what their father did to his property ?

A. They did not know what had happened.

Q. You told us that you communicated to the children sometime or
other ?

A. I never told any one of the children except Dr. Sithamparanathan.

Q. You told Dr. Sithamparanathan on the 27th the information you
received from Mathuranayagam, viz. that the father had executed a Last
Will leaving all the property to charity ?

A. I said that.

Q. Did Dr. Sithamparanathan tell you at any time : please speak to
40 my father and get him to alter the Will ?

No. 19

Respondent's
Evidence—
Continued

A. No.

Q. Did you give that information to the child Manonmani at any stage ?

A. No.

Evidence of
V. Shanmugam
Pillai
Cross-
examination—
Continued

Q. Rajeswari ?

A. No.

Q. Did you know a man called Kanagaratnam connected to the Ayurvedic Hospital ?

A. If I see him I am able to say.

Q. Dr. Kandasamy ?

10

A. I do not know.

Q. R. A. Natesan ?

A. I do not know.

Q. Was your brother interested in religious activities ?

A. Yes.

Q. Did he build a Madam in India ?

A. Yes. I knew it only afterwards.

Q. Did you know that he was making arrangements to build a Madam at Kataragama ?

A. I do not know.

20

Evidence of
V. Shanmugam
Pillai—
Re-
examination*Re-examined :*

Q. You are also a very good Hindu ?

A. Yes.

Q. You are interested in religious activities ?

A. Yes. I am the Secretary of a religious trust under a Sangam in Ramnad. Annually I perform my religious rites. If I leave all my property to an outsider as an administrator of the Will my children will not have any interest in giving alms and performing annual ceremonies on my behalf.

Q. When this Will was signed who was in the room ?

A. There was one Doctor who is a witness to the Will, Koruthu, 30 Wilbert who was shown to me, his son and daughters and Proctor Caderamanpulle.

Q. You said that the brother took the Will and read it ?

A. Yes.

Q. Then what happened ?

A. He asked Proctor Caderamanpulle to read it and Proctor asked him whether he was to read it loud so that others may hear and he said yes. Proctor Caderamanpulle read it loud.

Q. Then what happened ?

A. Then he signed it.

40

Q. Where were the witnesses ?

A. The witnesses were in the same room.

Q. Did they sign it before or after the deceased signed it ?

A. After listening to the Will they signed it.

Q. Who signed first, the deceased or the witnesses ?

A. The deceased.

Q. After the deceased signed the Will the witnesses signed ?

A. Yes.

Q. You were there and you saw it ?

10 A. Yes.

No. 19
Respondent's
Evidence—
Continued

Evidence of
V. Shanmugam
Pillai
Re-
examination—
Continued

(Sgd.) Illegibly.
Additional District Judge.

C. K. KORUTHU—Sworn, 48 years, Chartered Accountant. Residing at No. 57/8, Flower Road, Colombo.

Evidence of
C. K. Koruthu
Examination

I am a Chartered Accountant employed in Turquand, Young & Co.

I knew the deceased Natarajan. (Shown the Will which is the subject matter of this action). I remember signing this document. This is the Last Will of the late Mr. Natarajan. (Witness reads the Will before answering). This was signed on 3.3.61. I had been to the house of the deceased before that. I used to go to his house to see Mr. Ponnusamy who is a colleague of mine in the house. I signed this Will in the house of the deceased. On the 3rd morning I went to the office. Mr. Ponnusamy came there at about 8.45 a.m. and at his request I came to the house of the deceased at about 9.30 a.m.

I know Mathuranayagam. I saw him in the garden. I spoke to him. He was in the garden in front of the house and then he came up to my car. When he came I asked him how the old man is and he said he is mad. I asked : what is the matter, and he said : I am in a hurry to go away, can you take your car out. I took the car out to give him room and he went out. Then I went into the house. I went into the hall. I spoke to the deceased and asked him how he was getting on. Then he told me : " I am better except that I find it difficult to take my food and drink " and then he said he had a swelling in his throat. He said he could not open his mouth and turn the tongue to a side and he showed me his mouth.

By about 9.45 or 10 a.m. Proctor Caderamanpulle came. I had seen him before but I never knew him. At one time I was staying at Kotahena and I used to see him. Proctor Caderamanpulle came and sat in the verandah and I was also seated in the verandah and we were chatting.

This Will was signed inside the hall. Proctor Caderamanpulle, myself, Dr. Ketharanathan the other witness to the Will, children of the deceased and Ponnusamy were there. Wilbert was also there.

Q. Just before the Will was signed what happened ?

No. 19
Respondent's
Evidence—
Continued

Evidence of
C. K. Koruthu
Examination—
Continued

A. I was talking to Proctor Caderamanpulle in the verandah. After Dr. Ketharanathan came we all went inside the hall. And Proctor Caderamanpulle sat on a chair close to the bed and told the deceased that the Will was ready for signing. Proctor Caderamanpulle gave the Will to the deceased and the deceased called for his spectacles and he read the Will. He gave it back to the proctor and asked the proctor to read it. Proctor Caderamanpulle said there is no legal requirements to read the Will, but if the deceased wants it he said he will read it. Then the deceased said: "All right, you read it loud". He read it loud. After reading the Will he gave it to the deceased. He took the Will and called for a fountain pen. Then he asked 10 for a writing pad and the writing pad was kept on his lap and the Will was placed on it and then he signed the Will. I saw him signing. After he signed the Will Dr. Ketharanathan signed as the first witness and I signed as the second witness.

(Shown the Will). This is what the deceased signed. The deceased was perfectly conscious when he signed it. When he spoke he spoke rationally.

Evidence of
C. K. Koruthu
—Cross-
examination

Cross-examined :

Q. How long had you known Ponnusamy ?

A. From about 1947. 20

Q. He is a friend of yours ?

A. He is a colleague of mine and to that extent he is a friend.

Q. You have gone to his house to see him ?

A. Yes.

Q. You go there frequently ?

A. No.

Q. Roughly how many times a month ?

A. When there is a requirement I go.

Q. Did you know before you went to the house on 3rd March why you were being asked to come to the house ? 30

A. I knew.

Q. Ponnusamy gave you that information ?

A. Ponnusamy came to the office at about 8.45 a.m. and he asked me whether I could sign as a witness to a Will and he told me that his father-in-law wanted me to see him.

Q. Did you know on that day whether the deceased had executed an earlier Will ?

A. I did not know.

Q. Dr. Ketharanathan was brought to the house by Dr. Sithamparanathan ? 40

A. I cannot tell you that. I saw him only when he came up to the verandah.

Q. Did you know Dr. Sithamparanathan ?

A. Yes. From the time I came to know Mr. Ponnusamy I used to know him also.

Q. Did you know Mr. Shanmugarajah, the other son-in-law of the deceased ?

A. I have seen him, I knew him a little.

Q. Do you know where Ponnusamy lived prior to 3.3.61 ?

A. Immediately prior to 3rd March he was staying in the house adjoining the house of the deceased. That house also belonged to the deceased.

Q. Would it be correct to say that he was living there from January, 10 1961 ?

A. I cannot say.

Q. Prior to that where was he living ?

A. He was living at Colpetty Milepost Avenue.

Q. You came to know the deceased through Ponnusamy ?

A. Yes.

Q. You met the deceased when you went to see Ponnusamy in his house ?

A. Yes.

Q. When did you first see the deceased ?

20 A. First time I saw him when he came with Ponnusamy and his daughter to my house to ask my wife to buy a saree for her in 1951.

Q. Do you know where Dr. Sithamparanathan was living prior to January, 1961 ?

A. My impression was that he was living at No. 292, Deans Road. That is the father's house.

Q. Your visit to No. 292, Deans Road could have been only after the early part of 1961 ?

A. From 1951 I had gone there.

30 Q. Between 1951 and end of 1959 had you been to No. 292, Deans Road to see Ponnusamy there ?

A. Yes.

Q. Your object in going to that house was to meet Ponnusamy ?

A. Yes, and his family. We go to pay social visits just as they visited us.

Q. Did you know Mathuranayagam ?

A. Yes.

Q. For a long time ?

A. After I happened to know Mr. Ponnusamy.

Q. You came to know Mr. Ponnusamy in 1947 ?

40 A. Since that time.

No. 19
Respondent's
Evidence—
Continued

Evidence of
C. K. Koruthu
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
C. K. Koruthu
Cross-
examination—
Continued

Q. You knew Mathuranayagam from the time Ponnusamy joined your office ?

A. First time I saw him was when he came to see Mr. Ponnusamy in our office and I was seated by his side ; that was the first time I had seen him.

Q. That would be roughly when ?

A. Must be somewhere in 1954 or 1955.

Q. Did Mathuranayagam talk to you in English or in Tamil ?

A. In English.

Q. Were you surprised when Mathuranayagam told you the deceased was mad ?

10

A. Yes.

Q. Did you know the deceased prior to the 3rd March, 1961 ?

A. Yes.

Q. Did you know that he had stayed at Durden's Hospital for a number of times ?

A. Yes.

Q. He was in Durden's Hospital for the first time in October, 1960 ?

A. I do not know.

Q. Do you know that he was at Durden's Hospital on two occasions ?

A. I do not know.

20

Q. Do you know whether he was in the Central Hospital ?

A. I do not know.

Q. Do you know whether he was in any hospital prior to his death ?

A. I got the information from Mr. Ponnusamy that his father-in-law was sick and had entered hospital. I had no interest except that Mr. Ponnusamy is my colleague in the office.

Q. Nor did you know what the deceased was suffering from ?

A. I knew about it only after his death.

Q. Did you find out from the deceased whether he was being treated by any doctor ?

30

A. I have not asked him that.

Q. Can you recollect the occasion you met the deceased immediately prior to 3rd March ?

A. Sometime back when Mrs. Ponnusamy was in the nursing home for her last confinement I visited them with my wife and then I saw him there. That must have been about 6 months or even more.

Q. At that time did you know that he was suffering from any complaint ?

A. No.

Q. The information you had that he was in the hospital was after that date ?

40

A. Yes.

Q. You did not know who the doctor who was treating the deceased ?

A. I did not know.

Q. You do not know whether round about 3.3.61 he was being treated by a doctor or not ?

A. I assume.

Q. Do you know as a fact that he was treated by a doctor ?

A. I am not in a position to say whether he was treated by a doctor or not, but my assumption is that he was treated by a doctor.

10 Q. Did you question Ponnusamy as to whether he was being treated by a doctor ?

A. That is no concern of mine.

Q. On the day when the Will was signed was a window closed at any stage ?

A. I do not think.

Q. Can you recollect how many windows there were in that room ?

A. There were 4 or 5.

Q. At some stage or other Proctor Caderamanpulle was in the room. At about that time did you see Mathuranayagam outside the house ?

20 A. I did not.

Q. Did Proctor Caderamanpulle tell any one of the witnesses that he had signed in the wrong place ?

A. I cannot remember.

Q. Did Proctor Caderamanpulle tell you or Dr. Ketharanathan that you or Dr. Ketharanathan had signed the Will in the wrong place ?

A. I cannot remember.

Re-examined : Nil.

(Sgd.)
Additional District Judge.

30

(Adjourned for lunch)

26.10.62.

Resumed after lunch. Same appearances.

Mr. E. B. Wickramanayake calls :

JOSEPH MARIAN CADERAMANPULLE—Sworn, 68 years, Proctor S.C. and Notary, Hultsdorf, Colombo.

No. 19
Respondent's
Evidence—
Continued

Evidence of
C. K. Koruthu
Cross-
examination—
Continued

Evidence of
J. M. Cadera-
manpulle—
Examination

I have been in practice for 39 years. I knew the deceased in this case for about 30 years. He was my client for 30 years. I had attested two previous Wills for him, other than the Will sought to be proved. (Shown the Will dated 3.3.61) I attested that Will. I got a telephone message from
40 Dr. Sithamparanathan, deceased's son, saying that his father wanted to

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Examination—
Continued

make a Will and that he asked me to come. I went there on the morning of the 3rd March at about 8 o'clock. I saw the deceased that day. I know Mathuranayagam. I spoke to the deceased. I asked him what his instructions were. He told me he wanted to give all his properties to his three children. I asked him "Are you giving all your properties to them" and he said "Yes, nothing excepted." He wanted to give all his properties to his three children. I then asked him in what proportion; he said equally. I asked him who was to be the executor, and he said "Dr. Sithamparanathan" his son. He told me "I do not want that Mathuranayagam"; with a flash of his hand, in Tamil he said "cut that Will off." I went back, 10 I came to my office. I took down the full names of the three children. Then I came back to the office and drew up the Last Will. Then, at about 10 o'clock, Mr. Ponnusamy, deceased's son-in-law, came to my office and asked whether the Will was ready. I asked him why; he said "I want to get as a witness one Dr. Ketharanathan who was working at the Lady Havelock Hospital or Lady Ridgeway Hospital. Mathuranayagam also came to my office. When Ponnusamy came to inquire Mathuranayagam came to my office. Then I could not discuss with Ponnusamy anything further; I wanted to get rid of one. I got into the third room and asked Mathuranayagam to come there. I was seated with Ponnusamy in the 20 second room when Mathuranayagam came. Mathuranayagam told me "I hear they are going to make a Will for Natarajan, I warn you because he is charmed." I did not take notice of it. I saw the deceased an hour or two before perfectly sound. Then the Will was ready. Then Mr. Ponnusamy wanted to ascertain whether he was to stay or go to the Lady Ridgeway to get Ketharanathan, so that he could bring him and take his signature, and go away. When I went to the house of the deceased, I saw one Koruthu. Then Dr. Ketharanathan came. There was a big verandah in that house. Facing that is the bedroom of the deceased and on the opposite side is the pawn broker's shop. The Will was signed in the bedroom of the deceased. 30 The two witnesses were present. Deceased's brother Shanmugampillai, then the three children, and one son-in-law, Ponnusamy were there.

Q. Was there a Wilbert?

A. There was a person.

Then I gave the Will to the deceased. He read it. He called for the spectacles. I think one of the daughters gave the spectacles. He put it on, then read it and gave it to me to read it again. I said "Do you want to read the Will for the contents to be known by all?" He said "Yes". Then I asked "Do you want it read aloud?" He said "Yes" I read 40 it. It was about three paragraphs. I read the Will aloud and then kept it aside and said "In other words you are giving all your property to your three children, and you appoint your son-in-law as executor." He signed. He sat on the bed and called for a pillow; then he attempted to sign. When he found the pillow soft, he wanted something hard. Something was tendered and he signed. He was not so steady as when he signed the previous Will. He signed in my presence. The witnesses signed in my presence. I too signed in their presence. All the signatures were taken at one and the same time. Mathuranayagam was in the pawn broker's shop outside the slidingly arranged railings there.

Cross-examined :

The first Will was attested by me on 28.12.1960. Instructions for that Will were given to me by the deceased in writing. I have the protocol of that Will with me. I have brought it. (Mr. Navaratnarajah moves to mark a photostat copy of the Will) I think the original is also there. The original was given to me when the second Will was made. I have the instructions in respect of that Will—he himself drew it up. The witnesses to that Will were R. A. Nadesan and Dr. M. Kandasamy.

(Mr. Navaratnarajah marks the original of the Will No. 1278 as P2).

10 Q. The next Will he executed attested by you is Will No. 1283 of 2nd February, 1961 ?

A. Yes.

(Mr. Navaratnarajah marks Will No. 1283 as P3).

Q. The witnesses to that Will are Dr. Kanakarathnam and Dr. Kandasamy ?

A. Yes, two doctors.

Q. Dr. Kandasamy being the witness in the earlier Will P2 ?

A. Yes.

Q. The bequests made in the Wills P2 and P3 are the same ?

20 A. With material differences.

Q. Will you point out what the material differences are ?

A. In the first Will, all the bequests were given to charity, except for Rs. 30,000 to be given to his son by instalments of Rs. 500 from the Bank so that he may go to England. In the second will also, that is there, but in the first Will the Trustees were the son and Mathuranayagam, and their children or other children's children or children. The second Will says that the trustees should be only Dr. Sithamparanathan and Mathuranayagam or their children ; no other children or other members of the deceased's family should become a trustee; another significant fact I noticed was that
30 the most valuable property, 292, Deans Road, was not to be rented but should be acquired solely by the Trustees, meaning only Mathuranayagam, Dr. Sithamparanathan and their children, the rest of the family entirely excluded.

Q. Also in the earlier Will P2, the trust has been described as Neelachi and Velautham Natarajan Trust ?

A. Yes.

Q. Neelachi being his wife ?

A. Yes.

40 Q. In Will 1283, the trust has been described as Velautham Natarajan Trust ?

A. Yes.

Q. The wife's name has been omitted ?

A. That is right.

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle—
Cross-
examination

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

Q. Under the Will P2, apart from the sum of Rs. 30,000 devised to Sithamparanathan, a sum of Rs. 10,000 has been devised to his granddaughter Mangula Sukumari ?

A. Yes.

Q. Daughter of Manonmani ?

A. Yes.

Q. (Shown P3). In the second Will No. 1283, P3, those bequests are there ?

A. Yes.

Q. (Shown third page of P2). In 1278, P2, he sets out the reason as to why he had bequeathed almost all his property, save and except the sum of Rs. 40,000 for charitable purposes ?

A. He has stated reason for excluding perhaps the two daughters.

(To Court :

Q. He has mentioned that he has provided already for his daughters ?

A. Yes).

Q. P2 was drafted by the deceased ?

A. Yes.

Q. He knows English very well ?

A. Not very well, passable. I had to touch it up. 20

Q. Those instructions were given to you in writing and before making any alteration you used to telephone the deceased to find out whether you could meet him ?

A. No.

Q. In 1283 he sets out at page 3, " as I have given my two daughters Manonmani Natarajan, wife of S. Ponnusamy, and Rajeswari Natarajan wife of D. Shanmugarajah adequate dowries at their marriage and even afterwards, my said daughters will not be entitled to any claim or share out of my estate after my death " ?

A. Yes. 30

(To Court :

Q. In both Wills he mentioned that ?

A. Yes).

Q. One important asset owned by the deceased was the pawnbroker's business ?

A. Yes.

Q. Pawnbroker's business cannot be carried on without a licence being obtained from the Government Agent ?

A. Yes.

Q. Deceased was anxious that this pawnbroker's business should not be in any way interfered with by reason of his death ? 40

A. I do not know.

Q. Do you know that the deceased had written to the Government Agent asking the Government Agent to issue a licence to Sithamparanathan and Mathuranayagam who were to join him as partners ?

A. I do not know.

Q. (Shown P1) (Mr. Wickremanayake objects unless the Government Agent is called.

Mr. Navaratnarajah states he is showing witness the document).

Q. Can you identify his writing ?

10 A. That is deceased's writing.

Q. Are you familiar with, Dr. Sithamparanathan's writing ?

A. Not much.

Q. His signature ?

A. Only after the case.

Q. You went with Mathuranayagam and Sithamparanathan for a conference at the house of Mr. N. E. Weerasooriya ?

A. At the Law Library.

Q. That was a few days prior to deceased's death ?

20 Will. A. Not a few days. Must have been a week or so after the second

Q. Have you made a note of the conference ?

A. I have a good memory.

Q. Have you made a note of the date ?

A. No.

Q. Dr. Sithamparanathan and Mathuranayagam were there ?

A. Yes.

Q. The discussion was about the pawnbroking business ?

A. We asked for Mr. Weerasooriya's opinion regarding income tax and about the registration of the pawnbroking business.

30 Q. Registration of Sithamparanathan and Mathuranayagam as partners along with the deceased ?

A. Yes.

Q. Mr. Weerasooriya gave you certain advice ?

A. Not much.

Q. Having regard to the conference you had with Mr. Weerasooriya did you come to know at least by that date that the deceased had decided to admit Mathuranayagam and Sithamparanathan as partners in the business of pawnbroking ?

A. I do not know. I do not deny. I did not give my mind to that.

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Caderra-
manpulle
Cross-
examination --
Continued

Q. Did you have the conference with Mr. Weerasooriya at the instance of the deceased ?

A. No.

Q. One matter that was raised at the conference was the registration of Mathuranayagam and Sithamparanathan as partners along with the deceased in the pawnbroking business ?

A. There was some discussion.

Q. The discussion was as to whether these two people were to be registered as partners along with the deceased ?

A. I cannot remember.

10

Q. Or whether a pawnbroking business can be carried on as a partnership business ?

A. There was the talk of partners and all sorts of things.

Q. This was done with the knowledge of the deceased ?

A. I was in the office. All of a sudden I was taken by Dr. Sithamparanathan and Mathuranayagam and taken to Mr. Weerasooriya. They wanted a proctor to interview Mr. Weerasooriya. I never gave any thought.

Q. You knew deceased for 30 years ?

A. Yes.

Q. You have been his lawyer ?

20

A. Yes.

Q. And also his adviser ?

A. Not all matters.

Q. You took an interest in his welfare ?

A. As far as cases he entrusted to me.

Q. You know his children well ?

A. No.

Q. When did you come to know Dr. Sithamparanathan ?

A. The first time I came to know him was when the first Will P2 was written.

30

Q. By the words "I came to know him," *i.e.* Sithamparanathan, do you say you talked to him, or got to know him or came to know his existence ?

A. I never saw him and I never knew that deceased had a son who was a Doctor.

Q. At the time of P2 you became aware of the name of Sithamparanathan ?

A. Yes, deceased called the son.

Q. And introduced him to you ?

A. No, he discussed.

Q. P2 was executed in his house ?

40

A. All in his house.

Q. Who were present when P2 was executed ?

A. At the time P2 was executed, Sithamparanathan was not there. When there was the discussion about the draft, he came.

Q. About what draft ?

A. He gave a draft. It was much longer than the Will I attested. I went through and asked him " what, is this your son ? " He called him. Then I said " Why not do some charity separately, give some estates separately for charity and separately for the son. Then he called him.

10 Q. What was the conversation that took place between the father and the son ?

A. Nothing, just showed me and discussed.

Q. Deceased did not act on the advice given by you that certain properties of his should be devised separately to charity and separately for his children ?

A. Not for the children. I said " he has to go to England, you have given Rs. 30,000 by driblets of Rs. 500. Why not provide him with something substantial instead of leaving room for litigation. If Mathuranayagam does not give him the money he will be handicapped."

20 Q. Under P2 who were the trustees to be in management of the estate ?

A. Sithamparanathan and Mathuranayagam and successors—the rest of the family and their children.

Q. At that time Sithamparanathan was a Doctor ?

A. So I heard that day from his father.

Q. The father, as far as you knew, was well disposed towards the son ?

A. I do not know.

Q. Sithamparanathan was at that time in Kurunegala ?

A. I do not know that.

30 Q. Did you know Ponnusamy ?

A. I came to know him only on the day I attested the third Last Will. Before that I did not know his name or that he was his son-in-law. I had to ask him what the name was.

Q. That is on the 3rd morning ?

A. Yes.

Q. You did not know at that time whether Ponnusamy was living ?

A. No.

Q. Did you know the daughter Manonmani ?

A. I did not know any of them.

40 Q. Did you know if he had any children ?

A. I did not know.

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

Q. The first time you came to know that deceased had at least 3 children was when ?

A. One child or three children, the only day I came to know he had a son who was also a Doctor was on the day P2 was attested.

Q. And, apart from his son, two daughters ?

A. That I came to know when I attested the third Will. I had not seen them face to face.

Q. Did you know that at the time P2 was executed he had 3 children ?

A. Might have been six.

Q. At least that he had 3 children ?

10

A. I do not direct my attention to find out the number of children. I see that the Will is attested correctly, without rambling round the bush.

Q. You knew he had 3 children at the date of P2 ?

A. Three names were given, two daughters and a son, but whether they were the only children or whether he had no children I did not mind to inquire.

Q. Were you surprised that he had devised all his property to charity ?

A. Excluding Rs. 40,000.

Q. Did he ask your advice ?

A. He never asked my advice. He drafted it to the dictation of some- 20 one else. He wanted my service as Notary Public.

(To Court :

Q. You saw him on the 3rd. When was the earlier visit—before the 3rd ?

A. I do not think I saw him after I attested the second Will on 2nd February. Between the 3rd and his death, I did not see him again).

Q. Did you know that deceased was suffering from any ailment ?

A. No.

Q. Did you know that at the time you attested P2 deceased was suffering from any ailment ?

30

A. Not well. Not moving about freely outside the house.

(To Court :

That was at the time of the first Will. He was able to walk about and do his business, but never came out. He did not come to Hultsdorf to entrust any work).

Q. At the time you executed the Last Will No. 1283 of 2nd February, you did not know that he was ailing from any serious illness ?

A. I heard he was having liver trouble.

Q. My question is serious ailment ?

A. No.

40

(To Court :

Q. He was not in bed ?

A. He was lying down.

Q. At the time of the second Will of February ?

A. He conversed with the witnesses.

Q. He was not ill in bed ?

A. He was quite fit.

Q. Not on a sick bed ?

A. It is a lingering disease he had been told).

10 Q. Wills P2 and P3 were all signed by him not when lying in bed ?

A. Nor was the third Will signed lying in bed.

Q. Was P2 placed on a table and was deceased seated when he signed ?

A. He came out of his office room ; by the bedside he has a table.

Q. Second Will of 2nd February ?

A. Same place it was signed.

Q. Third Will according to you ?

A. Same place.

Q. Where was it signed ?

A. Same room as the first and second.

20 Q. And on the same table ?

A. Not on the table. He was on the bed, sat on the bed, called for pillows and signed.

Q. On the 3rd of March did you know he was suffering from any ailment ?

A. He was ailing.

Q. So ill he could not write with a firm hand ?

A. Yes, his hand was weak.

Q. Shivering ?

30 A. I do not think. The nib itself with which he attempted to sign was very sharp and pointed and scraping the paper.

Q. Did anyone hold his arm while he was signing ?

A. No.

Q. Deceased signed the protocol and the Will ?

A. Yes.

Q. Did the deceased have any difficulty in affixing the two signatures ?

A. The deceased was not so steady as when he signed the first and second Wills.

Q. Did you point out that his signature was not being correctly written by him ?

40 A. No.

No. 19

Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

Q. Did you ask him to sign twice ?

A. I asked him to sign twice on the protocol, because his first signature did not seem good ; I asked him to sign again.

(Mr. Navaratnarajah marks photostat of the protocol as P4).

Q. (Shown P4) He has signed it twice ?

A. Yes.

Q. Why ?

A. I asked him to do so because the first signature was not quite good.

Q. What do you mean by saying that the signature was not quite good ? 10

A. That was not the signature which I saw in the other two Wills.

Q. You wanted him to sign again in the same way as he signed the earlier Wills ?

A. I would not be so foolish as that. How can I ask him to sign in the same way as before.

Q. You said the first signature was not quite good ?

A. And, I asked him to sign a second time, going on my experience. As the deceased was signing, his first signature was shaky, but after that it improved.

Q. The second signature was good ? 20

A. Yes.

Q. Does it make any difference whether the signature was good, bad or indifferent, so long as it is his signature ?

A. That is why you are cross-examining me.

Q. You are in practice for the last 39 years ?

A. Yes.

Q. What is necessary for a Will is that the executant must put even a cross-mark on the document to show that it is his act and deed ?

A. Yes. You would have argued further.

Q. Did it not strike you at the time the Will was being executed that 30
the Will might be challenged ?

A. Never.

(To Court :

Q. Out of an abundance of caution you thought you might ask him to sign again to see whether he could show a firmer hand ?

A. Yes).

Q. The protocol was signed first ?

A. Yes.

Q. After the protocol was signed, did you hand the protocol to the witnesses to be signed ? 40

A. No. I got the executant to sign both.

Q. Both documents were signed by the deceased first ?

A. Yes.

Q. Thereafter, you handed these two documents to the two witnesses ?

A. I took both from deceased and gave it to Dr. Ketharanathan, and, he being a doctor, I thought he knew where to sign. He signed just a little above, (Witness indicates on the protocol) immediately after the testator.

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

(To Court :

Q. Below the testator's second signature ?

10 A. Yes. I got him to sign at the proper place below).

Q. Where did the witnesses sign—in which part of the house ?

A. Same room as where the deceased signed.

Q. Was there a table ?

A. There was a table, or stand, on a side. Witnesses Ketharanathan and Koruthu signed there. Must have been on a table.

Q. In P2, the attestation is that the Last Will was duly read over by Velautham Natarajan—is that correct ?

A. Yes.

20 Q. In P3 the attestation is that the Will was duly read over by Velautham Natarajan—is that correct ?

A. Yes.

Q. In the Will dated 3.3.61 you do not refer in your attestation to the fact that the Will was read by the deceased ?

A. Because I undertook the responsibility, and said, as I took the responsibility, I read and explained to him duly.

Q. According to you, the Will was handed to him to be read ?

A. And he read.

Q. He called for his spectacles and read it ?

A. Yes.

30 Q. You were satisfied that he understood what was in the document ?

A. Yes.

Q. I ask you why in the attestation you did not set out that the Will was read by him ?

A. If I said read by him, I might have to say "also read and explained by me." I could have said both. Here I took responsibility more. A Will is not read out in the presence of witnesses.

Q. Mathuranayagam saw you in the office that day ?

A. Yes.

40 Q. According to you, he wanted to tell you that they were trying to get a Will executed ?

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

(Mr. Wickramanayake objects to the question. Withdrawn).

Q. He saw you that morning ?

A. He came.

Q. What did he tell you ?

A. I called him inside because I knew he had come to know about the execution of the third Will.

Q. You thought he had come there in connection with the execution of that Will ?

A. Yes. Then I found Ponnusamy seated at my table. I took Mathuranayagam to the other room and asked, "What brought you here." 10 He said "I hear deceased is going to write another Will. I warn you because he is charmed."

Q. You knew at that time that Mathuranayagam would certainly challenge that Will ?

A. I did not think so fast. I did not think he would challenge. The Will was not attested at that time.

Q. Deceased died on the 5th ?

A. Yes.

Q. The application for probate was made by Sithamparanathan through you on what date ? 20

A. 14th April.

Q. 12th April ?

A. Yes.

Q. Did Sithamparanathan tell you at that time that there was trouble between him and Mathuranayagam ?

A. After he came that day he did not come to see me at all.

Q. Did Sithamparanathan tell you ?

A. When.

Q. I gave you a date. The petition for probate of the Will was filed on 12th April, 1961. I take it Sithamparanathan gave you instructions ? 30

A. He gave me the schedule of the properties and the Last Will.

Q. That is all he told you ?

A. There is nothing else to be told. He gave me the list of properties and left.

Q. The Last Will was with you ?

A. No.

Q. Where was the Last Will ?

A. With Sithamparanathan and his father.

Q. When was the Will sent to the father ?

A. I did not send it to the father. Dr. Sithamparanathan came and 40 took it.

Q. Before his father's death or after ?

A. On the same day.

Q. Did anyone else tell you there would be opposition to the Will ?

A. I did not discuss.

(Para 6 of the Will of 3rd March put to witness). That is the usual clause for Order Absolute in a Will.

Q. That is the usual clause ?

A. Otherwise you will not get Order Absolute.

10 Q. Did Sithamparanathan tell you you must get Order Absolute in the first instance ?

A. Not necessarily ; I am instructed, not advised.

Q. Did Sithamparanathan tell you ?

A. Why should he say. I am the lawyer.

Q. Did you think it necessary that you should get Order Absolute in the first instance ?

A. I always do, to save time and trouble.

Q. Did the statement you put down, " The petitioner does not apprehend any opposition to the grant of probate of the said Will to him " is merely to get Order Absolute in the first instance ?

20 A. Without that you will not get.

Q. You did not think it necessary to satisfy yourself that the statement is true ?

A. The Will was giving the property to the three children, I do not know who could have opposed.

Q. Do you say that you put it down without satisfying yourself that there would be no opposition to the Will ?

A. To my knowledge there could not have been any opposition and I knew there would be no opposition.

Q. A Will may be perfectly valid but still it may be opposed ?

30 A. That is a different matter. Do you suggest I should always apply for Order Nisi in a Will.

Q. This petition was supported by the affidavit of Sithamparanathan ?

A. Yes.

Q. Sithamparanathan was swearing to the fact that he did not apprehend any opposition to the grant of probate to him ?

A. Yes.

Q. Although Sithamparanathan never gave you any instructions on that matter ?

A. He did not.

40 Q. Did it strike you that in the Will of 3rd March, one notable feature is that whereas he had in the earlier two Wills devised his entire property

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

save and except Rs. 40,000 to charity, not one cent was given to charity in the Last Will ?

A. Yes.

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

Q. In the Wills P2 and P3, there are certain institutions which are to benefit by the trust ?

A. Yes.

Q. There was to be a madam at Kataragama ?

A. Yes.

Q. Then there was to be a madam for a certain temple in South India, Palani ? 10

A. May be. You are reading from that.

Q. There were certain parties at least, they may be charitable institutions, who were to be benefited by P2 and P3 ?

A. Yes.

Q. Did it not strike you that those persons might be interested in challenging the Last Will ?

A. I do not know of any person's name being mentioned.

Q. Did it not strike you that persons in charge of these institutions would be interested in the Last Will which is the subject matter of this action ? 20

A. Once the third Will is written, the other two go overboard ; those two are revoked.

Q. Did the deceased discuss with you about any application made by him for a land or piece of land at Kataragama for the purpose of building a madam ?

A. No.

Q. Did you regard him as a religious person ?

A. I do not know.

Q. I am going to question you about the 3rd of March—where did Ponnusamy see you for the first time ? 30

A. In my office.

Q. At 7 o'clock ?

A. Not 7 ; about 10 o'clock.

Q. The telephone message came roundabout when ?

A. Half past seven.

Q. Office or house ?

A. House.

Q. You would have gone to the deceased by about ?

A. 8 or 8.30.

Q. Do you know Wilbert ? 40

A. I do not know.

(Wilbert called in and shown to witness).

Q. Do you know him ?

A. I saw him that day.

Q. Was he there in the house when you went to take instructions from the deceased ?

A. I saw him at the entrance of the house.

(To Court :

Q. In the morning ?

A. At about 10 when I went to take the signature).

10 Q. Not at the time you went in the morning ?

A. No.

Q. At the time you took instructions from the deceased was there anyone else in the room ?

A. His son was there. I think his son must have been there.

Q. You know the brother of the deceased ?

A. At that time I did not see him. I hear now he was inside the house—the brother who gave evidence.

Q. Sithamparanathan was there at the time instructions were given ?

20 A. I cannot definitely say. There were people. At least two daughters were there.

Q. When instructions were given to you ?

A. Yes.

Q. When you came back to the house with the Will ?

A. Deceased's house ?

Q. Yes. Were both witnesses Koruthu and Ketharanathan there ?

A. Koruthu was there and Ketharanathan came afterwards.

Q. Koruthu was seated at the verandah when you entered ?

A. Might have been, or, seeing me coming, might have come to meet me.

30 Q. Ponnusamy was there in the house ?

A. I cannot remember. I can definitely remember Dr. Sithamparanathan. Ponnusamy came to my office and ascertained whether I was going directly, and then went to the Hospital, and then must have come with the Doctor, Ketharanathan.

Q. How long had you to wait in the house before the Will was signed ?

A. 5 or 6 minutes.

Q. There was a fan working in the room ?

A. I did not notice.

40 Q. Can you recall giving directions to stop the fan to prevent papers flying ?

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

A. When I do not remember the fan, how can I say I gave instructions to stop it.

Q. Do you recall a window there ?

A. Several windows.

Q. Do you recall giving instructions to close one of the windows ?

A. No. I do not know whether a window was closed or not, but I never ordered a window to be closed.

Q. Wilbert was just outside the room when the Will was being signed ?

A. Must have been.

Q. You noticed Wilbert ?

10

A. When I went.

Q. In the verandah ?

A. Yes.

Q. The Will, I put it to you, was placed on a Ledger before it was signed ?

A. Might have been for a hard surface. Your are right. There was something rough and hard.

Q. The ledger which was brought by Ponnusamy ?

A. I cannot remember.

Q. One of the inmates of the house brought the ledger ?

20

A. Might have been.

Q. He was seated on the bed ?

A. Yes.

Q. There were pillows placed behind his back ?

A. There were pillows for his head, not for his back.

Q. Was there anyone helping the deceased to sit in that position—somebody holding him ?

A. No. He sat himself.

Q. When you say "sat himself" what do you mean ?

A. He was lying down and got up.

30

Q. He was seated cross-legged on the bed ?

A. Put his legs down and sat. I was more keen on taking the signature and not noting all these. I feel that he was on the bed, not Ghandi-like with crossed-legs.

Q. You are sure his head was resting on a pillow while he was seated ?

A. I do not think so. No pillow can be placed for the back. The bed was not like a cot.

Q. I asked you about the position in which he was seated ?

A. Yes.

Q. I asked whether he was propped up by pillows ?

A. Not propped up by pillows.

Q. Did I ask whether there were pillows behind his back ?

A. Yes.

Q. Did you then say there were pillows behind the head ?

A. His head was in the air when he signed.

Q. Did the deceased, when you went there into the room with the Will and protocol, utter the word Mathuranayagam ?

A. That was on my first visit.

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

10 (To Court :

Q. Regarding the third Will ?

A. When I visited first).

Q. What did he say ?

A. " Cut the words "—in Tamil he said Peyarai vetti podu.

Q. I suggest to you that Sithamparanathan requested the deceased to sign the documents given by you ?

A. Asked the father to sign.

Q. Yes ?

A. I would not have tolerated it.

20 Q. Did Sithamparanathan mention the word charity at the time the Will was being signed ?

A. No.

Q. (Question repeated).

A. I do not know. He did not tell me.

Q. Whether he told deceased or not you cannot say ?

A. No. He gets 1/3rd of the property. I do not know why he should reduce it by charity. That is not human.

30 Q. Can you deny that Sithamparanathan did not tell his father the word " charity " at the time when you were with the deceased in the room with the Will and protocol ?

A. No.

Q. Is it that he did not say or you did not hear ?

A. Then ask me whether I heard him.

Q. Did you hear him say ?

A. No.

Q. Did you tell the deceased that there was no legal requirement for you to read the Will ?

A. I do not understand the question.

Q. Deceased asked for the Will and he read the Will ?

No. 19
Respondent's
Evidence—

Evidence of
J. M. Cadera-
manpulle
Cross-
examination
Continued

A. Yes.

Q. You are satisfied he understood ?

A. Yes.

Q. You say he approved of it ?

A. Yes.

Q. Thereafter he gave the Will and asked you to read it ?

A. He asked me to read aloud.

Q. Did you tell him at that time there was no legal requirement for you to read ?

A. There is no legal prohibition. No legal requirement. There is no 10 legal prohibition for reading Wills even before witnesses.

(To Court :

Q. You told him ?

A. No.

Q. Did you tell him about the legal requirement ?

A. No. I do not discuss law with the laymen.)

Q. Did you tell deceased, when he requested you to read the Will, there was no legal requirement ?

A. I said, "Do you want it read aloud so that all people may hear— destroys the privacy of the Will." 20

(To Court :

Q. Can you remember the exact words you used on that occasion ?

A. "Do you want it read in the presence of all." Regarding the legal requirement, he knew it, when the second Will was written.

Q. Did you preface your remark by saying there was no legal require- ment ?

A. No.

Q. You did not use the phrase ?

A. No. I simply said "Do you want it read in the presence of all", meaning publishing, and he said "yes".) 30

Q. In regard to the earlier Will P2, can you recall who were there at the time that P2 was executed ?

A. Nobody excepting the witnesses, the deceased, and no more than a servant or two—no children at all.

Q. He read the Will ?

A. Yes.

Q. Did he on that occasion ask you to read the Will ?

A. No. One of the witnesses was keen to know the contents of the Will and I said, "I am sorry, I cannot give you, ask the testator." Then the witness asked the testator; he said "you cannot know all. You sign 40

only as witness to the signature." From such a man I need not ask about legal provisions.

Q. Deceased knew that Will should not be read out in the presence of witnesses ?

A. He knew the sanctity of the Will.

Q. That no one need know the contents of the Will ?

A. Not even the witnesses.

Q. The Will P3 of 2nd February, 1960, can you tell us who were present then ?

10 A. Same. No children.

Q. The witnesses alone ?

A. Witnesses, deceased, and hardly a servant or two—Those 2 Wills were really made by him and I merely cut off here and there.

Q. You corrected his English ?

A. Yes.

Q. And perhaps summarised ?

A. Yes.

Q. You know Dr. Kandasamy who was a witness to the earlier 2 Wills ?

20 A. Yes.

Q. He was a good friend of the deceased ?

A. Might have been.

Q. You know A. Kanakarathnam, witness to the Will of 2nd February ?

A. Yes.

Q. He was also a good friend of the deceased ?

A. It was he who brought the witnesses.

Q. You know R. A. Nadesan ?

A. Yes.

Q. He is a good friend of the deceased ?

30 A. Yes.

Q. And Kandasamy ?

A. Same witnesses as the first. They were common witnesses to both Wills.

Q. Did you know that at the time the Will of 2nd February was executed, R. A. Nadesan was not in Colombo ?

A. Somebody signed there.

Q. Second Will ?

A. Two doctors, Kanakarathnam and Kandasamy.

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Q. Do you know, at the date of the 2nd Will, R. A. Nadesan was not in Colombo ?

A. I did not make inquiries.

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

(Further hearing on 30.10.62 and 7.11.62)

(Sgd.)
Additional District Judge.
26.10.62.

30.10.62.

Hearing resumed. Same appearances.

Mr. Navaratnarajah states he has filed a fresh list of witnesses and 10 moves for summons on Dr. Thanabalasunderam.

Mr. Wickramanayake states summons can go out but he would object when the witness is called, since he has been listed after the inquiry commenced.

Summons to issue.

(Sgd.)
Additional District Judge.
30.10.62.

JOSEPH MARIAN CADERAMANPULLE, sworn, recalled.

Cross-examination Contd.

20

Q. The two Wills P2 and P3 created a charitable trust ?

A. Yes.

Q. You are familiar with the provisions of section 101 of the Trust Ordinance ?

A. The section deals with Trusts.

Q. Kindly read it ?

(Mr. Wickramanayake states witness is here as notary who attested the Will. Matters under the Trust Ordinance are matters of law. Witness is not an expert.

Question withdrawn).

30

Q. Deceased, in regard to the Wills P2 and P3, was keen as to who the trustees should be ?

A. He appointed two trustees.

Q. Did you tell the deceased that a trustee can be removed from office under the provisions of section 101 of the Trust Ordinance ?

A. I did not think of any Trust Ordinance to advise on those things. He asked me to write a Will creating a trust, not a deed of trust.

Q. You know that trustees of a charitable trust can be removed from office ?

(Mr. Wickramanayake objects. He submits that is a matter of expert knowledge, an opinion on a question of law, unless the witness says he gave advice on a matter of trust.)

(To Court :

Q. You gave no advice in regard to the removal of a trustee ?

A. I treated it not as a deed of trust but as a Will creating a trust. Moreover the two Wills were drafted in his own writing and came to me for
10 my signature as Notary Public. I was not consulted about it).

Q. The Will sought to be propounded is being challenged on the ground that the deceased had no testamentary capacity ?

A. Petitioner says that.

Q. Dr. Thanabalasunderam was the last Doctor who saw the deceased ?

A. I do not know him.

Q. Did you, after this inquiry commenced, find out who the doctor was who treated the deceased before his death ?

A. In fact I never thought this application would be proceeded with—far from filing list of witnesses. I do not treat this inquiry very seriously
20 because I know what I did.

Q. (Shown P2). Every letter in the signature of the deceased is well and clearly formed ?

A. I am in entire agreement with that.

Q. P3—every letter of his signature is well and clearly formed ?

A. Yes.

Q. (Shown protocol of Will 1285—original of P4). There are two signatures ?

A. Yes.

Q. Are the letters in the first signature decipherable ?

30 A. The first letter “ V ” is clearly decipherable, and I could identify it as my client’s.

Q. My question is—can you decipher the letters in the first signature ?

A. In the first signature, the initial “ V ” is clearly seen. There is a dot. The other letter N is well formed but the rest is undecipherable.

Q. In the second signature ?

A. The V and N are better.

Q. What about the other letters ?

A. Same as in the first signature.

Q. That is—undecipherable ?

40 A. Yes.

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

No. 19
Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

Q. (Shown original A) In that signature what letters are decipherable?

A. V and "Tar", "Jan" are decipherable. That is the third signature on the original; it is better than the first and second in the original.

Q. The letters in the signature that appears on the Will A are all decipherable?

A. I do not say all. There are three signatures.

(To Court :

Q. Two signatures on the protocol?

A. Two on the protocol and third signature on the original. The signature on the original which is sought to be proved by the respondent, the signature on the Will in question, is better to my mind than the two signatures that appear on the protocol). 10

Q. My question is what are the letters in the signature on the document A which are decipherable?

A. V, and "taraja"—N is something like M.

Q. The deceased on the 3rd March was extremely physically weak?

A. He was weak.

Q. Extremely weak?

A. I would not say that.

Q. His hand was shivering? 20

A. Not shivering.

Q. Will you kindly look at the signature?

A. I saw it.

Q. Will you please look at the signature and documents A and B and tell me whether his hand was not shivering at the time he wrote that signature?

A. I do not know how. It was not shivering like this (witness demonstrates). It was shaking. When the pen was taken it was shaky.

Q. Did you say on the last occasion that the signature was not as good as it was in P2 and P3 because he had used a pen with a fine point? 30

A. I did say—which was a contributory cause and increased the shakiness of the hand.

Q. On the 3rd of March, when you saw the deceased in such a weak condition, did you ask what he was ailing from?

A. No.

Q. Nor did you inquire from anyone whether he was being treated by any doctor?

A. I knew he was treated by doctors, including his own son. That is what I heard.

Q. Heard from whom? 40

A. When I went there, they talked together. Koruthu was there. Various people were there.

Q. Was Dr. Thanabalasunderam's name mentioned ?

A. I do not know Dr. Thanabalasunderam nor was his name mentioned.

(Mr. Wickramanayake states he discovered only yesterday that Dr. Thanabalasunderam saw deceased a few days before he died. Dr. Austin who saw deceased on the 2nd of March will be called).

Re-examined :

Q. You said that on P2 the signature was firm ?

A. Yes.

10 Q. When deceased signed P2 was he lying in bed ?

A. He was walking about.

Q. On what did he keep P2 ?

A. On a table.

Q. P3 ?

A. On a table.

Q. In regard to the Last Will in question, you said he was seated in bed and placed something on his lap—pillow ?

A. Pillow and then a hard thing. Mr. Navaratnarajah suggested a ledger—I would not contradict it.

20 Q. You have said that he was certainly much weaker on that day ?

A. Yes.

Q. He was not moving about ?

A. Yes.

(To Court :

Q. You spoke to the deceased ?

A. Yes, in order to get instructions).

Q. You said you have been his proctor for 30 years ?

A. Yes.

Q. You had spoken to him in the course of the 30 years ?

30 A. Yes.

Q. You spoke to him on the attestation of the earlier Wills ?

A. Yes.

Q. You spoke to him on the attestation of this Will. How was his mental condition then ?

A. Mental condition—he was quite competent to dispose.

No. 19

Respondent's
Evidence—
Continued

Evidence of
J. M. Cadera-
manpulle
Cross-
examination—
Continued

Evidence of
J. M. Cadera-
manpulle—
Re-
examination

(Sgd.)

Additional District Judge.

30.10.62.

No. 19

Respondent's
Evidence—
*Continued*Evidence of
Dr. L. D. C.
Austin
Examination

Dr. L. D. C. AUSTIN, sworn 53 years, Cameron Place, Colombo.

I am an F.R.C.S. England. I am the Resident Surgeon of the General Hospital. I have been Resident Surgeon there from about 1939. I got my fellowship when I was in Galle. I did not attend on Natarajah, the deceased in this case, but I saw him once. I saw him on the 2nd of March last year. He had primary carcinoma of the liver, normally called cancer of the liver. There are instances of secondary deposits of cancer somewhere else sending seeds into the liver, but this was cancer of the liver itself. When I saw him he was walking into the part where his bed was left. He was on his feet. He had his feet wet. I asked him where he was walking 10 about. He said he had been to the bathroom and he talked to me quite rationally; He was in full control of his senses. Those who have cancer of the liver die suddenly, usually of haemorrhage; the disease does not bring in mental deterioration. People, while talking quite rationally, suddenly collapse. There was nothing wrong with his general mental condition.

Q. You had on the 2nd of March certain swabs taken ?

A. I asked them to use a mouthwash because he wanted me to see him about a pain in the neck. He had his parotid gland infected, like mumps; his mouth was sore. I asked him to use Aspasol Mouthwash.

Cross-examined :

20

Q. Who called you ?

A. Mr. Ponnusamy.

Q. You had known him for some time ?

A. A number of years.

Q. You know Dr. Sithamparanathan.

A. He was a student under me and he is now anaesthetist—he anaesthetises when I operate.

Q. Did you examine the patient ?

A. Yes.

Q. Did you know who had treated him earlier ?

30

A. No. I was called to see the swelling on his right cheek.

Q. Your examination was confined to that ?

A. No. I examined him generally too.

Q. Cancer of the liver sometimes can result in the condition known as cholaemia ?

A. That is usual in cases of cirrhosis, not with cancer.

Q. Never ?

A. That is right.

Q. Can you describe the symptoms of cholaemia ?

A. They get unconscious, they feel drowsy and get unconscious. 40 They die in a coma.

Q. Blood transfusions are given for cancer ?

A. Blood transfusions are given for loss of blood when there is diminution in the quantity of circulating blood ; you replace with blood.

Q. In the case of cholaemia are blood transfusions given ?

A. That depends. Cholaemia comes on in cirrhosis of the liver and they bleed. To replace the lost blood, you give the blood transfusion not for the cholaemia but for the haemorrhage.

Q. How long did you talk to him that day ?

A. About 15 minutes.

Q. Can the condition of cholaemia last for a few days ?

10 A. Yes, several days—that depends on how acute it is—what the resistance of the patient is.

Q. One with cholaemia will be rambling in his talk ?

A. Before they get unconscious, they may be rambling.

Q. Unconsciousness follows drowsiness ?

A. Yes.

Q. Drowsiness may last a few days ?

A. It comes on pretty rapidly.

Q. The rambling talk lasts a few days ?

20 A. You see you get a very big haemorrhage and it comes on immediately after. In cirrhosis, there is large haemorrhage and these symptoms come very rapidly—does not last a few days.

Re-examined :

Q. You said there was no question of his being in a state of cholaemia on the 2nd of March ?

A. I can assure you of that.

Q. My learned friend asked you whether cholaemia would last several days ?

A. I explained that it comes very rapidly.

(To Court :

30 It is caused by the haemorrhage and the destroyed liver cannot deal with the absorption and breakdown of the blood of the bowel. We wash out the bowel to get rid of it, so that he would not absorb the poisons ; there would be blood poisoning. Normally, the liver has to detoxify any poisons. In cirrhosis, the liver cannot deal with toxins. Here there is an additional growth in the normal liver. You do not get this in cholaemia. The liver is able to detoxify. It is not a destruction of the liver.

Q. Cirrhosis is destruction of the liver ?

A. Yes ; whereas this is an additional growth.)

40 Cirrhosis is a destruction of the liver and it cannot deal with toxins, and therefore goes into cholaemia. This is an additional growth and the patient does not go into cholaemia.

No. 19
Respondent's
Evidence—
Continued

Evidence of
Dr. L. D. C.
Austin
Cross-
examination—
Continued

Evidence of
Dr. L. D. C.
Austin—
Re-
examination

No. 19
Respondent's
Evidence—
Continued

- Q. From his condition on that day, could he have fallen into cholaemia?
A. No. He can die any moment. It is sudden death.

Evidence of
Dr. L. D. C.
Austin
Re-
examination—
Continued

(Sgd.)
Additional District Judge.
30.10.62.

Mr. Wickramanayake states he did not want to call Dr. Balendra because he saw the testator several days before his death; in view of the questions on rambling talk and coma, he would like to know what the objector's position is.

Mr. Navaratnarajah states Dr. Thanabalasunderam saw the deceased a 10 few days, may be 8 or 10 days, before death. His proctor has not questioned Dr. Thanabalasunderam as to what he observed. The evidence he is going to lead is that 4 or 5 days prior to death deceased was rambling and his condition was poor, and he was not mentally competent—about 5 or 6 days or within a week prior to death.

Mr. Wickramanayake states, on the question of Dr. Thanabalasunderam, he will not object now. He is now instructed that in January Mathuranayagam and Sithamparanathan fetched Dr. Thanabalasunderam. Mathuranayagam knew Dr. Thanabalasunderam was attending on testator. Respondent spoke to Dr. Thanabalasunderam about giving evidence, and he 20 said he had no records or notes, and could not speak from memory. Mr. Wickramanayake states he will close his case now. After evidence is given by Dr. Thanabalasunderam, if necessary, he would move to call Dr. Balendra.

Mr. Navaratnarajah states he will not object if Court allows it.

Mr. Wickramanayake closes his case.

No. 20

Petitioner's Evidence

No. 20
Petitioner's—
Evidence

Mr. Navaratnarajah calls:-

HAPUWITA ARATCHIGE WILBERT PERERA, affirmed, 46 years, 30
Trader, 5, Vihare Lane, Wellawatte.

Q. What business do you carry on now?

A. Wilbertsons Grinding Mill.

Q. When did you come to know the deceased?

A. About 10 or 12 years ago.

Q. In what connection did you come to know the deceased?

A. He was a pawnbroker and had business dealings with him.

Q. For how long did you borrow moneys from him?

A. From about 3 or 4 years before his death, I had dealings with the deceased.

Evidence of
H. A. W. Perera
—Examination

Q. In 1958 there were riots in Colombo ?

A. Yes.

Q. Did you do anything for the deceased in connection with it ?

A. He telephoned to me to help him and I went.

Q. What is the help you rendered to him on that occasion ?

A. When I went there, a shed in front of his house was on fire. I put out the fire. Then he gave me his licensed gun and he asked me not to allow anyone to come, and I protected him,

Q. From that day what was your relation with the deceased like ?

10 A. He liked me much after that.

Q. Did you go to his house frequently ?

A. Yes.

Q. Was there any room in the house where any image was kept ?

A. There is a shrine room where he does religious worship.

Q. Have you been to that room ?

A. He would not allow anyone to go there.

Q. Does he go to Kataragama ?

A. Now and then.

Q. Have you been with him to Kataragama ?

20 A. No.

Q. Did he talk to you about any madams at Kataragama ?

(Mr. Wickramanayake objects. He states it is a statement by the deceased that is sought to be elicited. We are now concerned with deceased's testamentary capacity.

Mr. Navaratnarajah cites section 14 of the Evidence Ordinance. He states he would establish that deceased, right up to his death, had certain intentions which he desired to give effect to. Where it is proved that the deceased had definite intentions in regard to the disposal of his property after death and where a Will is propounded contrary to it, Court will take
30 into account, in coming to a decision, whether the Will sought to be propounded should be admitted to probate or not.

(Witness is asked to stand out).

In answer to Court as to whether the other matters are not merely incidental if the testator's capacity to think is established, Mr. Navaratnarajah submits that in deciding that question, these are matters Court will consider. He states it was so held in 1828 (2) 818 Ecclesiastical Cases 169 and 1828 (1) 880 Ecclesiastical Cases 255.

In answer to Court as to whether, even though there is unimpeachable evidence that testator had a perfect mind, Court must go into the question
40 of the intention of the testator of building madams, Mr. Navaratnarajah submits that before deciding to accept the evidence of the proctor and the witness, Court will also give a certain consideration to this matter, and come

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Examination—
Continued

to a finding. Court's conscience must be satisfied that he had a perfect testamentary capacity.

In answer to Court, Mr. Navaratnarajah states that the evidence in the cases he referred to is similar. He submits that evidence of the mental condition of deceased had not yet been placed. The evidence may be that he was incapable of thought. Court will have to balance that evidence against the evidence of the proctor and the witnesses.

In answer to Court as to whether his position is that the notary was honestly mistaken, he submits Court's conscience should be satisfied that the Will should be admitted to probate. He does not want to comment one way 10 or the other about the notary's evidence.

In answer to Court, Mr. Navaratnarajah submits that evidence of the deceased's intention is admissible under section 14. He states he is questioning the witness in regard to the testator's intention to build a madam. If Court is satisfied he had that intention, it is unlikely he would have made a Will by which he would not have given effect to that intention. That is one matter Court must take into consideration. Refers to 39 N.L.R. 494. Statements made by a testatrix shortly after execution of the Will that she had given her property to her child are admissible. He will prove that deceased, at a certain point of time, had as one of his fixed objects in life, a 20 madam at Kataragama. The Will sought to be propounded contains no provision for a madam.

Mr. Wickramanayake states he objects to a statement of a deceased person. The issue in the case cited was one of fraud. The fact that she made a statement after she had signed the Will was admitted to show her intention at the point of time of writing the Will; we are not concerned with any intention prior. The only issue is whether he was of sound mind at the time of writing the Will. Independent of oral testimony, we know from the first and second Wills that he had an intention of putting up a madam at a certain time. Any man can change his mind. He changed his mind. 30 General evidence of his intentions cannot be led in the form of statements of the deceased. Expressions of feelings at the time in question may be admitted but not a general intention in the past. Counsel cites 39 N.L.R. 496.

ORDER

In the course of the argument on this question I have been referred to the case of *Rajasooriya v. Rajasooriya* reported in 39 N.L.R. 494. I may begin by reproducing the headnote which is in these terms:—

“Where, on an application for probate, suspicion attaches to a Will, Court should not pronounce in favour of it unless the suspicion is removed and the Court is judicially satisfied that the paper propound- 40 ing does express the true Will of the deceased. Statements made by a testatrix shortly after the execution of the Will to the effect that she had given all her property to her child are admissible under section 14 of the Evidence Ordinance.”

It is this section that has been discussed and argued. Learned counsel who opposes this Will which is sought to be proved desires to elicit evidence from the witness who is now in the witness box and who has temporarily

stood out of it, to show that at a certain time, whether in 1958 or 1961, I am not certain, the testator expressed an intention, a general intention I take it, to construct a madam or to provide funds for construction of a madam for religious purposes. For one thing, it strikes me that the relevancy, if there is any relevancy, is far too remote. The question at issue is whether the testator, the deceased, was competent to execute the Last Will of date 3rd March, 1961. That is the only issue that arises for determination. So the relevant question and the only material one—when I say only I mean the substantially material question—is whether on this date
 10 the testator was of sufficient understanding and of sufficient mental capacity to do the act of executing the Will. The case cited deals with statements made by a testatrix after the execution of the Will and, therefore, there is that very vital dissimilarity. Learned counsel for both sides have read certain passages of this judgment and I do not think it necessary for me to reproduce them. My attention has been specially drawn to page 496, the concluding part of that page, where the point of law has been discussed. As submitted by learned counsel for the propounder of the Will, the real question is whether at the time the Will was executed, as I have already said, there was mental capacity in the testator, and any declarations made
 20 by him at or about that time would seem relevant. I do not think it would be correct to say that if a man had an intention at some period of time he would carry that as a fixed intention throughout his life. In this case, having certain facts before me, namely, the execution of certain other Wills prior to the Will in question, where there have been bequests to some charitable trust, there is evidence that at some stage the testator was inclined to dispose of property towards certain charities. But I think the question which is sought to be put is far too general and is strictly not relevant to the question under discussion. Therefore this general question is disallowed.

30

(Sgd.)
Additional District Judge.

(Witness recalled and re-affirmed).

Examination-in-chief (Contd.) :

Q. For how long was the deceased ailing prior to his death ?

A. About one year.

Q. Was he in any hospital or nursing home ?

A. He was in a hospital shortly before death.

Q. What was the hospital ?

A. Durdans.

40 Q. For how many days was he there ?

A. About 10 to 12 days.

Q. How long before death was he in Durdans ?

A. About 2 months before.

Q. Thereafter was he in any other hospital ?

A. Then he went to the Central Hospital.

No. 20
 Petitioner's
 Evidence—
Continued

Evidence of
 H. A. W. Perera
 Examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Examination—
Continued

Q. How long was he in Central Hospital ?

A. 5 or 6 days.

Q. Did you go to see him while he was in the hospitals ?

A. Yes.

Q. After he came back from Central Hospital did you go to his house regularly ?

A. Yes.

Q. How was his condition say about 8 or 9 days prior to his death ?

A. 8 or 9 days before his death he was talking at random like a man not in his proper senses. 10

Q. Did any doctor come and see him ?

A. Some doctor came who resembles you.

Q. How long prior to the deceased's death did that doctor come ?

A. About 8 or 9 days prior.

Q. Did he examine him ?

A. Yes.

Q. How long was he there that day ?

A. About an hour.

Q. You were also there ?

A. Yes. 20

Q. Was any treatment given to the deceased ?

A. He examined and gave a prescription.

Q. Did his condition improve or deteriorate ?

A. He was weak.

(To Court :

His condition got worse.)

Q. He died on a Sunday :

A. Yes.

Q. Were you there the previous Thursday ?

A. Yes. 30

Q. What happened that evening ?

A. He vomited blood in the morning at 9 or 9.30 of the 2nd of March.

Q. You were there ?

A. Yes.

Q. That evening did you go to the house ?

A. Yes.

Q. Did you meet Dr. Sithamparanathan ?

A. Yes.

Q. Did he tell you anything ?

A. He told me that his father's condition was worse.

Q. Did you go on Friday morning ?

A. Sithamparanathan telephoned to me in the morning at 7 a.m. on the 3rd of March asking me to come.

Q. Did you go there ?

A. I went at 8 or 8.30 on the 3rd of March.

Q. Did you go to the deceased's room ?

A. Yes.

10 Q. What did you observe ?

A. There was some receptacle and there was a tube and blood was being transfused into the body.

Q. Was Dr. Sithamparanathan there ?

A. Yes.

Q. Did you question Dr. Sithamparanathan ?

A. I asked him whether he vomited blood.

Q. Who was the doctor who was giving the blood transfusion ?

A. The son.

Q. Where was the deceased ?

20 A. On his bed in his room.

Q. Was he able to talk to you ?

A. He could not talk. He was just looking from side to side. (Witness demonstrates moving his head sideways).

Q. Was Ponnusamy there ?

A. Yes.

Q. Did Sithamparanathan give you any instructions about Mathuranayagam ?

A. When I came that morning Dr. Sithamparanathan asked me to close the gate and not to allow Mathuranayagam to come.

30 Q. Thereafter, did anyone come to the house ?

A. A tall gentleman came in a car.

Q. What time ?

A. About 9.30.

Q. Did Mathuranayagam come ?

A. As the tall gentleman came, Mathuranayagam stopped his car outside and entered the premises.

Q. Did Mathuranayagam try to enter the house ?

A. He was talking to the tall gentleman for 10 or 15 minutes.

Q. Then ?

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Examination—
Continued

A. Dr. Sithamparanathan asked me not to allow Mathuranayagam to come in and asked me to send in only the tall gentleman.

Q. You know the tall gentleman :

A. Mr. Koruthu.

Q. Did Ponnusamy go out that morning ?

A. He went in the car.

Q. After Ponnusamy left was anything done in the deceased's room ?

A. He removed the tubes with my assistance. With my assistance Dr. Sithamparanathan removed the apparatus, and removed the clothes stained with blood.

10

Q. Thereafter did Ponnusamy come ?

A. He came after 45 minutes.

Q. He came alone or with anyone ?

A. He came with a short gentleman with some papers.

That gentleman is the notary Mr. Caderamanpulle.

Q. Thereafter ?

A. The Doctor, Ponnusamy, the Proctor, Koruthu, were talking in the hall in the middle and then the Doctor went off in the car.

Q. Where was Koruthu at the time ?

A. In the verandah by the bed where I was seated—all of them were 20 there.

Q. Where were they seated—on benches ?

A. There were chairs in the verandah.

Q. Did Dr. Sithamparanathan come thereafter ?

A. He came with another gentleman.

Q. Do you know his name ?

A. The Dr. who was working in the Lady Ridgeway Hospital.

Q. Then what happened after Sithamparanathan came with the man ?

A. Then I was called in.

Q. By whom ?

30

A. By Ponnusamy and Dr. Sithamparanathan.

Q. Then ?

A. They asked me to help them to hold up the deceased.

Q. What did you do ?

A. Then the daughters all got together and kept 3 pillows at the back and sat him up on bed.

Q. Was anyone holding him ?

A. Mr. Ponnusamy.

Q. Was anything placed on his lap ?

A. They kept a pillow on his lap, then a ledger book, then the Proctor gave him the papers which he brought and showed the places where he should sign.

Q. Was there a fan working at the time ?

A. There was an oscillating fan at his feet.

Q. Was the fan working at the time ?

A. Papers were flying about for the fan. The short gentleman asked for the fan to be stopped.

(To Court :

10 By short gentleman I mean the Proctor.)

Q. There was a window which opened out into the garden ?

A. As soon as the Proctor entered, he asked me to close all the windows.

Q. You said papers were placed before the deceased ?

A. On his lap.

Q. Was anyone holding the papers at the time ?

A. Mr. Ponnusamy held the papers.

Q. Then what happened ?

A. The Proctor pointed out the places to sign.

20 Q. Then ?

A. Dr. Sithamparanathan told the deceased. "Appa, Appa, Dharmam Kudukka Oppam podunga ; Appa, appa, Dharmam Kudukka oppam podunga." (Father, to give to charity, sign here.)

Q. What did the deceased do ?

A. He looked about and said, "Mathuranayagam, Mathuranayagam."

Q. Did Dr. Sithamparanathan say anything ?

A. He said he will come.

Q. Then ?

30 A. He gave a pen and a pair of spectacles. The daughter held the spectacles over his eyes.

Q. Then ?

A. He was gazing round without signing.

Q. Then ?

A. The daughters started crying.

Dr. Sithamparanathan in a loud voice appealed to the testator to sign in order to give to charity.

Q. Then what happened ?

A. With great difficulty he signed and it was wrong, and he signed in two places.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Examination—
Continued

Q. How many places did he sign ?

A. In two places.

Q. Was the Will read out ?

A. It was not read, and he also would not have understood.

Q. Did anyone else sign those documents ?

A. Mr. Koruthu and Dr. Ketharanathan and he also signed it wrong and signed it a second time.

Q. Where did they sign the document ?

A. After the testator signed they walked out to the verandah and signed. 10

Q. Then what happened ?

A. Koruthu got into his car and went. The Proctor went with Ponnusamy.

Q. At what time did you go home ?

A. About 12.

Q. That evening did you go to the house—Friday ?

A. Yes.

Q. At what time ?

A. About 6 p.m.

Q. How long were you there ? 20

A. About 2 hours.

Q. Was the deceased able to talk at that time ?

A. No. He took half an hour to utter one word ; with difficulty he could speak.

Q. Did you go the following day—on Saturday ?

A. Yes.

Q. You know Jayasekera ?

A. He came there.

Q. What happened ?

A. Deceased was sleeping and I was seated by him. He asked me 30 how the condition of the patient was and I told him he was very weak and he vomited blood.

Q. What else happened ?

A. He told me he was going to Kataragama for a pooja and he went away.

Q. How long were you in the house that day ?

A. I went away at about 2 p.m.

(To Court :

That was on the 4th.)

Q. Did you come back to the house in the evening ? 40

A. Yes.

Q. How was the condition of the deceased ?

A. His condition was worse. He could not talk.

Q. On the next day did you go there—on Sunday ?

A. Yes.

Q. At what time ?

A. About 8.30 or 9.

Q. What did you observe when you went there ?

A. There was blood in a basin.

10 Q. How was his condition ?

A. When they poured medicine or something into his mouth it would dribble out. I was asked to fetch Oxygen.

Q. By whom ?

A. Dr. Sithamparanathan. Then the Doctor gave him an injection and he died.

Cross-examined :

Q. When did you first attend a consultation with proctor or counsel of the objector ?

A. I went to the proctor.

20 Q. When did you first go to the proctor ?

A. About 2 weeks to a month prior to the institution of this case.

Q. What year ?

A. Last year.

Q. You went to the proctor and you told him the story that you have related in Court about the incidents of the 3rd ?

A. The proctor asked me.

Q. Then you told him ?

A. Yes.

30 Q. That is to say the proctor for Mathuranayagam was aware of all this story you told us of the propping up with pillows and getting him to sign ?

A. Yes.

Q. You have an *alias* as Malukaday Wilbert ?

A. No.

Q. Did you figure in the R. A. de Mel election petition case ?

A. No.

Q. Have you been to jail ?

A. In 1932.

Q. In 1937 you went to jail again ?

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Examination—
Continued

Evidence of
H. A. W. Perera
—Cross-
examination

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Cross-
examination—
Continued

A. No. Only once.

Q. On 7.6.32 you were convicted of theft of ducks ?

A. I went to jail only once.

Q. What for ?

A. For causing hurt, cutting somebody's leg.

Q. You had 3 convictions ?

A. Only one.

Q. You told your proctor all these things—that on the 2nd you went there early in the morning—that you helped to prop him up to make him sign ?

10

A. Yes.

Q. You went there on that occasion at about what time ?

A. 8 or 8.30.

Q. Did you on that occasion go in answer to a summons or on your own ?

A. I went there on receipt of a telephone message.

Q. You found that he was sick ?

A. He had vomited blood before I came.

Q. We are dealing with Thursday—the day before the signing of these documents—with closed windows and fan out. That day did you go in the morning ?

A. At about 8 or 8.30.

I went on the Thursday on a casual visit.

Q. At that time he was ill in bed ?

A. Yes. There was a basin by him which was full of blood.

Q. So he had already vomited blood when you went there ?

A. Yes.

Q. You said he vomited blood again at 9 or 9.30 ?

A. No. He vomited before I went.

Q. After you went he did not vomit blood ?

30

A. Yes.

Q. After vomiting blood he was in a state of complete exhaustion ?

A. Yes.

Q. He was physically exhausted ?

A. At all times—even before that he was physically frail.

Q. As a result of vomiting blood he was completely exhausted ?

A. He was exhausted, he was waving his arms about, shaking his head about.

Q. Doing those things like a man who was not in his senses ?

A. Yes.

Q. It was quite obvious to you as a layman that he was not in his proper senses ?

A. Yes.

Q. You stayed there on the 2nd for several hours ?

A. Yes. I went away for lunch. I came back in the afternoon.

Q. When you came back he was worse than in the morning ?

A. I asked the Doctor.

Q. You saw him worse ?

10 A. Yes.

Q. He was not capable of getting about and talking ?

A. So far from walking, on the second, he was not capable of lifting anything into his mouth.

Q. Anybody who says that he was able to walk about in the bathroom and talk would be saying something utterly false ?

A. Yes. It is deliberate falsehood. I attended on the patient.

Q. On the 3rd morning you went there in response to a phone call ?

A. Yes.

20 Q. You were suggesting that Dr. Sithamparanathan brought you there as a thug to keep Mathuranayagam out ?

A. No.

Q. During the riots the old gentleman, the deceased, sent for you for his protection ?

A. Yes.

Q. He gave you his gun ?

A. Yes. He gave me the gun and asked me to shoot people who enter.

(To Court :

Q. You were quite ready to shoot ?

A. I did not even touch the gun).

30 Q. You put out the flames outside ?

A. Dr. Sithamparanathan and I fitted the hose to the pipe.

(To Court :

Q. During the riots some rowdies were hired as protectors by some Tamil gentlemen ?

A. I did not go like that.

Q. Others ?

A. Yes.)

Q. When the deceased died you had pawned articles to the value of over Rs. 2,000 ?

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Cross-
examination—
Continued

A. Rs. 7 or 8 thousand.

Q. The worth may be Rs. 7,000 or 8,000 but you had got Rs. 2,000 on those articles ?

A. Rs. 3,000, Rs. 2,000—like that.

Q. You went to Dr. Sithamparanathan and wanted the articles back waiving the money for services you rendered in the riots ?

A. No.

Q. On the 3rd you were not there in the morning ; you were brought to keep Mathuranayagam out ?

A. I know Mathuranayagam for a long time. 10

Q. They could not keep Mathuranayagam out—so they got you down to help ?

A. They could have closed a gate.

Q. It was suggested by Counsel for Mathuranayagam that you were got down there to keep Mathuranayagam out ?

A. They could have closed the gates.

Q. What was the need for you to be brought there ?

A. If by any chance Mathuranayagam tried to force his way I was brought.

Q. I put it to you Mathuranayagam got you there to assist him to try 20 to prevent the execution of a Will ?

A. That is not correct.

Q. When you came there on that occasion there was no vomiting of blood ?

A. That day too there was vomiting of blood and there were signs of vomiting of blood.

Q. You were there at about 8 or 8.30 ?

A. Yes.

Q. From your inquiries you realised that he had vomited from early morning—the stains were there from early morning ? 30

A. Yes.

Q. Those signs had been there for a few hours—2 or 3 ?

A. Yes.

Q. After you went they were cleaned up ?

A. Yes.

Q. From what you found out, the vomiting of blood was 2 or 3 hours earlier—it was not fresh blood ?

A. Yes.

Q. Those are signs anybody who went there half an hour earlier would have seen ? 40

A. Yes.

Q. This story of the bloodstains there visible you told the proctor for Mathuranayagam on the first occasion ?

A. I did not say that.

Q. When did you tell them about the blood transfusion ?

A. I did not tell the proctor about the blood transfusion. I told Mathuranayagam.

Q. When did you tell him ?

A. At the time of the death.

Q. You had told Mathuranayagam at the time of the death and the 10 fact that blood transfusion was necessary because he had vomited blood ?

A. Yes.

Q. Do you know that Proctor Caderamanpulle had come there at about 7.45 or 8 ?

A. No.

Q. Did you get to know from anybody that nobody had come there at all before you came ?

A. When I went there only the daughters were there.

Q. The blood transfusion must have been given at the time you went ?

A. Yes.

Q. From where the blood had been obtained you had no idea ?

A. Yes.

Q. You saw only the drip into his veins being continued ?

A. Yes.

Q. According to you, Sithamparanathan went out and told you of the vomiting of blood ?

A. Yes.

Q. Did he tell you at what time of the morning he had vomited ?

A. He did not give a time. He said today also he vomited.

Q. How many times had he vomited blood before that ?

A. Once or twice before.

Q. Once was on the 2nd, the day before ?

A. Yes.

Q. The other time before that ?

A. The day I went in the morning.

Q. Before that for 8 or 9 days he had been in very poor condition ?

A. He could stammer and talk. There was a commode by the bed. Deceased's brother and I helped him into that.

Q. For 8 or 9 days he was not able to walk about in the room ?

A. He could not walk.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Cross-
examination—
Continued

Q. He could not have gone out of the house ?

A. Yes.

Q. He did not go out of the room for 8 or 9 days before his death ?

A. Yes. He could have gone with assistance.

Q. According to you, Dr. Sithamparanathan removed all traces of blood transfusion ?

A. When I was there it was the daughters who removed the blood-stained clothes but Dr. Sithamparanathan took the needle off the vein.

Q. Did he do anything else ?

A. He dabbed it down with something. 10

Q. No bandage, cotton wool, nothing to stop the bleeding ?

A. He put some sticking plaster.

Q. The sticking plaster was there at the time the proctor came ?

A. Yes.

Q. When the Doctor from Lady Ridgeway Hospital who was a witness to the Will came, the plaster was there ?

A. Yes.

Q. Was it covered up ?

A. It was visible to anybody.

Q. You told us that it was Dr. Sithamparanathan who went out from that house to fetch the other Doctor ? 20

A. Yes.

Q. According to you deceased was so ill at the time that they all sat in the verandah ?

A. The daughters were in the room and the deceased's brother who gave evidence was in the room.

Q. When Proctor Caderamanpulle, doctor who was in the hospital, Koruthu came—it was obvious to any of them that the person was in a condition when he could not understand anything ?

A. They went in there, had a look and came out but they did not go there when he signed. 30

Q. Koruthu went and had a look ?

A. Yes.

Q. The Doctor from the Lady Ridgeway Hospital went in, had a look ?

A. Yes.

(To Court :

Q. Did they go singly or together ?

A. First Koruthu went in and came out ; then the Doctor who later signed.

Q. The ladies were in the room ? 40

A. Yes.

Q. You were there in the room to assist testator ?

A. I was in the verandah.

Q. Only the ladies were in the room ?

A. Yes.

Q. The others in the verandah went in, had a look and came back ?

A. Yes.

Q. One by one they went and came back ?

A. Yes).

10 Q. At a certain stage there was a paper that was signed ?

A. Yes.

Q. At that time who were in the room ?

A. The children, the Proctor, Ponnusamy and Dr. Sithamparanathan.

Q. Koruthu and the other Doctor were outside ?

A. In the verandah.

(To Court :

Q. The door leading to the verandah was closed ?

A. No.

Q. Where were you ?

20 A. In the verandah. I went into the room to help.)

Q. It was obvious to anybody that the man was in a state when he could not understand anything ?

A. Yes, and he could not hear too.

Q. The Doctor who signed as the witness--as a doctor, also should have understood that testator could not understand anything ?

A. Yes.

Q. Mr. Caderamanpulle was there a long time ; he saw that a fraud was being committed, a false statement was made that testator was signing for charity ?

30 A. The Proctor must know definitely that he was not in a fit condition.

Q. The Proctor must have heard Dr. Sithamparanathan tell testator " Sign here in order to give to charity " ?

A. Yes.

Q. You would have known that a deliberate fraud was being practised on this man who was completely senseless ?

A. Yes.

Q. You helped in the perpetration of the fraud ?

A. I cannot say that.

Q. He did not stop it ?

40 A. Yes. He did not even read the paper.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Cross-
examination—
Continued

No. 20
 Petitioner's
 Evidence—
 Continued

 Evidence of
 H. A. W. Perera
 Cross-
 examination—
 Continued

(To Court :

Q. Did you know what was happening ?

A. Yes.

Q. That it was a Last Will ?

A. Yes.

Q. Did it not strike you this was a deliberate fraud ?

A. I could not have talked. I was an outsider.

Q. You knew that it was a fraud ?

A. I realised it was a gross fraud that was being perpetrated but I could not do anything to stop). 10

Q. Did you know that it was the Last Will that testator was signing ?

A. I knew he was disposing of the property.

Q. Do you know a Last Will ?

A. Yes.

Q. That is a testamentary disposition of property after death ?

A. Yes.

Q. It can be done before a notary and two witnesses ?

A. Yes.

Q. There was a notary there ?

A. Yes. 20

Q. You knew the notary had come for that ?

A. Yes.

Q. There were two witnesses ?

A. I did not know whether it was about the licence.

(To Court

At that time I did not do anything to prevent the perpetration of a fraud.)

(Adjourned for lunch).

(Sgd.)
 Additional District Judge. 30
 30.10.62.

30.10.62.

Trial resumed after lunch. Same appearances.

HAPUWILA ARATCHIGE WILBERT PERERA, recalled, affirmed.

Cross-examination (Contd.) :

Q. You told the Court that you saw towards the end a doctor who came and who looked like my learned friend (counsel for the objector) ?

A. Yes. He came about a week ago.

Q. Was Mathuranayagam there at the time he came ?

A. Yes.

Q. Mathuranayagam also knew that the doctor had come to attend on the deceased ?

A. Yes.

Re-examined : Nil.

(Sgd.)

Additional District Judge.

No. 20

Petitioner's
Evidence—
Continued

Evidence of
H. A. W. Perera
Cross-
examination—
Continued

ELMO VINCENT JAYASEKERA, affirmed, 46 years, Ex-Store-
10 keeper, Aitken, Spence & Co., Colombo.

Evidence of
E. V. Jaya-
sekera—
Examination

I know the deceased. I knew the deceased, for the last 10 or 12 years. He died on Sunday the 5.3.61. I met him on Friday before, *i.e.* the 3rd, between 12 and 1 p.m. His son was there at that time and I think one of the daughters was there. The deceased was on a bed lying down. I wanted to speak to him and I found that his condition was so bad and therefore I did not speak to him. I waited there for about half an hour. During the whole of that half an hour the deceased did not speak to me.

On Saturday I went there between 12 and 1 p.m. I saw the deceased. He was in a very bad condition and I took a pooja off his hand to Kataragama ; Wilbert Mudalali kept a pooja in his hand and I took it off from him.
20 I did not speak to him. I went to Kataragama.

I returned early morning on Monday at about 2 a.m. I brought the ash from Kataragama, and I came to office and stayed at the office for about half an hour and thereafter I went to the deceased's house at Deans Road and found him dead. I go to Kataragama often. The deceased had been with me to Kataragama. About 6 months prior to his death he had been with me ; myself, A.S.P. Jayasinghe, Mr. and Mrs. Rupasinghe, my wife and two children, we all went in 3 cars.

Cross-examined

30 The deceased died on a Sunday. I think I saw him about 7 or 8 a.m. on Sunday. I went and saw him on Friday between 12 and 1. He could not speak.

Evidence of
E. V. Jaya-
sekera—
Cross-
examination

Q. Did you talk to him ?

A. I talked to him.

Q. You just told the Court in evidence-in-chief that his condition was so bad that you did not talk to him ?

A. He did not speak to me.

Q. Your evidence-in-chief was that his condition was so bad that you did not talk to him ?

40 A. I cannot remember.

Q. Apart from whether you said it or not, is it a correct statement of fact that on Friday when you went between 12 and 1 his condition was so bad that you did not speak to him ?

No. 20
Petitioner's
Evidence—
Continued

Evidence of
E. V. Jaya-
sekera
Cross-
examination—
Continued

A. I did not talk to him ; I spoke to the doctor ; he did not speak to me.

Q. Did you speak to him ?

A. I spoke to the doctor and not to the deceased.

Q. The deceased did not speak to you ?

A. Yes.

Q. You were in Government service ?

A. I was not.

I have been at Aitken Spence for the last 12 years. I came to know the deceased as a pawn broker. I went to him to pawn things. I did about 10 4 businesses with him and after that he became very pally with me during the last 3 years. Mathuranayagam was coming every evening and speaking to the deceased and he was looking after the deceased very well.

Q. On Friday was Mathuranayagam there ?

A. No.

Q. On Saturday was he there ?

A. No.

Q. And you saw the deceased about 8 or 10 days before that Friday ?

A. About 7 days before that Friday.

Q. Have you got summons in this case ?

20

A. No.

Q. How many times have you been to Court ?

A. This is the first time I came. I went and saw the Advocate. I came because the Advocate asked me to come to Court.

Q. You know that when a witness comes to Court he comes on summons from Court ?

A. Yes.

Q. Have you got batta for today ?

A. No.

Q. Did Mathuranayagam ask you to come and give evidence today ? 30

A. Yes, and I was asked to come today.

Re-examined Nil.

(Sgd.)
Additional District Judge.

Mr. Navaratnarajah, at this stage, moves to summon Dr. Thanabala-sunderam. He says that he became aware only yesterday that Dr. Thanabalasunderam had treated the deceased last a few days before his death. He moves for a further date to call this doctor. Counsel refers to section 175 C Civil Procedure Court *re* Court's discretion. The evidence of this doctor will be relevant in deciding whether the deceased had testamentary capacity 40

on Friday or not. This section came up for consideration in the case of *Girantha v. Maria*, 50 N.L.R. 519 at 522. The deceased's children would have known that Dr. Thanabalasunderam had treated their father. In answer to Court counsel says that Mathuranayagam was not there from morning till evening to know that Dr. Thanabalasunderam treated the deceased. The evidence is that he used to come in the morning or in the evening.

No. 20
Petitioner's
Evidence—
Continued

In regard to costs, counsel says, the Court may take into account that this case could not have finished today.

10

ORDER

In regard to the application to summon Dr. Thanabalasunderam, I have heard learned counsel who has been at pains to refer me to the authority which he has cited, viz. *Girantha v. Maria*, 50 N.L.R. 519. The relevant passage has been read to me and it is at page 522. Taking all in all, I think it may be of some assistance to have the doctor before us.

The remaining question that has now to be considered is that this inquiry had to be interrupted, and we have just resumed after the adjournment and there is much time ahead before the close of the day. This motion which is submitted in respect of this doctor is called the "Petitioner's additional list of witnesses." The petitioner submits that he came to know only yesterday that it was this doctor in question who was the last doctor who treated the deceased professionally a few days before his death. If the petitioner had come to know yesterday he had sufficient time to move the office and have summons taken out on the doctor. There are certain other matters which have been brought to my notice, but I think they are of no consequence. For the interruption of this trial I think the objecting petitioner is responsible and I think the propounder is entitled to be compensated in the way of costs. The objecting petitioner will pay the propounder the costs of today as taxed.

30 Further trial on 7.11.62.

(Sgd.)
Additional District Judge.

7.11.62.

Inquiry resumed. Same appearances.

Mr. Navaratnarajah calls :-

Dr. R. S. THANABALASUNDERAM, affirmed, 40 years, Visiting Physician, General Hospital.

My qualifications are M.D., M.R.C.P.

(*To Court* : I am an M.D. (London) and M.R.C.P. (London).) I have done research work on liver—myself and Prof. P. B. Fernando. It was published in the Quarterly Journal of Medicine. I have treated patients suffering from cancer of the liver—a fairly large number.

Evidence of
Dr. R. S.
Thanabala-
sunderam—
Examination

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Examination—
Continued

- Q. Cancer of the liver results from cirrhosis ?
- A. Yes.
- Q. What is the other type of cancer of the liver ?
- A. Secondary deposits in the liver, which is also referred to as carcinoma.
- Q. On how many occasions did you see the deceased in this case ?
- A. About 4 or 5 times.
- Q. Immediately prior to his death when was the first occasion you saw him ?
- A. Probably a month or more.
- Q. When was the last occasion on which you saw the deceased prior to his death ?
- A. 5 or 6 days or more.
- Q. More meaning ?
- A. 1 or 2 days more than 5 to 6 days.
- Q. On the last occasion that you examined him, how long did you take with the deceased ?
- A. 10 to 15 minutes.
- Q. Who called you to see the deceased ?
- A. His son Dr. Sithamparanathan.
- Q. What did you observe on the last occasion you examined him ?
- A. He was a very sick man. He was thin, emaciated, with swollen legs ; he talked very little and that too incoherently. On examination, he was dehydrated ; his pulse was rapid and he had his large mass in the abdomen, the tumour in the liver. 20
- Q. Did he complain of any pain ?
- A. I cannot remember that.
- Q. What was the incoherent talk due to ?
- A. One was the dehydration, and the other, the liver cells failed.
- Q. What does cholaemia mean ?
- A. That is liver cell failing. 30
- Q. Was the cancer of the liver deceased was suffering from due to cirrhosis or not ?
- A. He suffered from cancer of the liver.
- Q. Was it due to cirrhosis ?
- A. Yes.
- Q. Once cholaemia sets in in a case like this, what is the progress ?
- A. The progress would fluctuate and will go downhill.
- Q. What was the treatment you recommended on that date ?
- A. He was dehydrated as a result of diarrhoea ; I suggested intravenous fluids, glucose saline and drugs to stop the diarrhoea. 40

Q. Anything else ?

A. I do not remember anything else.

Q. Was Dr. Sithamparanathan there at the time you examined the patient ?

A. Yes.

A. Did he ask you about the condition of the deceased ?

A. Yes.

Q. What did you say ?

A. I said he was deteriorating.

10 Q. Deteriorating meaning ?

A. Progress downhill.

Q. Can you recall recommending pethidine ?

A. Symptoms earlier were mainly pain and loss of appetite. Then I prescribed analgesic drugs to relieve pain and injection of pethidine.

Q. Does pethidine effect one's mental capacity ?

A. It produces sleepiness.

Q. Does Cholaemia produce drowsiness ?

A. Yes.

20 Q. (Shown P2). This is the Will that was signed by the deceased on 28th December, 1960. (Shown P3). This is the Will that was signed by the deceased on 2nd February, 1961 ; (Shown protocol P4 of the Will marked A). This is the Will that was signed by the deceased on 3rd March, 1961 ; these are the two signatures ; (Shown A). This is the Will that was signed, also on the 3rd March, 1961 ; the deceased died on 5th March, 1961. The document P4 and the Will A were signed by the deceased about 2 or 3 days before his death. Looking at those signatures, can you give an opinion ?

(Mr. Wickramanayake states witness is not a handwriting expert ; he wishes to know if the question is put to him as medical expert. Mr. Navaratnarajah states he is asking for his opinion as medical expert).

30 A. That is illegible handwriting.

(Mr. Wickramanayake wishes it recorded that his answer is given as medical expert).

Q. What more ?

A. Of a feeble man and an aprax, where writing gets deformed, where they are unable to form words.

Q. What is that due to ?

A. That is in many mental conditions where there is drowsiness, where there is mental deterioration, cortical deterioration, the deterioration of the functions of the brain.

40 Q. The patient who signed these two Wills was suffering from cancer of the liver ?

A. Yes.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Examination—
Continued

Q. Does cancer of the liver sometimes affect the writing of the individual ?

A. Yes.

Q. (Shown Sheila Sherlock's Diseases of the liver and Biliary System). At page 88 the authoress deals with the relation of the liver to mental function ?

A. Yes.

Q. At page 89 clinical features are dealt with ?

A. Yes.

Q. You refer to the last paragraph at page 89 ?

10

A. Yes.

Q. Will you kindly read it ?

A. (Witness reads) "Intellectual deterioration varies from slight impairment of organic mental functions to gross confusion. Daily fluctuations may be observed. Focal defects appearing in a setting of clear consciousness, relate to disturbances in visual, spatial gnosis. Those are most easily elicited in the motor sphere as constructional apraxia, shown by inability to reproduce simple designs with blocks or matches. Symptoms of this defect are manifest in various difficulties. Writing is typically oblivious of rulings and a daily writing chart is a good check of progress." 20

Failure to distinguish objects of similar size, shape, function and position leads to the frequently observed symptoms of micturating and defaecating in inappropriate places."

Q. What does that mean ?

A. The whole paragraph ?

Q. Yes ?

A. It means deterioration in mental function as a result of liver cell failing.

Q. And the writing of the individual, according to this, is a good indication ?

30

A. Of liver cell failure.

Q. And mental deterioration ?

A. Yes.

Q. At page 90 the authoress deals with speech ?

A. Yes.

Q. "The speech is slow and slurred, the voice monotonous, and often faint. In deep stupor dysphasia, becomes marked and is always combined with perseveration." What does that mean ?

A. It means that speech is slow as she says. It is monotonous, there is no fluctuation of voice in intensity from time to time, and dysphasia, 40 meaning a disturbed speech, becomes marked, and is combined with perseveration : you repeat the same word.

Q. Does disturbed speech mean incoherent speech ?

A. Yes.

Q. You said that on the last occasion you saw him he showed symptoms of cholaemia ?

A. Yes.

Q. One symptom being the incoherence of speech ?

A. Yes.

Q. Having regard to that fact could you have signed as a witness to his signature to a Will thereafter ?

A. I would not have signed.

10 Q. Dr. Austin says in his evidence that on the 2nd of March, the day prior to the execution of the Will there was swelling on the face ?

(Mr. Wickremanayake states it was not on the face but on the parotid).

A. Was it on the parotid gland—salivary gland.

Q. Caused by ?

A. Infection from the mouth cavity.

Q. Does it affect one's power of speech ?

A. It does.

Q. Dr. Austin says in evidence that on the 2nd of March, roughly 3 or 4 days before his death, the deceased talked to him quite rationally and
20 he was coming out of the bathroom unaided. Do you think, in your view that is possible ?

A. I cannot comment on that.

Q. Do you think it is possible ?

A. I want the question again.

Q. Dr. Austin in his evidence says that on the 2nd of March the deceased talked to him quite rationally and he saw him coming out of the bathroom unaided—Dr. Austin saw him coming out of the bathroom unaided ?

A. On my examination, must have been 3 or 4 days earlier. I would
30 not have thought it possible.

Q. Proctor Caderamanpulle who attested the Will on 3rd March, 1962, states that the deceased talked to him quite rationally and the deceased sat on the bed unaided—having regard to what you observed on the last occasion that you examined him and also having regard to the signature of the deceased that appear on the protocol and the original, will you say it is possible for him or not ?

A. I would have thought it not possible.

Q. Proctor Caderamanpulle also says that on the 3rd of March, 1961, in the morning, at about 7.30 a.m. the deceased talked to him quite rationally ;
40 ally ; having regard to the signatures on the two documents and to what you observe on the last occasion you saw him, and also having regard to the fact that he died 2 days later, will you say it is possible or impossible ?

A. I would have thought it was not possible.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Examination—
Continued

Q. The evidence of one witness in this case is that for a few days prior to the death, 5 or 6 days prior, the deceased was rambling in his talk, and talking like a mad man. Is that possible?

A. Possible.

Q. It was suggested that when a person suffers from cancer of the liver vomits blood, he dies within 2 or 3 hours thereafter?

(Mr. Wickramanayake says it was not so suggested. It is in the teeth of the evidence. Dr. Austin said he has known cases of people having cancer of the liver suddenly dying).

Mr. Navaratnarajah refers to evidence at page 44—"those who have 10 cancer of the liver die suddenly usually of haemorrhage", and states the question is on that. He reframes the question).

Q. Do persons suffering from cancer of the liver, when they vomit blood, die within 2 or 3 hours?

A. Depends on the quantity of the blood lost.

Q. In this case the evidence of one witness is that the deceased vomited blood on Thursday morning, 2nd March, again on Friday, 3rd March, and thereafter again on Sunday, on which day he died. Is that possible?

A. Yes.

Q. What is the treatment usually given when a patient suffering from 20 cancer vomits blood?

A. Blood transfusion, depending on the quantity of blood he has lost.

Cross-examined :

Q. Dr. Sithamparanathan saw you long before you were served with summons in this case?

A. Yes.

Q. And asked whether you were in a position to testify to the deceased's mental condition?

A. Yes.

Q. You said you had no case record?

30

A. Yes.

Q. Have you a case record?

A. No.

Q. Did you not tell him because you had no notes you will not be able to remember the facts?

A. Detailed facts.

Q. That you would not be able to, that you could not give any evidence of value because you had neither the case record nor even notes of the dates you visited him?

A. I did not have.

40

Q. At no time did you have a note of the dates you visited, nor a case record?

A. Yes.

Q. You are going on your memory ?

A. Recollection.

Q. Which recollection was not sufficient to enable you to give evidence when Dr. Sithamparanathan asked you ?

A. I told him my evidence will not be helpful.

(To Court .

Q. Helpful means ?

A. To him).

10 Q. You also said " I cannot recollect any of the details " ?

A. That was in fact to put him off.

Q. After service of summons, did you telephone to him to see you ?

A. Yes.

Q. What for ?

A. He is a doctor, he is a colleague and I did not want to give evidence.

Q. You were served with summons by the other side ?

A. Yes.

20 see me " ?

A. Yes.

Q. What for ?

A. To tell him that I am going to give evidence which will not be helpful.

Q. Did you ask him to see you to give you the dates ?

A. Yes.

Q. Did he say he must consult his lawyers before seeing you ?

A. Yes.

Q. Did he ring back that he was told he ought not to say ?

30 A. Yes.

Q. You rang him up to know the dates ?

A. No.

Q. You said you found deceased dehydrated, thin, emaciated, legs swollen, talk incoherent, rapid pulse ?

A. Yes.

Q. That was on the last day you saw him ?

A. Yes.

Q. The dehydration was caused by the diarrhoea ?

A. Yes.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. When dehydration is caused by diarrhoea, the treatment is, first stop the diarrhoea, and replace the fluid dehydrated ?

A. Simultaneously.

Q. You gave him first a boric enema to clear the bowel ?

A. I do not remember giving the boric enema.

Q. Followed by enema of starch and morphia ?

A. Yes.

Q. To stop further purging ?

A. Yes.

Q. Along with that you gave him a drip ?

10

A. Intravenous drip. Intravenous fluid.

Q. To replace fluid that had been dehydrated ?

A. Yes.

Q. That is purely the treatment of the condition of an old man who had gone weak, the result of diarrhoea ?

A. Yes.

Q. That is the last day you saw him ?

A. That is as far as I remember.

Q. That day was the 13th of February, 1961 ?

A. I cannot remember the date.

20

Q. Take it from me ; I will prove it. When you told Court that you saw deceased 4 or 5 days or more before his death, what were you trying to suggest to Court—that you saw him shortly before death ?

A. No.

Q. 13th of February was almost three weeks before he died. He died on the 5th of March. You gave the death certificate on the 5th of March ?

A. Yes.

Q. 13th of February is nearly 3 weeks before the date of death ?

A. Yes.

Q. At that date you did not prescribe anything at all for any condition of cholaemia ?

30

A. I prescribed glucose.

Q. Did you have any antibiotic and glucose ?

A. No.

Q. Glucose drip was merely to replace the dehydrated fluid ?

A. To treat the liver failure.

Q. No antibiotic ?

A. Yes.

Q. Sheila Sherlock deals with comatic conditions following on cirrhosis ?

A. Yes.

40

Q. She goes on further in the same book to point out that if that condition is observed, if there is a suspicion of cholaemia, it is necessary for a doctor to observe the patient every four hours. And have these tests of ability to place matches in patterns and blocks to see progress ?

A. Yes.

Q. Did you see that patient after that date till death ?

A. It was a doctor who called. If he did not call I was not going there.

Q. Did you place any test on that day ?

A. Not necessary.

10 Q. Why not ?

A. Because he was suffering from carcinoma of the liver.

Q. It does not bring about cholaemia ?

A. It does.

Q. Carcinoma may supervene on cirrhosis ?

A. Yes.

Q. Carcinoma cannot bring about Cholaemia ?

A. It can.

Q. You say primary carcinoma by itself can cause cholaemia--will you give authority for it ?

20 A. It can.

Q. Dr. Austin has given evidence that cholaemia is caused by the toxins in the liver cells ?

A. What do you mean ?

Q. By toxins in the system ?

A. Yes.

Q. That is not brought about by carcinoma *per se* ?

A. It can.

Q. What is the authority ?

30 A. Sherlock. She says "Failure of liver cell function can complicate almost all forms of liver disease"

Q. That deals with failure of liver cell function ?

A. Yes.

Q. Failure of liver cell function arises when there is deterioration of the liver ?

A. When the liver cells are diseased.

Q. It is not a damage of liver cells ?

A. Disease of liver.

Q. Does not always mean damage to liver cells ?

A. It does.

No. 20
Petitioner's
Evidence--
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination--
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. Where is the authority for that ?

A. That is the authority.

Q. Dr. Austin is a man of some experience ?

A. In my opinion . . .

Q. Dr. Austin told us definitely that carcinoma cannot damage liver cells ?

A. It can in my opinion.

Q. What is the authority for saying carcinoma damages liver cells ?

A. Even in Hodgkin's disease of the liver which is similar .

Q. Never mind similarity ?

10

A. This is a similar example.

Q. Dr. Austin is express that carcinoma of the liver by itself will not cause damage of the liver cells or result in toxins. You do not agree ?

A. Yes.

Q. Can you show me—not similarities—any statement that carcinoma *per se* will damage the liver cells ?

A. That is my opinion.

Q. You have given your opinion. Dr. Austin has given his opinion. You have the last word on liver diseases before you. Is there anything in it which points to your opinion ?

20

A. "Failure of liver cells function can complicate all forms of liver disease."

Q. Failure of liver cell function is caused by liver disease ?

A. This chapter deals with liver disease. When she says "Failure of liver cell function can complicate all forms of liver disease", it includes carcinoma of the liver.

Q. Failure of liver cell function can complicate the carcinoma. Everybody admits that. Show me any passage where carcinoma of the liver by itself results in failure of liver cell function ?

A. This sentence refers to that. It refers to all forms of liver disease. 30

Q. Carcinoma of the liver is a disease of some sort ?

A. Disease of the liver.

Q. The point in question is this : Does that particular disease of the liver which Dr. Austin says is only a growth on the liver of malignant cells cause failure of the other cells of the liver. What you are pointing to is "Failure of liver cell function can complicate all forms of liver disease." Show me any passage which is contrary to Dr. Austin ?

A. This sentence answers the question.

Q. No doubt failure of liver cell function can complicate any liver disease. I am asking you, do you have in support of your opinion pitted 40 against Dr. Austin's that carcinoma by itself results in failure of the liver cells—where does it say ?

A. It must. That is a simple thing. A growth inside the liver will press on the liver cells. If there is a carcinoma growth inside the liver it will press on the liver. That will damage the liver.

No. 20
Petitioner's
Evidence—
Continued

Q. Is there anything in the text book which says so ?

A. They need not mention it.

Q. It is so self-evident that they need not mention it and so self-evident that, apart from a doctor of Dr. Austin's standing, any medical student would know it ?

Evidence of
Dr. R. S.
Thanabala-
sunderam
(Cross-
examination—
Continued)

A. Yes.

10 Q. Cholaemia—the first sign is drowsiness ?

A. He may be dazed.

Q. One of the signs is drowsiness ?

A. Yes.

Q. The drowsiness grows greater unless it is arrested ?

A. Yes, it must be arrested.

Q. The drowsiness, if allowed to grow greater, can prove dangerous ?

A. Yes.

Q. For that reason any drug that induces sleep or drowsiness is completely contra-indicated ?

20 A. What was the question ?

Q. For the reason that drowsiness has to be arrested any drug that induces drowsiness is completely contra-indicated ?

A. There are some people.

Q. Answer my question—drowsiness is a dangerous thing ?

A. Yes.

Q. It must not be allowed to progress ?

A. Yes.

Q. For that reason any drug that induces drowsiness is completely contra-indicated—must be avoided at all costs—is that so—or not ?

30 A. It has to be avoided, but there is an exception. If he is restless, he has to be kept quiet. He can jump out of the bed.

Q. Was the patient jumping out of the bed ?

A. I am not talking of this case.

Q. In the case of carcinoma there is always severe pain ?

A. Not always.

Q. Invariably ?

A. There is pain.

Q. Pain is relieved by analgesics ?

A. Yes.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. Analgesics are given to relieve pain temporarily ?

A. Yes.

Q. Pethidine is an analgesic ?

A. Yes.

Q. It is given to relieve pain and the effect lasts 3 hours ?

A. Yes.

Q. If you want to keep a patient under analgesics, you keep on repeating pethidine every 3 or 4 hours ?

A. It depends on how long he is drowsy with pethidine.

Q. Pethidine—normal period of effectiveness is 3 hours ?

10

A. Yes. In some people it may take longer.

Q. How much longer ?

A. 4 or 5 hours.

Q. If the pain is so acute that it needs an analgesic, it must be repeated every 4 or 5 hours ?

A. Yes.

Q. You prescribed one injection of pethidine subcutaneously on that date ?

A. Yes.

Q. You prescribed one injection of pethidine to relieve the pain he was suffering from ?

A. On which date ?

Q. On the last day ?

A. I do not think I prescribed. I would not have given it.

Q. You would not have given pethidine because it was contra-indicated in the case of cholaemia ?

A. Yes.

Q. You are certain about that—it is dangerous to give pethidine to a man already drowsy from cholaemia ?

A. Yes.

30

Q. (Shown R1). That is your prescription ?

A. Yes.

Q. You have prescribed starch and opium enema, which you gave to stop the purging ?

A. Yes.

Q. Which had to follow a boric washout ?

A. Yes.

Q. You had a boric washout followed by an opium enema to prevent purging ?

A. Yes.

40

Q. Glucose 5 per cent. saline ?

A. Yes.

Q. Saline is to replace loss of fluid ?

A. Yes.

Q. What is this ?

A. Vitamins.

Q. No antibiotic at all ?

A. Yes.

Q. In the case of cholaemia what you do is give frequently glucose
10 intravenous with antibiotics ?

A. Yes.

Q. No antibiotics here ?

A. Yes.

Q. Ivax is given for diarrhoea ?

A. That is antibiotic.

Q. It is to check the diarrhoea ?

A. Yes.

Q. Antibiotics for the diarrhoea ?

A. Yes.

20 Q. Pethidine 75 milligrams subcutaneous stat ?

A. Yes.

Q. That is immediate subcutaneous injection of 75 milligrams of
pethidine to be given ?

A. That is the last day I saw the patient.

Q. You say you saw him last on the day you dehydrated him for
diarrhoea ?

A. I saw him on more than 2 occasions with diarrhoea, on the previous
occasion also he had diarrhoea.

(In answer to court, Mr. Wickramanayake says R1 is dated 13th
30 February).

Q. You said you saw him for the first time about a month or more
before his death ?

A. I am not certain.

Q. How many months before ?

A. Altogether may be about 2 months.

Q. Every time you went, Mathuranayagam went with you—you
know Mathuranayagam ?

A. I do not know. He said he was an uncle.

(Mathuranayagam called in). I know him.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Q. Mathuranayagam knew you had been visiting Natarajan from January and in February ?

A. Yes.

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. He knew that at that time—Mathuranayagam drove the car every time you went to see the patient ?

A. Yes.

(Shown an undated prescription—R2).

Q. First thing you prescribed is H 11 tablets, two per day, to the extent of 60 tablets ?

A. Yes. 10

Q. H 11 are androgenic steroid hormones ?

A. No.

Q. What is that ?

A. Nobody knows what it is.

Q. It is given to build up tissues ?

A. They say it has some effect on carcinoma. We give it empirically.

Q. Tissues are built up—what is prescribed is sterile hormones ?

A. Yes.

Q. In the case of an old man you had to avoid giving hormones with the virilising factor—you have hormones with the virilising factor and without ? 20

A. Yes.

Q. In the case of an old man you seek to give hormones without the virilising factor ?

A. No. You can.

Q. There are some androgenics without the virilising factor ?

A. Yes. H 11 is not an androgen.

Q. What is it ?

A. It is extracted from the urine of mares.

Q. It is a hormone ? 30

A. Yes.

Q. I have read the literature on it—it was described as an androgen ?

A. I have not read.

Q. Durabolin ?

A. That is a non-virilising hormone.

Q. Medral ?

A. That is a corticosterone.

Q. To build up tissues ?

A. Medral is not for that. It breaks down.

Q. It is not anything given for cirrhosis—nothing in your prescription contains one item for cirrhosis?

A. We give Durabolin and medral can be given.

Q. Can be given for anything—they are hormones?

A. Given for cirrhosis.

Q. H 11—two tablets 3 times for a day after meals—would it make any difference if it was given before or after meals?

A. Might vomit before meals.

Q. No antibiotic treatment of any sort?

10 A. No need of antibiotics to treat carcinoma or cirrhosis. (Shown R3 dated 12th January).

Q. First thing is Hydrenox?

A. To get rid of fluid from the system. He had oedema of the swelling.

Q. Diuretic?

A. Yes.

Q. Next a pot. cit. mixture—also for the same purpose—diuretic?

A. You counteract the potassium loss.

20 pot. cit. ?

A. Yes.

Q. Syrup codene?

A. That is an opium derivative.

Q. (Shown R4 of 16th January). Pot. cit. mixture again with codene?

A. Yes.

Q. Then you have on the other side?

A. Spar.

Q. Another sterile?

A. That is a promazine derivative.

30 Q. What for?

A. Stops vomiting. It induces sleep.

Q. Further inducement of sleep in a drowsy man—that is all you prescribed for him in the course of your treatment?

A. Yes.

(Shown R5 of 9th January). (Mr. Wickramanayake states it is a copy of a prescription which is with the City Dispensary).

Q. This is prescribed by you—Medral 4 milligrams?

A. Yes.

Q. What for?

40 A. That is to relieve pain as I said earlier.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thambala-
sunderam
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. It is another analgesic ?

A. Yes.

Q. Carcinoma can be very very painful ?

A. Can be.

Q. If 5 or 6 days before he died you saw him in the condition of cholaemia that would have deteriorated steadily—he died 5 or 6 days later ?

A. If he died 5 or 6 days later it would have deteriorated.

Q. In the course of the deterioration, the symptoms of the cholaemia would have been more noticeable—you say simultaneously ?

A. Yes.

10

Q. As time progresses symptoms would be more noticeable—drowsiness more noticeable ?

A. Yes.

Q. Incoherence more noticeable ?

A. Yes.

Q. Inability to walk about ?

A. Yes.

Q. It would not have been possible for him in between to walk to the bathroom by himself ?

A. Yes.

20

Q. Progress of cholaemia would have resulted in micturation(?) in inappropriate places—urinating in bed. He would not have been able to get to the bathroom or talk rationally to Dr. Austin ?

A. Yes.

Q. Or given a description of what is wrong ?

A. Yes.

Q. Completely impossible ?

A. Yes.

Q. If what was wrong with him was carcinoma and diarrhoea on 13th February, when you last saw him . . .

30

(Mr. Navaratnarajah objects ; witness saw the patient last 5 or 6 days before death. Mr. Wickramanayake states witness said the last day he saw the patient was when he dehydrated him. Mr. Navaratnarajah states the evidence may be recorded as question and answer).

Q. The last day you saw him was 13th February ?

A. I think much later.

Q. You say that without any record ?

A. Yes.

Q. When did this happen ?

A. One year or so ago.

40

Q. Can you tell me the last day you treated a patient four months ago ?

A. I cannot remember the exact date.

Q. Can you tell me any patient of yours who died six months ago—any name ?

A. Arnolis Appuhamy.

Q. Can you tell me how long before you saw him—where did you see him ?

A. In hospital.

10 Q. Do you keep a record of cases you treat privately ?

A. I saw him at his house and there was a doctor attending.

Q. You saw him on several occasions ?

A. Yes.

Q. In that connection, is it not necessary that you should have a record ?

A. There is a doctor who would know the details.

Q. This is not one casual visit—you treated the patient throughout a period of time ?

A. Yes.

20 Q. You saw him from time to time and prescribed ?

A. Yes.

Q. In such cases is it not necessary to make a note ?

A. If there is a doctor he keeps a record.

Q. Did you ask him on any occasion for a record ?

A. No.

Q. Each time you went you treated without any reference to written notes of what happened in the past ?

A. Yes.

Q. Merely because there was a doctor in the house ?

30 A. Yes.

Q. At least for one purpose you need a record—you keep a fee book—I take it you receive fees ?

A. Yes.

Q. You keep a record of the fees ?

A. Yes.

Q. Your fee book will tell you the last day you saw the patient ?

A. I do not put down the names or the dates. I put down as a lump sum at the end of the day.

Q. You keep a diary where you note appointments ?

40 A. Yes.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thamabala-
sunderam
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Q. Calls ?

A. Not all. Somebody calls me in a hurry, I go. Dr. Sithamparanathan called me.

Evidence of
Dr. R. S.
Thunabala-
sunderam
Cross-
examination—
Continued

Q. You have no single note of a single visit to this gentleman ?

A. Yes.

Q. He did not fetch you every day ?

A. He is a doctor. He comes home and says "come immediately" and I get into the car and go.

Q. You have made no note of the visits ?

A. Yes. 10

Q. From recollection you say you visited him so many days ?

A. Yes.

Q. What makes you recollect ?

A. Because he told me he had died. I had a recollection of that. It was a few days.

Q. A fortnight will be a matter of a few days ?

A. No.

Q. What made you think less than a fortnight ?

A. My recollection.

Q. Why did you tell Dr. Sithamparanathan that you had no recollec- 20
tion of dates and no records ?

A. Because my evidence would be against him.

Q. You said "I have no record of the dates nor recollection of these matters ?

A. I did not say I have no recollection. I said no record.

Q. Notes of the case ?

A. Record means that.

Q. You visited him on the last occasion and spent 10 to 15 minutes ?

A. Yes.

Q. You observed all these things ? 30

A. Yes.

Q. Coming to the handwriting—that handwriting is in a later stage of cholaemia ?

A. No, probably earlier.

Q. Sheila Sherlock tells you what test to apply—four hourly ?

A. I did not do that.

Q. If you want to find out whether it is cholaemia you observe every four hours by this test—make a pattern with match sticks, break it up and see whether the patient can do it again ?

A. Yes. 40

Q. Secondly, see whether the patient can write ?

A. Yes.

Q. The fact that the patient cannot put together matchsticks in a square or cannot write indicates that in that mental condition, he is unable to control the muscles—intellectual faculties or muscles ?

(Question withdrawn).

Q. You are an M.D., M.R.C.P. London ?

A. M.D. Ceylon, M.R.C.P. London.

10 Q. With M.D. Ceylon and M.R.C.P. London you can understand this. (Sheila Sherlock, page 88, headed Hepatic Precoma and Coma, and the table V, put to witness). Hepatitis is inflammation of the liver ?

A. Yes.

Q. Acute virus hepatitis ?

A. Infective hepatitis.

Q. Paracentesis abdominis ?

A. Removal of blood.

Q. Portal vein thrombosis which can result in haemorrhage ?

A. Yes.

Q. Ammonium chloride ?

20 A. You give ammonium chloride.

Q. Portal vein block would cause haemorrhage ?

A. Not necessarily.

Q. It would bring about the condition of hepatic coma ?

A. Yes.

Q. Chiari's syndrome ?

A. Thrombosis of the hepatic vein.

Q. Hepatic necrosis ?

A. Dying off of the tissue.

Q. Not one suggestion of carcinoma ?

30 A. They have not mentioned in this.

Q. This is the schedule of the cases the authoress has observed as causes of hepatic coma ?

A. Yes.

Q. She says " It is now recognised that a neuro psychiatric syndrome of the same basic pattern may complicate liver disease of almost all types." Not liver disease but any disease can be affected by neuro psychiatric syndrome ?

A. Almost all types of liver disease.

Q. That will be equally true of other diseases ?

40 A. Yes.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. That is the effect on the mind in any disease ?

A. Not that. Mental change as observed in cirrhosis or other disease of the liver. I do not know whether he died in a coma.

Q. Do you know that he was perfectly rational on the 2nd and 3rd of March ?

A. No. I did not see him.

Q. (Third para of page 89, passage commencing "intellectual deterioration" and ending "gross confusion" put to witness). This passage must be read with all that went before. It refers to the suggestion the lady is discussing ?

10

A. It refers to liver cell failure.

Q. Does she start by dealing with liver cell failure under these conditions ?

A. Failure of liver cell.

Q. Due to disease of the liver ?

A. Yes.

Q. Cirrhosis causes rapid failure of the liver if it was acute ?

A. There is no acute cirrhosis. Cirrhosis leads to carcinoma. There is no acute hepatitis.

Q. Where is the authority for your statement that cirrhosis leads to 20 carcinoma ?

A. Himsworth says primary carcinoma of the liver usually if not always develops in a liver which is already the seat of fibrosis.

Q. Where do you find that cirrhosis is fibrosis ?

A. Cirrhosis is fibrosis of the liver.

Q. If there had been intellectual deterioration, it would vary from slight impairment of organic mental functions to gross confusion ?

A. Yes.

Q. Will you concede that Dr. Austin is capable of noticing features of gross confusion ?

30

A. He can.

Q. The only alternative is that Dr. Austin, having noticed, has deliberately perjured himself—he has said he saw him on the second; discussed his case—you did not treat him for any paratititis ?

A. No.

Q. Nor did you see him in a condition of paratititis ?

A. Yes.

Q. You must have seen him before Dr. Austin ?

A. Yes.

(To Court :

40

Q. When you saw him the mental functions were definitely impaired ?

A. Yes. He was a very sick feeble man who had been dieting for months with large carcinoma of the liver. That itself could lead to deterioration. If he is not eating it can cause deterioration. There were two factors to produce mental deterioration).

No. 20
Petitioner's
Evidence—
Continued

Q. Dehydration was on the day you treated him ?

A. It goes on.

Q. You said that was due to diarrhoea ?

A. Yes.

Q. Diarrhoea dehydrates—takes away fluid from the system ?

10 A. Yes.

Q. The moment that stops dehydration stops ?

A. It might not have replaced enough fluids.

(To Court .

Q. It may ?

A. Yes.

Q. If the diarrhoea stops, the impairment of the mental function due to diarrhoea or dieting will also improve ?

A. Yes—the deterioration, if he corrects adequately.

Q. Your prescription is to check it adequately ?

20 A. But sometimes it cannot be given. If it was adequately given, impairment should have reverted to normal).

Q. You prescribed an adequate amount ?

A. I did not see him the next day. I do not know how much he recovered. He did not say he was better, whether he had improved.

Q. Why should you imagine he got worse ?

A. Not necessarily. I do not know his condition.

Q. You saw the patient—the son and Mathuranayagam who called him uncle got you ?

A. Yes.

30 Q. You were brought in as specialist ?

A. Yes.

Q. You prescribed ?

A. Yes.

Q. The son was himself a doctor who though not able to prescribe with the efficacy of a specialist would be able to understand the purpose of your prescription ?

A. Yes.

Q. When the patient is still ill, you are invariably called in again ?

A. Not invariably—sometimes. Sometimes they go to another
40 doctor.

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. You were not called in ?

A. Not after the last time.

Q. You had every reason to believe that the patient was improving ?

A. Subsequently I was told he died.

Q. So far as your treatment was concerned, you were not called in. Why did you imagine ?

A. I saw him so ill. Carcinoma is not a disease with a good degree of progression.

Q. Cholaemia is a disease of greater progression ?

A. No. It fluctuates. 10

Q. With carcinoma you can survive for years ?

A. Yes.

Q. In cholaemia you progress fast ?

A. It takes time in some patients. It fluctuates sometimes. It may get better, then deteriorate.

Q. If it gets worse, there is drowsiness and inability to think coherently ?

A. Yes.

Q. It fluctuates—if it gets worse, drowsiness and inability to think becomes worse ?

A. Yes. 20

Q. If it gets better, drowsiness and inability to think passes and there is complete rationality ?

A. Yes.

Q. From which it may go down ?

A. Yes.

Q. You do not know whether he got better before he got worse ?

A. I do not know.

Q. He may have got better before he died—because it fluctuates ?

A. It is very unlikely. I saw a very sick man. In carcinoma the general tendency is to progress gradually and he dies. 30

Q. From the day you saw him either he went downhill fast or he fluctuated ?

A. Yes.

Q. Take the first possibility—if he went downhill fast and died, Dr. Austin who saw him after you did could not have possibly found a rational man walking about ?

A. I would have thought he would not have improved to the extent you are describing now.

Q. Never mind his improving to that extent or not. There are two stages. You saw him in a certain condition. Either he went downhill fast till his death or he fluctuated—these are the two alternatives ? 40

A. Yes.

Q. If he went steadily down, Dr. Austin could not possibly have seen him walking or heard him ?

A. Yes.

Q. If he fluctuated, if Dr. Austin saw him in that condition, the fluctuation had gone up to a degree where he had become completely rational again ?

A. I would not have expected him to improve to that extent. He might have fluctuated to a mean.

10 Q. Do you say Dr. Austin is telling a lie ?

A. No.

(To Court :

Q. His improvement to a degree where it may be that Dr. Austin saw him in a rational state about 3 days before he died—would you rule it out completely ?

A. Ruling out completely would be difficult. It would be a dramatic recovery).

Q. Dr. Austin has said that in his mind on that day there was not the slightest doubt that this man was perfectly rational—that is Dr. Austin's
20 evidence. He said " I saw him on the 2nd of March last year " and he fixed the date not by recollection but he brought the records. Passage at page 44 of the proceedings commencing " When I saw him he was walking into the part where his bed was left " and ending " He was in full control of his senses " put to witness. Do you say that that evidence of Dr. Austin is impossible, that Dr. Austin told a lie ?

A. No.

Q. Do you suggest that it is impossible ?

A. It is dramatic. I do not suggest it is a lie.

Q. Do you suggest that if Dr. Austin saw him and heard him that day
30 it is impossible—answer yes or no ?

A. Dramatic recovery. It is not impossible.

Q. Did you ever prescribe a blood transfusion for him ?

A. No.

Q. Which would be necessary in the case of acute loss of blood by vomiting ?

A. Yes.

Q. This is what Dr. Austin said in re-examination :

" Q. You said there was no question of his being in a state of cholaemia ?

A. I can assure you of that.

40 Q. Cirrhosis is a destruction of the liver"—liver cells ?

A. There are three things : death of liver cells, regeneration of liver cells, fibrosis—these are the three points. The liver is comprised of cells. There is death, regeneration.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. Regeneration in such cells takes the place of dead cells ?

A. Yes.

Q. That is a method of causing regeneration to replace dead cells and keep the patient alive ?

A. Yes.

Q. Cirrhosis itself is a destruction of liver cells ?

A. No.

Q. You say regeneration is a disease ?

A. Yes. Diagnosis of liver disease is on these three points.

Q. How do you discover ?

10

A. When you look at the slide you know, and there is examination by microscope.

Q. On death there is regeneration to replace the dead cells ?

A. Some times it may overdo and it leads to carcinoma of the liver.

Q. You may diagnose the disease by noticing on a slide death of cells, regeneration and fibrosis ?

A. Yes.

Q. What is the disease ?

A. Diffused hepatic fibrosis.

Q. What happens to the liver ?

20

A. There is fibrous tissue ; it becomes firm and hard and nodular. That is known as hobnailed liver, which is the other word for cirrhosis.

Q. You would disagree with Dr. Austin ?

A. Yes.

(To Court :

Q. Dr. Austin has said that in carcinoma the liver is able to detoxify ?

A. Primary carcinoma of the liver supervenes on cirrhosis of the liver. All this argument would not be necessary. Carcinoma almost always supervenes in cirrhosis. Cirrhosis of the liver is the basis for development of cancer. I can show it in Sheila Sherlock's book. Under the heading of primary carcinoma of the liver, she says "the association of cirrhosis and primary liver carcinoma is too striking to be explained as mere coincidence— at page 565.

Q. Is there a definition of carcinoma as an additional growth on the liver. Dr. Austin said that in carcinoma the liver cells are not damaged but can yet detoxify ?

A. That would be in a secondary deposit).

Q. Are you suggesting that there can never be primary carcinoma of the liver without cirrhosis ?

A. That is extremely rare.

40

Q. She says 61 per cent. of primary carcinomas showed cirrhosis ?

A. She says almost always.

Q. Biopsy would reveal whether there was carcinoma—by a pathological test you can ascertain whether it is carcinoma or whether cirrhosis is present ?

A. You take a piece of the liver. You may get only the tissue. It may not be possible to distinguish which is the cirrrosed part.

(Adjourned for lunch)

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

(Sgd.)
Additional District Judge.

7.11.62.

10

7.11.62.

Trial resumed after lunch. Same appearances.

Dr. R. S. THANABALASUNDERAM, recalled, affirmed.

Cross-examination (Contd.) :

Q. Biopsy is the method pathological, external or conditional of the clinical examination ?

A. Yes.

Q. That is the digging of the tissue section and examining by a microscope ?

20

A. Yes.

Q. Cirrhosis would have affected the whole of the liver ?

A. Yes.

Q. Any biopsy would necessarily then disclose fibrosis of the liver ?

A. No. If there was carcinoma supervening on the cirrhosis of the liver that would only show carcinoma and nothing else, unless you take the whole liver.

Q. Did you examine to find out whether carcinoma had set in ?

A. I was told so.

Q. There were two biopsies at two different times ?

30

A. Yes.

Q. The first one showed nothing ?

A. I was told carcinoma.

Q. The first biopsy showed nothing ?

A. That I cannot say.

Q. The first biopsy would have necessarily shown cirrhosis ?

A. If you do an aspiration liver biopsy.

Q. You did not try to find out ?

A. From the diagnosis it was obvious that there was carcinoma of the liver.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Q. You saw this patient very late. He was then, according to you, in a state of cholaemia brought about by cirrhosis of the liver ?

A. I did not say that. His mental state was highly attributable to 3 factors : dehydration and liver cells in a state of failure. He was in a state of cholaemia.

Q. Due to liver failure ?

A. Yes.

Q. Liver failure brings about cirrhosis ?

A. No. Liver failure is due to the main disease of the liver.

Q. Do you say that he was then in a state of Cholaemia due to carci- 10
noma of the liver ?

A. Yes.

Q. Have you any authority for the proposition that cholaemia will supervene in the case of carcinoma of the liver ? Dr. Austin was definite that carcinoma will not produce cholaemia. Have you any authority for the contrary ?

A. The one I read out.

Q. What was the cause of death, was it cirrhosis ?

A. Cholaemia as a result of carcinoma of the liver which had super-
vened on cirrhosis of the liver. 20

Q. Did you give a death certificate ?

A. I do not remember whether I gave it or not.

Q. If you had given a death certificate what would you have said ?

A. I would have said only carcinoma of the liver.

Q. For cholaemia is it necessary to give glucose in four hourly drips with anti-biotics ?

A. Some people give anti-biotics and some don't.

Q. Do you give glucose in four hourly drips ?

A. You give about 1500 cc. for a day. I asked him to give a drip,
I did not say four-hourly. 30

Q. In the case of other drugs you prescribe the number of times per day ?

A. Yes.

Q. You admitted to me that according to the recognised treatment such a glucose drip, whether with anti-biotics or not, could have been four-hourly ?

A. 1500 cc. and not four hourly.

Q. You have not prescribed that ?

A. Not that amount.

Q. As in the case of other drugs you have not prescribed how often it 40
is to be repeated ?

A. For a drip I say continue.

Q. Did you say in the prescription to continue ?

A. I have not.

Q. You admit that on the day you prescribed the prescriptions contained nothing for cirrhosis ?

A. Not for cirrhosis.

Q. Not one contained anything for cirrhosis ?

A. Yes.

Q. One of them contained a prescription for diarrhea ?

A. Yes.

10 Q. The other contained a prescription for relief of pain in carcinoma ?

A. Yes.

Q. With regard to handwriting, handwriting can be shaky for a number of reasons ?

A. Yes.

Q. If you are writing under conditions which are not conducive to normal writing there might be difference ?

A. I haven't had that experience.

Q. As a man you have no idea that when a thing is written under conditions that will not be conducive to the best writing, the handwriting
20 can be shaky ?

A. There might be shakiness.

Q. You said that the handwriting might have been affected by his mental condition ?

A. Yes.

(Counsel refers to the passage on Intellectual deterioration at page 89 and the illustration given at page 90 of diseases of the liver and Biliary System by Sheila Sherlock).

Q. Without knowing the conditions under which it was written you have expressed the opinion that it was due to apraxia ?

30 A. Having seen him earlier and known that he had this disease of the liver and the general state.

Q. You did not see the deterioration in writing. You saw one specimen on that day. You do not know under what conditions that writing was made ; you do not know where he was seated or how he wrote. Without knowing all that you have ventured to give the opinion that it was due to apraxia ?

A. It could be possible.

Q. Do you say it will not be possible for any other reason ?

A. It could be.

40 Q. When you rang up Dr. Sithamparanathan did you also tell him why don't you settle this case ?

A. I told him.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Cross-
examination—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam—
Re-
examination

Q. You asked him to come and see you and you told him to settle this case. What business had you to tell him to settle this case after you have been summoned as a witness and after you received summons ?

A. I did not want to come to Court and give evidence.

Q. Was it in order to persuade him to settle the case that you asked him to come and see you ?

A. The main purpose is for me not to come here.

Re-examined :

Q. You told us that Dr. Sithamparanathan spoke to you about your giving evidence in this case earlier ? 10

A. Yes.

Q. Can you tell us when it was ?

A. I do not remember the date. Last year he came and asked me on two occasions and I told him that my evidence would not help him if I did give evidence, that I do not want to spend my time in Court and that I had no notes.

(At this stage Mr. Wickramanayake points to page 320 of the text book where it says : "Fibrosis is not synonymous with cirrhosis).

(Shown page 320 of Sherlock).

Q. There is a paragraph headed ' Definition ' ? 20

A. Yes.

Q. " Cirrhosis is a term used for any hepatic lesion conforming to certain criteria," and there are 3 references given 15, 21, 27 ?

A. Yes.

(Definition at page 320 of Sherlock is read to the witness).

Each lobule means each unit of the liver. It is not necessary that there is an involvement of each lobule. Hepato cellular necrosis is the death of liver cells at some stage. Nodular parenchymal regeneration must be present. Fibrous tissue bands join central veins with portal tracts and disorganize the normal hepatic architecture. 30

Q. At page 82, chapter 5, commences ?

A. Yes.

It is headed Hepato-cellular failure, and that is a chapter on cholaemia. Hepta-cellular failure means liver cells failure.

Q. You said failure of liver cells for instances complicates almost all forms of liver disease ?

A. Yes. Liver disease means all diseases of the liver, *i.e.* inflammation, infiltration, infiltration with pains, infiltration with litogen and liquidation, carcinoma and cholangitis. all those come under the general terms of liver disease. 40

Q. The question that was put to you was as to why it is that carcinoma can produce failure of the liver cell function ?

A. It is a disease of the liver and it can interfere with the blood supply to the cells and it can obstruct the lungs and can displace and compress and cause death of the liver cells. There is inside a fibrous capsule.

No. 20
Petitioner's
Evidence—
Continued

Q. Liver cell failure may be terminal in obstructive jaundice, such as primary biliary cirrhosis, or extra-hepatic obstruction associated with malignant replacement of liver tissue or acute cholangitis?

Evidence of
Dr. R. S.
Thanabala-
sunderam
Re-
examination—
Continued

A. Yes. Carcinoma is a malignant condition of the liver cell.

(To Court :

Q. Can there be carcinoma without damage to the liver cells?

10 A. No.

Q. Once the liver cells are damaged the liver cannot have the detoxifying effect?

A. Yes.

Q. That means the liver cannot function to detoxify?

A. Yes, depending on the amount of damage it causes.

Q. So that it may not damage the entirety of the cells of the liver?

A. Carcinoma might damage 75 per cent and 25 per cent of the liver cells would do its normal functions.

Q. Cirrhosis may damage the entirety of the cells?

20 A. No; there are some cells which are normal.

Q. Cholaemia is a condition created when the entirety of the liver cells are damaged?

A. It is not the entirety but more than 75 per cent.

Q. In carcinoma, may be less than 75 per cent?

A. It can be.

Q. If there is less than 75 per cent damage it cannot be cholaemia?

A. Yes.

Q. Cholaemia can be arrived at when there is more than 75 per cent damaged?

30 A. Yes.

(Counsel refers to incidence of carcinoma at page 566 of the text book).

Q. Without any biopsy test can you tell us whether the entirety of the cells were damaged or whether there were sufficient cells to detoxify?

A. That is very difficult to say.

Q. Dr. Austin says that when carcinoma sets in the liver can yet detoxify?

A. He had carcinoma all that time.

Q. Your view is that when you examined this patient cholaemia had set in?

40 A. Yes.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Re-
examination—
Continued

Q. If it had set in it must be there even if it fluctuates ?

A. Yes.

Q. You also say that you would not undertake to say that Dr. Austin is swearing falsely ?

A. Yes.

Q. You are in direct conflict with his evidence ?

A. Yes.)

Q. Are you sure you examined him about a week prior or 10 days prior to his death ?

A. That I am more or less sure in the sense I knew the interval between 10 my seeing him and his death was very short.

Q. On that occasion are you sure that you noticed that he was coherent in his speech ?

A. He spoke very little, he spoke 1 or 2 words.

Q. Did you ask him many questions ?

A. Not many, a few. I asked how he was feeling and he did not give a sensible answer.

Q. What did he say ?

A. I cannot remember what he said. The general recollection was that he was not in his normal senses, *i.e.* he was not coherent. 20

Q. Was he in great pain ?

A. No. He was dehydrated, very feeble.

Q. You had seen him on earlier occasions ?

A. Yes.

Q. On earlier occasions did he talk well ?

A. He spoke. Even then he spoke very little.

Q. Are you one of the doctors who prevent a patient from talking ?

A. No.

Q. On the earlier occasions that you saw him did he talk coherently ?

A. Yes. 30

Q. It was on the last occasion that he was not talking coherently ?

A. He spoke progressively less coherently.

Q. That according to you was due to what ?

A. On that day he had liver failure, *i.e.* cholaemia and dehydration, a combination of factors which produced a mental state.

Q. The last occasion that you saw him—was it on 13.2.61 ?

A. I saw the patient on 4 or 5 occasions.

Q. On every occasion you saw him you prescribed ?

A. I am not certain. Only the overall picture is definite in my mind.

Q. When did you thereafter see him, having regard to the fact that he died on 5th March ?

A. On 13.2.61 I saw him. I must have seen him. No. I saw him and that time is far too long.

Q. You were asked what was meant by malignant displacement of the liver tissue ?

A. Yes. Malignant displacement meaning cancer.

Q. And you referred thereafter to page 566 of the text book ?

A. Yes. At page 82 she says it might be questioned whether so many 10 different conditions should be included under one heading.

(To Court :

Q. Cholaemia is synonymous with liver failure. Carcinoma also includes all those, but not necessarily all the cells being damaged ?

A. It is not necessary for all the cells to be damaged. Liver failure means that the liver is not performing its functions. Then he goes into a mental state and coma. If there is 25 per cent of liver functioning it is enough to prevent a liver failure).

Q. At page 83 the clinical features of hepato-cellular failure are set out ?

20 A. Yes.

Q. They are 10 in number ?

A. Yes.

Clinical syndrome comprises some or all of the features.

Q. Item No. 6 is neurological changes ?

A. Yes.

Q. Those changes are dealt with in this book at page 88 onwards ?

A. Yes.

Q. You are positive that on the last occasion that you saw him he was incoherent in his talk ?

30 A. Yes.

Q. And that according to you was due to cholaemia and dehydration ?

A. Yes.

Q. In the prescription that you have dated 13.2.61 you have not prescribed anything for cholaemia ?

A. Yes.

Q. Nor in any prescription prior to 13.2.61 ?

A. Yes.

Q. Tell us exactly what was prescribed on the last occasion you saw the deceased ?

40 A. I do not remember. I gave a prescription. I told him what and what to do. I am not certain whether I gave a prescription.

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Re-
examination—
Continued

No. 20
Petitioner's
Evidence—
Continued

Evidence of
Dr. R. S.
Thanabala-
sunderam
Re-
examination—
Continued

Q. You told us that there may be fluctuations in cholaemia ?

A. Yes.

Q. Having regard to the age of the patient and the condition when you saw him last and the fact of his death on the 5th March, if there was any fluctuation at all can you tell whether the fluctuation would be such as to make it perfectly normal ?

A. I would not have thought so.

(To Court :

Q. If he is normal he is cured ?

A. Yes.)

10

Q. Unless of course as you said that there was a dramatic cure ?

A. Yes.

Q. Having regard to the fact that he died on 5th March, could you say that there was a dramatic recovery between the last day you saw him and the 5th of March ?

A. It would not be possible.

Q. He could not have been on his feet and he could not have spoken rationally ?

A. Yes.

(Sgd.) 20
Additional District Judge.

Mr. Navaratnarajah closes the objecting petitioner's case reading in evidence P1 to P4.

(Sgd.)
Additional District Judge.

No. 21
Addresses to
Court

No. 21
Addresses to Court

Mr. Navaratnarajah addresses me. The estate of the deceased, according to the respondent in this case, is of the value of Rs. 383,183.51, and according to the objecting petitioner the net value of the estate is about 30 Rs. 447,667/-. Under the two Wills P2 and P3 all this estate, save and except for a sum of Rs. 40,000/-. would have passed over to charity. It is this will that is sought to be propounded that passes this entire property on to the 3 children. The first Will is dated 10.12.60. It was drafted by the deceased in his own handwriting and delivered to the proctor who told the Court that what he did was only to correct the language of it. It is now known and admitted that there are only 3 children of the deceased: 2 ladies and one man. In the Will of December, 1960, the deceased sets out the reason why he has not given any portion of his estate to the two daughters. Refers to page 3 of the first Will.

40

On 3.2.61, nearly two months later, the deceased executed another Will P3, which is also marked A, where he effected two changes. It is not suggested that these two Wills were executed by the deceased at a time when he was angry with his children. It is not suggested that he executed these Wills at a time when he was mentally incompetent. The two Wills show that he wanted a trust to be created which was to be named after him. This is the man who is alleged to have executed freely with a sound and disposing mind the Will of 3.3.61. Cites 1 *Haggart* page 256. It is a case of 1828 but has been referred to in text books as late as 1940s and 1950s.

10 There are some strong similarities between the case cited and the present case. In the case cited too there were two earlier Wills.

The evidence shows that from January, 1961, onwards Ponnusamy and his wife who were living prior to that date near about Colpetty came and resides in a house adjacent to the deceased's house. Dr. Sithamparanathan was there almost daily and the other daughter was also there. The person who procured the proctor was Dr. Sithamparanathan. It was Ponnusamy who went to the proctor to find out whether the Will was ready and it was he who brought the witnesses for the Will. One thing was clear that the deceased was extremely weak and he was suffering from a certain disease.

20 He was surrounded by people who were going to benefit by that Will. He had in the third Last Will failed to make provision to that trust to which at the earlier two Wills he had given all his property, save and except a sum of Rs. 40,000/-. In the circumstances what the Court would ask itself is this: Have I got before me the clearest and most consistent evidence of capacity? In cases of this nature the question for the Court is: "Has my conscience been satisfied that this Will sought to be propounded in this case is really the free act of the deceased, whether he had a good disposing mind?" The Court is not called upon to decide whether the Court will accept the evidence of X in preference to Y. The Court will ask a certain
30 question "whether taking the evidence as a whole I am satisfied in my conscience that this is the act and deed of the deceased." There is a local case where there was a conflict of evidence between the doctors, but the Court did not approve the question as to whether this witness was more credible than the other. The Court asked the question "are there suspicious circumstances which excite my conscience." The first question then is whether there are any suspicious circumstances in this case. The suspicious features in this case are similar to the suspicious features in the Haggart case.

The evidence of the witness Shanmugam who was called by the pro-
40 pounder of the Will for the purpose of showing as to how it was that the deceased who had the first intention in regard to charity had changed his mind. Refers to page 2 of the evidence. Also refers to pages 2 and 3 of the evidence. That position is made still clear at page 12. The advice given by Shanmugam to the deceased was that Mathuranayagam was a complete stranger and he should not have been allowed to carry out the work of the trust on behalf of the deceased. Here is a man who in the full possession of his power over a long period from December, 1961, to the end of February, 1961. Here is a man whose one fixed idea is to give to charity, when all the children looked after him and when he was on the best of terms
50 with them. For such a man to change his view some force or influence must have been used. The reason why Shanmugam was called was only for

that purpose. But his evidence is this: "You give it to charity but let the charity be done by your children and not by an outsider."

(Sgd.)
Additional District Judge.

Further addresses on 13.11.62.

(Sgd.)
Additional District Judge.

13.11.62.

Trial resumed. Same appearances as on last date.

Mr. Navaratnarajah continues his address.

10

Dr. Sithamparanathan had informed Shanmugam on the 26th February that the deceased had devised all his property to charity. Shanmugam at no time complained to the deceased that he had left all his property to charity. If he complained so the deceased would have told him that he had provided for his children very well. This advice was given to him on 27.2.61. The deceased when that advice was given kept silent. Caderamanpulle's advice at the time P2 was executed—that evidence is at the middle of page 30. Despite that advice P2 was executed by the deceased. According to Shanmugam what influenced the deceased was an incident that took place on 28th February when there was some discussion between Mathura- 20 nayagam and deceased's daughter—evidence at page 3.

On 1.3.61 the deceased discussed with Dr. Sithamparanathan about this Will. If at that time Dr. Sithamparanathan, who was fully aware of the earlier Will, had realised that the father was going to devise his property to his children he would not wait one moment. But he waited till the 3rd morning to give instructions to inform the proctor about his father's request. Dr. Sithamparanathan had to explain to this Court as to why he delayed till the 3rd to give instructions to Proctor Caderamanpulle, unless he knew that the new Will was only going to effect a change of trustees. Shanmugam wanted the deceased only to change the trustees and not to cut away charity 30 altogether. On the 27th according to the evidence Shanmugam had told Dr. Sithamparanathan what he told the deceased. If Dr. Sithamparanathan knew what Shanmugam was going to tell the deceased, *i.e.* don't give to charity, you give it to your children, naturally Dr. Sithamparanathan would have inquired what happened. The property involves 5 or 6 lakhs. The schedule to the petition gives the value of the pawn broking business as 3 lakhs in December, 1960. On 27.1.61 the deceased addressed a letter to the Government Agent admitting Dr. Sithamparanathan and Mathura- nayagam as partners of his business. It is not open to suggest that although the deceased right up to 1.3.61 had decided to give to charity, 2 days later 40 changed his mind. What was the physical and mental condition of the deceased on 3.3.61? Was this physical and mental condition such as would have enabled him to convey to another person exactly what he wanted? Refers to the evidence of the witnesses called by the propounder of the Will. To the two earlier Wills P2 and P3 the deceased gave instructions in writing. To P3 he did not give instructions in writing. The

reason why the deceased departed from what he had done earlier was because the deceased was not able to put down the instructions in writing. The second matter is that P2 and P3 were executed by the deceased seated at a table. But as regards the Will in question he was not able to go from his bed to the table which is a matter of a few feet. Shanmugam says that when the deceased was seated on the bed he was assisted by pillows—evidence at page 9. Proctor Caderamanpulle's evidence is that there were no pillows to assist him. From these two facts it would seem that the condition of the deceased physically was very very weak.

10 Dr. Austin's evidence at page 44. He does not say at what time on 2nd March he saw the deceased. If that was the condition on the 2nd there was not the slightest doubt that on the 3rd his condition deteriorated very very badly. Dr. Thanabalasunderam's evidence is at page 65—this statement was made by him long before Dr. Austin's evidence was put to him. Refers to the signature on the Will in question. P2 and P3 have been signed with a firm hand. The evidence is that both the protocol and the Will were signed. Proctor Caderamanpulle took the view that that was due to the fine nib that was used by the deceased and also due to his illness. At that time the two people who would have realised the cause of this signature
20 were Dr. Sithamparanathan and Dr. Ketharanathan. They knew that this signature was indicative of intellectual integration. When they saw the Will being signed in that way they should have told Proctor Caderamanpulle that this deceased was suffering from cancer. It is strange as to why Dr. Sithamparanathan and Dr. Ketharanathan did not give evidence. On the 3rd at about mid-day when witness Jayasekera went to the house the deceased was not able to talk to him. If Jayasekera's evidence is false Dr. Sithamparanathan could have contradicted him.

Proctor Caderamanpulle is a person who would not allow his clients to speak anything more than what is necessary. An application in this
30 case was made for an order absolute in the first instance. Proctor Caderamanpulle was asked whether Dr. Sithamparanathan had given him any instructions in regard to the petition and he said that there was no use of instructions and he gave the schedule to the property and that was all. The second point is that Proctor Caderamanpulle had been his proctor for 13 years but he never knew that the deceased had children or not. Proctor Caderamanpulle is a person who gets the person not to say anything more than what is necessary for the purpose.

Re Dr. Thanabalasunderam's evidence, the first question is whether he saw the deceased a few days before, viz. 5-6 days or 6-7 days before, or
40 as suggested by the propounder of the Will on 13.2.61. Assuming that Dr. Thanabalasunderam had seen the deceased on 13.2.61, one cannot understand why Dr. Sithamparanathan should have gone to him to get his evidence. Dr. Sithamparanathan should have got into the witness box and told the Court that Dr. Thanabalasunderam saw him last on 13.2.61 and not thereafter. From the 28th onwards Mathuranayagam was refused admittance to the house, but later he had information that Dr. Thanabalasunderam was the last doctor who had seen him and moved for summons. Evidence at page 46. The position taken up by the propounder of the Will on that day was that the last occasion on which Dr. Thanabalasunderam
50 saw him was in January, 1961. Dr. Sithamparanathan who was in Court

must have given that instructions to counsel. If it is true that it was on 13.2.61 that he saw the deceased last, it is not understandable why Dr. Sithamparanathan should have gone to him on two occasions to get his evidence. Dr. Thanabalasunderam had said that he observed diarrhoea; he did not say that he observed diarrhoea earlier. He was only questioned as to what he had observed on the last day. Counsel assumed that it was on the last day that Dr. Thanabalasunderam had observed diarrhoea and questioned him in regard to the treatment and thereafter produced the prescription of 13th February. One examination was on 13th February and thereafter a few days before his death. The witness at certain times 10 answered questions having in mind 13.2.61 and sometimes having in mind a few days before his death. Evidence at page 70 in cross-examination. The prescription referred to in cross-examination is the prescription of 13/2, but the witness says that on the last day he observed all this. Then there are 2 days referred to, *i.e.* 5 days before his death and 13.2.61. The question put to him was "on that day." Evidence at page 66—second question on that page. The witness when he was asked that question at page 71, the date he was having in mind was 4 or 5 days before his death. The doctor was seeing a patient who was suffering from cancer; it was passing the stage of medical treatment and that is why he did not prescribe for 20 cholaemia. Evidence at page 74—counsel shows him the prescription of 13/2. The witness has told him that a few days before his death he saw the deceased; counsel puts to him a prescription of 13/2 and questions him; that is not a fair question. At page 75—on the last day when he saw him the doctor never gave him pethidine because he said earlier that pethidine should not be given when a patient was drowsy. Pethidine was prescribed on 13/2. At page 77—counsel assumes that the witness admitted that he last saw the deceased on 13/2. Dr. Thanabalasunderam treated when there was a fellow doctor attending on him. In all there have been about 7 pages of cross-examination to establish that this witness saw the 30 deceased only on 13/2 on the last occasion. Why did Dr. Sithamparanathan not get into the witness box and tell the Court that it was he who took him on 13/2 for the last occasion.

(Counsel for the propounder says that Dr. Thanabalasunderam's name was put down as a witness at the last stages of the trial and therefore he has no opportunity to call Dr. Sithamparanathan.

Counsel for the objecting petitioner refers to page 47 of the proceedings and says counsel could have called him).

As to when the witness saw the deceased for the last time the Court may take the witness's testimony as a few days before his death and not on 40 13.2.61. Dr. Sithamparanathan was present at the time that Dr. Thanabalasunderam conducted the last examination. Dr. Thanabalasunderam tells the Court that on the last occasion he saw the deceased he was incoherent. If it was false Dr. Sithamparanathan could have got into the witness box and said that it was not so. According to Dr. Thanabalasunderam he had told Dr. Sithamparanathan two things when he was invited to give evidence, *i.e.* he was not having notes and that his evidence would be against him. Evidence at page 70, and in re-examination at page 89. Why did Dr. Sithamparanathan not get into the witness box and contradict Dr. Thanabalasunderam's evidence; in the absence of that evidence the Court may 50

accept Dr. Thanabalasunderam's evidence. Dr. Thanabalasunderam when he got summons he telephoned Dr. Sithamparanathan to say that his evidence was not going to help him, as both of them were doctors. It was suggested to him that he telephoned to find out the dates on which he examined the deceased. How was it going to help Dr. Thanabalasunderam? Evidence at page 70. Recall the atmosphere in which the witness was cross-examined.

No. 21
Addresses to
Court—
Continued

Re Dr. Austin's evidence. An attempt was made by counsel to show that Dr. Austin's evidence, viz. his observations on 2/3 were in direct conflict with the evidence given by Dr. Thanabalasunderam. Long before
10 Dr. Austin's evidence was put to him Dr. Thanabalasunderam said that a patient of this type may improve but there would be a sudden fall. Pages 66 and 68 of the evidence. An attempt was made to get an admission from Dr. Thanabalasunderam that Dr. Austin was giving false evidence. Evidence at page 77. Sometimes more than one question is put to the witness and he answers without knowing to what question he is answering. Evidence at page 80, a number of questions have been put. Pages 81, 82 and 83. But this witness never said that Dr. Austin was telling a lie. Counsel for the propounder confined himself only to the handwriting; suggestions of
20 counsel at page 88 *re* shakiness in handwriting. The conditions under which the deceased executed this Will are known. Dr. Thanabalasunderam's evidence was challenged in this way: firstly that the doctor had not prescribed for cirrhosis and secondly he did not know what cirrhosis meant and that carcinoma of the liver never result from cirrhosis. It is common ground that the deceased was at Durdan's Hospital and Central Hospital and that certain biopsies were taken. Evidence at page 86. Dr. Sithamparanathan would have known what their findings were. Without putting Dr. Sithamparanathan into the witness box counsel tried to establish certain things by his cross-examination. Evidence at pages 76 and 77. The treat-
30 ment given by Dr. Thanabalasunderam corroborates his story that the deceased was suffering from cirrhosis. An attempt was made again at page 87 to confuse the witness—one but the last question is important. The day that the witness was having in mind was the day on which he discovered cholaemia. At page 66 he has said the prescription he gave on that day. Dr. Thanabalasunderam on the last day did not prescribe for cirrhosis. A suggestion was made that this witness did not know anything about cirrhosis and that there was no authority to the witness' view that cancer is followed by carcinoma. Evidence at page 80. Then at page 83, last question. Dr. Austin never said that cirrhosis cannot produce cholaemia.
40 At page 86. Liver failure brings about cirrhosis. At page 89—there are 3 elements that go to make up cirrhosis. It is important for this case as to whether the patient suffered from cirrhosis or not. The Court may accept Dr. Thanabalasunderam's evidence that the deceased was suffering from cirrhosis. Having regard to the evidence of Dr. Austin and Dr. Thanabalasunderam, the Court may accept Dr. Thanabalasunderam's evidence that cancer can produce cholaemia. In regard to the malignant growth pressing against the liver cells, it might cause damage to the cells. When liver cells are damaged cholaemia can set in, if the damage is more than 75 per cent. It was suggested to the witness that he was misleading the Court
50 by referring to the passage at page 82 of the text book. Whether cancer produces cholaemia or not is at pages 72, 73, 90, 91, 93 and 94. Dr. Austin

was called for a certain purpose, viz. to give evidence as to what he observed on the side of the neck and then he said that he made a general examination. Evidence at page 45. It is difficult for a doctor to find out whether there is cirrhosis or not except by a biopsy. At page 46. On the medical evidence the deceased was suffering from cholaemia. That is corroborated by the evidence given by Shanmugam, Proctor Caderamanpulle and Jayasekera. Wilbert in his evidence stated that a few days before his death the deceased was talking as a madman. Incoherent speech was described by him as madman. It was attempted to show that there was a contradiction between Dr. Austin's evidence and Wilbert's evidence. The time at which Dr. Austin saw the deceased was not given; the time at which Wilbert observed vomiting of blood was given as 9.30 or 10 a.m. Cross-examination assumes incorrectly that Dr. Austin had seen the deceased after 9.30 or 10 a.m. and there is cross-examination to show that Wilbert is a liar because Dr. Austin said a certain thing. 10

Instructions given to Proctor Caderamanpulle. He was only able to recall the exact words as "cut the name of Mathuranayagam out of the Will." He did not know what advice deceased's brother had given him. Later he must have told him something about substituting the children. That is indicative of the fact that the deceased was endeavouring to give effect to the advice given by his brother, viz. not to have Mathuranayagam as a trustee. It is possible that the deceased could not communicate to Proctor Caderamanpulle what he wanted. The witnesses to the Will, his brother and his children were present at the execution of the Will. When P2 was executed the deceased had asked not to read the Will. Evidence at page 40. But on this occasion Proctor Caderamanpulle says he gave the Will to be read in the presence of all those present. If Proctor Caderamanpulle thought that the witnesses had understood the Will there was no reason for him to explain particularly Proctor Caderamanpulle being a man of few words. Also Dr. Ketharanathan who was a witness to the Will was not called. 20 30

Cites page 288 of *1 Haggard Reports*—moral conviction must be there. 63 *Law Times* page 465 at 466—conscience of the Court must be satisfied that the instrument is the Last Will of the deceased. 59 *N.L.R.* 245. Here is a man who had made up his mind for some reason or other to give everything to charity and to have a madam built at Kataragama, and thereafter he gives nothing to charity; that causes a grave suspicion.

Mr. Wikramanayake in reply. The manner in which Dr. Thanabalasunderam had been brought into the case and the type of evidence he gave. The Court may see how his name came into the list of witnesses. His name came in after Dr. Austin's evidence was over. Dr. Thanabalasunderam was telling deliberate falsehoods. *Re* experts who had been held to be giving false evidence in Court, counsel refers to Alles' case. Dr. Thanabalasunderam's mental attitude is such that he started off with a lie. Refers to the first page of his evidence where he said that he is "M.D. (London)." Refers to the prescriptions. Dr. Thanabalasunderam has given in his prescription what nobody else would give. Dr. Thanabalasunderam's evidence is half truths without being perjury. It is not necessary to consider his evidence at all. He said that in his opinion that it is unlikely that a man could have had that condition. Dr. Thanabalasunderam's evidence 40 50

is irrelevant. Dr. Austin saw the deceased on the 2nd March and he died on the 5th; therefore the statement that Dr. Thanabalasunderam saw him last is not correct. Page 72 of evidence. The evidence is that Mathuranayagam drove the car every time that the doctor went to see the deceased. Evidence at page 75. Refers to the motion filed summoning Dr. Thanabalasunderam. There was no suggestion that Dr. Thanabalasunderam was going to be called as an expert to give his opinion on matters which he had not noticed. It was asked why Dr. Sithamparanathan was not called. The burden is on the propounder to prove due execution of the Will. It

10 can be proved by calling any two witnesses. Proctor Caderamanpulle and Dr. Austin are two complete outsiders and they are professional men of standing, and also the witness Koruthu. There is evidence that Dr. Ketharanathan who was a witness to the Will has gone to Malaya. His affidavit was filed in the first instance, but now he is not in Ceylon to call him. One year ago Dr. Sithamparanathan asked Dr. Thanabalasunderam whether he could give evidence and his answer was that he had no notes, no records and he could not help. Then he received summons from the other side. Then he telephoned Dr. Sithamparanathan and asked him to come to get the dates. Then Dr. Sithamparanathan came to counsel

20 and he was advised by counsel not to give any particulars. In his evidence Dr. Thanabalasunderam was fixed to the date 13.2.61 as the last date he saw the deceased by asking him what he prescribed on that date. Evidence at page 65. He gives what he observed about the deceased. None of these were signs of cirrhosis. Dr. Thanabalasunderam at first did not know that there was a prescription dated 13.2.61. Evidence at page 66. After he got the summons why he telephoned Dr. Sithamparanathan was this: he had no notes, no record; he admits in evidence that he asked Dr. Sithamparanathan to give him the dates. At page 70 of the evidence. Treatment for cholaemia requires observation every 4 hours. His evidence is that only in

30 the case of this drip he did not say not to repeat. The drip was only for the purpose of replacing dehydrated fluid. Dr. Thanabalasunderam has not observed any condition brought about by cirrhosis which would result in cholaemia. After the prescription was put to him he said that he prescribed twice for diarrhea, but the other date was earlier. He said that glucose was prescribed only to replace dehydrated fluid. But when he was asked that he had given nothing for cholaemia he gets himself fixed up and says that he gave glucose for cirrhosis. The statement that he gave glucose for cirrhosis or cholaemia is half a falsehood. Evidence at page 71. Short of perjury he has deliberately given evidence which was false. You can take

40 a statement in a text book and place on it a construction. A medical man would be interested in a medical man's father. It is the duty of the doctor to check on every 4 hours. He does not do anything until the patient dies. He says he did not question Dr. Sithamparanathan how his father's condition was. He says that he thought they may have called another doctor. In fact they called Dr. Austin. This evidence of Dr. Thanabalasunderam is false. Page 71 of the evidence.

There is a flat contradiction between Dr. Austin and Dr. Thanabalasunderam. Dr. Thanabalasunderam tried to twist scientific facts to support his theory. He says that cirrhosis can bring about carcinoma and agreed

50 that carcinoma can in certain instances supervene on cirrhosis, cirrhosis can cause by degeneration of cells cholaemia. Refers to chapter on

Hepatic Precoma and Coma, p.88 of Sherlock. Carcinoma is not mentioned—it is impossible to understand why that particular disease only should be left out. Dr. Thanabalasunderam says that there are only some examples, but that he says to wriggle out of the situation. Comas brought about by the liver are mentioned. Dr. Thanabalasunderam had not treated for cirrhosis at any time throughout the whole period he was in attendance. When he was asked he gave a misleading authority. Evidence at page 72; that is not the authority.

(Intd.) . . .

Additional District Judge. 10

(Adjourned for lunch).

13.11.62.

Resumed after lunch.

Same appearances.

Dr. Austin and Mr. Caderamanpulle are both men of professional standing. To start with even Dr. Thanabalasunderam is entitled to the benefit of the presumption that as a professional man he would not be saying anything that is untrue, but his evidence has to be analysed. There was an attitude of mental arrogance in him. Demeanour and style of giving evidence are matters Court would have to observe. 20

In answer to Court, counsel states that Dr. Thanabalasunderam's answer that he did not want to waste his time in Court is really impertinent. If they come to Court and give truthful evidence they are performing one of the most important functions—helping in the administration of justice.

Dr. Sithamparanathan saw Dr. Thanabalasunderam one year ago. Dr. Thanabalasunderam does not say Dr. Sithamparanathan asked him to give false evidence. The Will is challenged on the ground of mental capacity. He told Dr. Sithamparanathan "I do not remember the case, I do not remember the dates, I cannot be helpful." Nobody can suggest that Dr. Sithamparanathan wanted Dr. Thanabalasunderam to give false 30 evidence. Dr. Sithamparanathan honestly believed that Dr. Thanabalasunderam could give evidence but when Dr. Thanabalasunderam said "I have no recollection or records," he dropped the matter. Although he told Dr. Sithamparanathan he had forgotten the case, now he comes to give evidence. He told Dr. Sithamparanathan "Why don't you settle this case?" What business is it for him to suggest settlement of the case? His reason is that he did not want to waste his time in Court. It may well be that he had also been induced to interest himself by people of standing, who were listed as witnesses, interested in the Kataragama Trust. What did he know about the case to want it settled? He tried to help. He gave 40 a little more by way of opinion thinking he could get away with it, without realising that it is our function to test these matters. He tried to brazen his way out with falsehoods or half truths. *Vide* page 72 of the evidence. We are not concerned with similarities in Hodgkin's Carcinoma per se will damage the liver is his opinion. He gave no authority. Merely because it is his opinion it cannot be accepted. Nobody doubts that failure of liver cells will complicate diseases. *Vide* page 73. He says a growth inside the

liver will press on the liver cells but he does not say it will damage. If 25 per cent of the cells are functioning there will be no cholaemia. He said certain matters need not be mentioned in text books; then it must be so obvious that Dr. Austin cannot make a mistake about it. Dr. Austin was not challenged. No suggestion was made to him or to Mr. Caderamanpulle of dishonesty. It cannot now be suggested that Dr. Austin was dishonest. Dr. Thanabalasunderam admitted drowsiness must be arrested. In regard to the question whether any drug inducing drowsiness is completely contra-

10 admitted it. He took long in order to avoid the answer. There was no question of the testator in this case wanting to jump out of the bed. There was no restlessness; restlessness and drowsiness are diametrically opposed. Dr. Thanabalasunderam merely tried to bring in an exception for the drug he gave. He said drowsiness progresses till it becomes coma. Drowsiness is an overwhelming desire to fall asleep, which, if not arrested, will lead to coma. Dr. Thanabalasunderam has to admit that you cannot give drugs to induce sleep in that condition. He said carcinoma is not always painful; strictly it may not pain always. Elsewhere, he says it is a very painful

20 painful, and the only treatment other than surgical is the relief of the pain. Pethidine, he admits, is an analgesic, the effect of which, according to him, lasts 4 or 5 hours. Drowsiness is the effect of pethidine. It is given subcutaneously so as to take more instant effect than by swallowing a tablet. He prescribed pethidine which he admits is only to bring on drowsiness and sleep and relieve pain in that way to a man who, according to him, was getting into a state of drowsiness which must not be allowed to go on. He said he would not have prescribed or given him—meaning if there was cholaemia—on the last day he saw testator. He did not know that he (Mr. Wikramanayake) had the prescription. Pethidine was contra-

30 indicated in cholaemia. He admitted it was dangerous to give a man with cholaemia. He starts with starch and opium enema. He could not remember the boric washout. Ivax is given in cases of diarrhoea—that anti-biotic was for the diarrhoea—he admitted. That was on 13.2.61. Some of the prescriptions have not been dated but you get the stamp of the chemists. Dr. Thanabalasunderam said earlier the trouble was purging and dehydration. For cholaemia, he admitted, glucose with antibiotics is the treatment. He said “That is the last day I saw the patient.” He has seen his prescription. Having seen, to a different question, he said that was the last day he saw the patient. On the last day he saw the

40 patient, he admitted, there could not have been cholaemia because it would have been dangerous to give pethidine, and he said “I could not have given;” the inference is there was no question of cholaemia, but only a feeble, emaciated man who had an attack of diarrhoea, which can be distressing. In this case, it dehydrated the man who was already dehydrated as a stick. In the diagnosis, treatment, and evidence, there is not the slightest indication of cholaemia. Dr. Thanabalasunderam tried to give medical opinion on hypothesis. He said on the previous occasion also he treated the patient for diarrhoea. Unlike Ayurvedic medicine, in Western medicine, we know the action of each drug. He says he prescribed H11

50 tablets without knowing what it is. It is quackery. It was put to him that it was androgenic hormones—*i.e.* with the virilising factor taken out. Any chemist would give the literature on any drug but Dr. Thanabalasunderam

says he does not know what H 11 is. Later he said “they say it has some effect on carcinoma.” His treatment then is for carcinoma. *Vide* page 76. He said first he did not know what H 11 is. He said it is not an androgenic. At least he admits it is a hormone. Durabolin is also an androgenic. He gave two hormones and medral. Why does he give hormones? Hormones are for building tissue, not for the treatment of any disease at all other than carcinoma. Every one of his prescriptions, except for diarrhoea, is either to relieve pain or to build tissue, to help the carcinoma. There is no drug prescribed for cholaemia. Pethidine is dangerous for cholaemia, but helps to relieve pain in carcinoma. *Vide* page 76 of evidence. He prescribed 10 spar, which he said was to stop vomiting and to induce sleep. He prescribed nothing but drugs to further induce sleep in an already drowsy man. He said Medral was to relieve the pain. It is a poison and the dispenser will not return the prescription; so a copy has been produced. He said carcinoma can be very painful; earlier he said it was not always painful. If he had cholaemia, it would not have been possible for the man to walk to the bathroom. The evidence of Dr. Austin that he saw the man walking from the bathroom was not challenged. Court cannot accept the evidence on the hypothesis of Dr. Thanabalasunderam that assuming there was cholaemia when he saw the patient it was not possible for the man to walk 20 about etc. He later says “I have a recollection I treated for cholaemia”; on the basis of cholaemia, the evidence of Dr. Austin is impossible. Has any reason been suggested why Dr. Austin should lie? Against Dr. Thanabalasunderam it is suggested that pressure has been brought to bear by people interested in the Kataragama Trust, like Sir Kanthiah Vaithianathan.

Mr. Navaratnarajah states Sir Kanthiah Vaithianathan has nothing to do with the Kataragama Trust—nor even Mr. Somasunderam. They were to speak to statements by the deceased 3 or 4 months before death.

Mr. Wikramanayake states he is only suggesting that there is a possibility of inducement of people high up concerned with the establishment of 30 the Trust. To Dr. Austin nothing was suggested. *Vide* page 77. Dr. Thanabalasunderam volunteered to say that 13th February was the last day he saw the patient—after the prescription was shown to him. Now he says he saw the deceased much later; he has no note. In re-examination he said he did not think he gave a prescription later. If Dr. Thanabalasunderam felt his evidence was against Dr. Sithamparanathan, he would have told Dr. Sithamparanathan “Why do you want to put forward a Will when you and I know the man was not in a fit condition.” Then he would not have said “I cannot remember the dates, I cannot give evidence.” On his own admission, he must otherwise have been prepared to be a party to a 40 fraud—if his evidence in Court is true. Dr. Sithamparanathan did not want to call him because Dr. Thanabalasunderam said he could not remember. Therefore others who did remember were called.

Dr. Thanabalasunderam said he did not put the patient to the hand-writing test; that is because the necessity did not arise. Where you suspect cholaemia you put the man through the test every four hours. He bases cholaemia merely on incoherent talk. What is the incoherence—he did not answer. It is his evidence that ordinarily the man did not talk much—when he was free from cholaemia. On a day when he had so much pain as to need pethidine immediately, he talked less. Incoherence is not for 50

Dr. Thanabalasunderam to infer. He has to state the details and Court will decide.

No. 21
Addresses to
Court—
Continued

Vide page 80—he said “ I did not see him.” On his own evidence, without seeing him, it would not be possible for him to say whether the deceased was rational or not. On the basis of the evidence of Dr. Austin and Mr. Caderamanpulle, the question was put to him ; he said he did not see ; without seeing, the rest is surmise. When asked for authority for his opinion that cirrhosis leads to carcinoma, he referred to Himsworth but that is not produced. Even that does not say “ always ”. He said “ Cirrhosis is fibrosis of the liver.” He was referred to page 320 of Sheila Sherlock—
10 “ Fibrosis is not synonymous with cirrhosis.” Dr. Thanabalasunderam was trying to take advantage of medical knowledge.

In answer to Court, Mr. Wikramanayake states cirrhosis can be treated and cured completely.

In answer to Court as to whether carcinoma caused by cirrhosis can also be treated, Mr. Wikremanayake states one does not know how carcinoma is caused. It does not mean that every time there is a deceased organ there is carcinoma.

Vide page 81—he says that he saw deceased before Dr. Austin. *Vide*
20 answers to questions by Court. There was no reason to believe that it was not adequately given. Why should Dr. Thanabalasunderam assume that Dr. Sithamparanathan could not attend to what a nurse can do ? Why should he assume the condition became worse. When a Dr. is not called again, he should assume the patient get better. The evidence of Wilbert is that the deceased was induced by false statements. If another doctor was called, who is the doctor ? A man can improve in regard to diarrhoea ; since he was suffering from carcinoma, he can die. Dr. Thanabalasunderam is biassed violently in favour of what he is putting forward.

Vide page 82. He may have seen a slight tendency to dehydration,
30 which he treated. When he said it was due to cirrhosis, he was twisting scientific facts. The moment the fluid was given to cure dehydration, he would be relieved. In carcinoma the general tendency is to progress gradually till he dies. There is no arresting of it. *Vide* page 83—Having Dr. Austin’s evidence, the patient would not have gone downhill. We are not concerned with what Dr. Thanabalasunderam expected or thought or imagined. *Vide* answer to the question by Court. Even the remote likelihood of an irrational state is not possible in view of the evidence of Dr. Austin and Mr. Caderamanpulle. Dr. Austin said “ I can assure you there can be no question of his being in a state of cholaemia.” *Vide* page 84.
40 *Vide* page 565, 566 of Sheila Sherlock. That passage makes it clear that cirrhosis is not always followed by carcinoma. Dr. Thanabalasunderam, with that degree of medical knowledge, knew that what he was stating was not correct ; he thought he could get away with it before laymen. Dr. Thanabalasunderam has here tried deliberately to mislead everybody. Cholaemia brought about by cirrhosis is the burden of the objector’s song and Dr. Thanabalasunderam’s evidence earlier but *vide* his evidence at the beginning of page 86. One does not know what the third factor is.

Mr. Navaratnarajah states at page 65 he said there were two factors.

Mr. Wikramanayake states he may have wanted to add a third factor. *Vide* page 87. For the glucose drip alone he does not say what the period is or whether it is to be continued. For other drugs, he mentioned quantity or how often it is to be repeated. Why did he not say it was not to be continued? Because he did not want it continued, because it was not for cholaemia. There was nothing for cirrhosis.

Re handwriting in cholaemia—*vide* page 90 of Sheila Sherlock. You check to see whether handwriting progressively retrogresses, from which you draw the inference that there is cholaemia. One cannot say that every person who cannot write has cholaemia. Dr. Thanabalasunderam said he 10 does not know whether the hand will shake if you try to write while traveling by train. Testator was sitting in an uncomfortable position. He was very feeble, but that is not of any significance. We are only concerned with whether on that day he understood what he was doing in relation to which the Court has the evidence of Dr. Austin that on the 2nd March the testator was perfectly rational, and the evidence of Mr. Caderamanpulle who was his proctor for 30 years. He need not know whether the deceased had children. The client came to his office. Mr. Caderamanpulle was not a man of few words, going by his evidence. Mr. Caderamanpulle attested the first Will, the second Will; he has no interest in the Will; he attested 20 the third Will. What is the suggestion they are making—that he joined in a conspiracy to commit a fraud? Mathuranayagam tried to prevent Mr. Caderamanpulle attesting the Will. What is left is the pawn-broker's business to be carried on. Mathuranayagam had worked his way into the confidence of an old man. The other Wills could have been attacked as unreasonable Wills brought about by undue influence. It is only when you find a Will which is unnatural by reason of bequests being given to persons ordinarily not likely to get, that suspicions arise. Where there is nothing more natural than giving equal shares to his children there cannot be suspicion. That gives by Will what will follow by intestacy. He devised 30 his property in the way the law thinks fit where no Will is left. In the case of undue influence or fraud, Court may look for suspicious circumstances. The conscience of Court does not start with doubt. The normal rule is that where there is proof of attestation and soundness of mind, then the burden is on the other side; it is only in the case of unnatural Wills that Court is called upon to exercise its discretion. *Vide* 41 *N.L.R.* 351. Where the Will is an unnatural Will the Court will be on guard. A father's generosity is invariably shown towards his children. When he gives to his children, there is nothing unnatural. Having a number of children, if he leaves the property to outsiders, Court will be on guard. If the other Will 40 had stood, and it was challenged on the ground of undue influence, Court would have found that Mathuranayagam wormed his way into the mind of an old man open to influence of this nature. The older a man grows the more he thinks of the hereafter. One has only to suggest some religious trusts. Till the brother came, Mathuranayagam was able to hold the man to that view. Mathuranayagam had poisoned the man's mind against the children. The other trustee by reason of his professional work could not have run the pawnbroking business. Mathuranayagam would have been in charge of the pawnbroking business. It would have been difficult to challenge his accounts. The brother brought the father and the children closer to each 50 other. He is the eldest brother.

The question is the state of the testator's mind at the time of the execution of the Will.

Further hearing tomorrow.

No. 21
Addresses to
Court—
Continued

(Sgd.) . . .
Additional District Judge.
13.11.62.

14.11.62.

Hearing resumed. Same appearances.

Mr. E. G. Wikremanayake continues his address :

10 Two cases were cited for the objector, one of which was Haggard's Reports, to show that the conscience of Court has to be satisfied. As in any other case, it is a matter of proof. Where there are suspicious circumstances of an unnatural Will, or where there is a suggestion of fraud and the circumstances are such that, although fraud must be proved affirmatively, Court should consider the evidence more carefully, it must do so. In the case cited from Haggard's Reports, the person in attendance on the lady as nurse or companion was the beneficiary. The witnesses received benefits. Court said it could not accept the evidence of the beneficiaries, and the unnaturalness of the Will was taken into account. There is no such thing
20 as moral conviction. The Evidence Ordinance sets out how the matter is proved. *Vide* passage cited by Mr. Navaratnarajah. Her condition was one of the factors in weighing the improbability of the evidence. *Vide* end of the judgment for reasons why it was rejected. Court looked at the improbability of the disposition—taking away from relations £10,000 and giving it to her attendant to whom already she had given a small legacy; witnesses were brought by the woman—domestics and they benefited under the Will; the Will was done in secrecy; they got another solicitor to attest; her solicitor who attested the previous Will was not allowed to see her. Under all those circumstances the Court said they cannot accept the evidence
30 of the two attesting witnesses. Here, the attesting witnesses have spoken to what happened. Koruthu does not benefit. Koruthu, Mr. Caderamanpulle and Dr. Austin have testified. The effect of the decision in the other case has been stated to be what he (Mr. Wikremanayake) stated it is, in a local case—that where fraud and fraudulent circumstances are alleged, although the burden of proving fraud is on the party alleging, Court will consider other factors.

The other case cited for the objector from Times Law Reports is a case where it was proved that the testatrix was not of sufficient mind. *Vide* the facts of that case concerning her diaries, the impression under which she
40 made the Last Will, and the alteration of what she entered in the diary. Her memory would not help her to realise she had given equally to both. Testamentary capacity includes memory as well.

Vide 41 N.L.R. 351. Suspicion was attached to the will by its very nature. The Will in this case is the most natural. As in all matters, where Court thinks this calls for a little more attention, Court has to be satisfied that the evidence led is clear. In the instant case, the evidence is of such a

nature that you cannot get any better evidence in support of any Will. The evidence of two professional men and an accountant is before Court. It is not suggested for the objector that Mr. Caderamanpulle made an honest mistake. The evidence put forward by the objector suggests Mr. Caderamanpulle taking part in a deliberate fraud. The suggestion is that the testator was forced to sign in the presence of Mr. Caderamanpulle under a false impression, that Dr. Austin, Koruthu and Dr. Ketharanathan have all given false evidence.

Dr. Thanabalasunderam was biased to a great degree. If there is nothing unnatural in the Will, the burden is shifted to the objector to prove 10 undue influence or fraud—which they sought to prove by Wilbert's evidence. Dr. Thanabalasunderam's evidence does not help the objector in any way. In the other case too, at the time the Will was signed, the testator was feeble; he could not sign and a thumb impression was taken. There too, the inability to form letters correctly was not because of mental condition. *Vide* passage at page 355. In that case, Dr. Somasunderam saw the patient, spoke from the bedhead ticket, and spoke of the possibility of the brain being affected.

Vide 22 *N.L.R.* 4. Of course, the burden is on the propounder to prove that the testator knew and understood the contents. It is for a medical 20 witness to describe the mental condition of the testator and for the Court to judge his testamentary capacity. *Vide* 48 *N.L.R.* 470. It was a 5 witnesses Will. The trial Judge was held not to have thought that the Will was an unnatural Will; he found discrepancies in the evidence of three witnesses called.

Stress was laid on the fact that Koruthu said Mr. Caderamanpulle announced it was not a legal requirement to read, but Mr. Caderamanpulle said he never said anything about legal requirement. It was not expressly put to Mr. Caderamanpulle. Koruthu may have got a wrong impression. The testator wanted the Will read aloud. That would be communicating 30 the contents. The Notary's Ordinance provides that he is not bound to reveal the contents. When the testator wanted the Will read aloud, Mr. Caderamanpulle said it was not necessary. The case in 48 *N.L.R.* 470 refers to Lorenz Reports. It was said that since it was a five witnesses Will, conscience of Court had to be satisfied. The decision in Haggard's Reports and Lorenz Reports was anterior to the enactment of the Evidence Ordinance.

In the 22 *N.L.R.* case, *vide* passage at page 10. The Will was dated 8th October. Mr. Wille saw the testator on the 7th; on the 8th morning he went through the draft. *Vide* comment regarding Dr. Parsons and 40 Dr. Paul. Dr. Paul saw the testator a fortnight before. *Vide* page 10. That is strong evidence—unlike in this case. He spoke of no mental degeneration *vide* reference to conversation with Namasivayam. In this case, we have the conversation with Dr. Austin, apart from the conversation with the Notary himself. *Vide* page 11—third paragraph. Even where suspicion attaches to a Will, there is no rule that petitioner should give evidence. In this case, suspicion was sought to be attached after petitioner's case was closed. *Vide* 48 *N.L.R.* 560. That was a 5 witnesses' case. One son-in-law benefited more than anybody else. Court cannot refuse probate on the ground of suspicious circumstances. Fraudulent conduct must be clearly 50

alleged and proved. *Vide* page 565, 567—lays down the principle—the circumstances attending the execution of the document may be such that it may be shown that there is a suspicious circumstance attaching to the Will; if Court accepts Wilbert's evidence—which is unacceptable, there would be circumstances creating a suspicion, and such suspicion should be removed. Wilbert's evidence is not necessary to be dealt with at all; it was too fantastic. Feebleness is not a circumstance creating suspicion.

In answer to Court as to why a man who was well enough, according to Dr. Austin, to walk about, had to be propped up on bed, Mr. Wikramanayake states he was seated on a bed; there was no question of propping up with pillows. Pillows may have been placed for convenience. Mr. Caderamanpulle's evidence is that testator's legs were hanging over the bed and he sat on the bed. Propping up is Wilbert's evidence.

In answer to Court as to why he could not have sat on the table, Mr. Wikramanayake states he may have preferred not to get out of the bed, or he might have listened to Dr. Austin's advice.

Mr. Navaratnarajah refers to evidence at page 43 of Mr. Caderamanpulle.

Mr. Wikremanayake continues: The testator was definitely weaker; a few days later he died. Physically he was growing weaker. Physical weakness indicates nothing at all. One day a man might feel like walking about and on another day not. According to Wilbert, somebody had to hold his hand. Wilbert also said he was told he must sign to give to charity. *Vide* page 92. He spoke very little, he spoke 1 or 2 words—that is the incoherence. The witness does not say what the answer was. Even on earlier occasions, he spoke very little; when dehydrated and in pain, he spoke less. *Vide* re-examination—bottom of page 93 and top of 94. He said he “gave a prescription; then he said “I am not certain I gave a prescription.” The last answer in re-examination is a theoretical view against which is the evidence of Dr. Austin.

There has been no case in which evidence in proof of the Will has been clearer than in this, unless it is said that Mr. Caderamanpulle is lying deliberately—if Wilbert's evidence is true. Koruthu is a Chartered Accountant, a man of some respect and standing.

Mr. Navaratnarajah states Mr. Wikremanayake submitted that if P3 was sought to be proved, he would have attacked it on the ground of undue influence.

Mr. Wikremanayake says he said that it might have been open to attack on that ground and it being an unreasonable Will Court would have had to examine it closely.

Mr. Navaratnarajah states that Order Nisi was entered on the application of the objector to set aside the Probate and to declare the Will of 2nd February, 1961, proved. That is P3. The only objection filed was in respect of the first matter, viz. that the Will of 3rd March was a good Will executed by testator when he was of sound mind, memory and understanding. No objection has been raised to the validity of P3. If Court rejects A, P3 is automatically admitted to probate.

No. 21
Addresses to
Court —
Continued

Mr. E. B. Wikremanayake states that the argument was that if there was no Will of 3rd March and Mr. Navaratnarajah had tried to prove the Will of 2nd February, it would have been open to attack as being unnatural and requiring closer examination by Court.

Mr. Navaratnarajah refers to objections dated 26.10.61.

Mr. E. B. Wikremanayake states that if the Will of 3rd March is held to be good, the earlier Will goes by the board.

Mr. Navaratnarajah submits that there is no evidence on record that Dr. Ketharanathan is not in Ceylon. *Vide* affidavits. Affidavit of Dr. Ketharanathan does not refer to sound mind, memory and understanding. 10

Mr. E. B. Wikremanayake refers to para 6 of that affidavit. He has said so—though it is not necessary.

Mr. Navaratnarajah states Dr. Ketharanathan should have been made available even if he was out of the Island. He was an independent medical witness. It is only a doctor who would have realised from the writing that it was an indication of cholaemia.

Judgment on 6.12.62.

(Sgd.) . . .
Additional District Judge.

No. 22
Judgment of
the District
Court—
6.12.62

No. 22

20

Judgment of the District Court

JUDGMENT

In his petition dated 12th April, 1961, the petitioner, Dr. N. Sithampanathan, avers that the deceased Velautham Natarajan, his father, died on 5th March, 1961, leaving a Last Will executed on 3rd March, 1961; that the heirs of the deceased are the three children, namely, himself the petitioner, Mrs. Manonmani Ponnusamy and Mrs. Rajeswari Shanmugarajah. The net value of the estate is given as Rs. 323,183.51. The petitioner as executor named in the Last Will claims probate. The petitioner adds that he does not apprehend any opposition to the grant of probate to him. A supporting 30 affidavit has been affirmed to by him in the same terms. Along with these papers, affidavits from the Notary who attested the Will and the two witnesses to the Will have been submitted.

On the motion of the proctor for the petitioner, who was the Notary who attested the Will, Order Absolute was entered declaring the petitioner entitled to probate.

On 24th May, 1961, R. Mathuranayagam filed petition and affidavit, where it is stated that the Last Will of 3rd March, 1961, was not the act and deed of the deceased, but that the deceased executed the Last Will dated 2nd February, 1961, in which both Mathuranayagam and Dr. 40 Sithampanathan were appointed Executors. The prayer is that the

Order Absolute already entered be set aside and that order be made declaring the Last Will of 2nd February, 1961, proved, and that Mathuranayagam and Sithamparanathan named as executors in that Last Will be granted probate. After a preliminary inquiry, on the application of learned counsel for Mathuranayagam, his petition was dismissed on 28th July, 1961, reserving to him a right to file another petition.

No. 22
Judgment of
the District
Court
6.12.62—
Continued

Thereafter, on 1st August, 1961, Mathuranayagam filed a second petition confirmed by an affidavit. This petition and affidavit are on the same terms as the petition and affidavit of 24th May, 1961, but with this
10 addition to the prayer, namely, for an order under section 377 of the Civil Procedure Code against the respondent (Dr. Sithamparanathan) ordering him to show cause why the petitioner's prayer be not granted. On this application, Order Nisi was entered and directed to be issued returnable 26th October, 1961. The material portion of the Order Nisi is as follows :— That the petition in respect of Last Will No. 1285 dated 3.3.61 be dismissed ; that the Last Will and testament of Velautham Natarajan dated 2.2.61 be declared proved and that probate be issued accordingly unless sufficient cause be shown to the contrary on 26th October, 1961.

On 26th October, 1961, the original petitioner Dr. Sithamparanathan
20 filed objections. The objections are :

“(2) The respondent denies that the Last Will No. 1285 already admitted to probate was not the act and deed of the deceased.

(3) The respondent states that the respondent and the notary and the witnesses were present at the execution of the said Will No. 1285 and that the testator was at the time of the execution of sound mind, memory and understanding and that the testator knew it was his Last Will that he was executing and also the contents thereof.”

And it was prayed that the order absolute already entered in the case do
30 stand and that the application to have Will No. 1283 dated 2nd February, 1961, admitted to probate be dismissed. It will thus be seen that no specific objection was raised to the validity of the Will of 2nd February, 1961. If therefore the Court holds against the original petitioner Dr. Sithamparanathan that the Will of 3rd March, 1961, is not a valid Will, the Will of 2nd February, 1961, must necessarily be accepted and admitted to probate.

The issues which call for a determination in these proceedings are :—

1. Was the Last Will No. 1285 dated 3.3.61 the act and deed of the deceased V. Natarajan ?

2. Was the deceased competent to execute the Last Will.

40 The propounder of this Will which is in dispute is Dr. Sithamparanathan (whom I shall hereafter refer to as the petitioner) and the objector is R. Mathuranayagam (who will be referred to as the Objector).

It is settled law that the onus is on the petitioner to satisfy the Court that the Will in question is the Will of a testator of sound mind, memory and understanding. The principles are clearly set out in the case of *Barry v. Butlin* (2 Moo. P.C. 480). The relevant passage from the judgment in that case, which is not available to me, is set out in the local cases of *John Pieris*

et al. Appellants, and W. M. Wilbert, respondent, (59 N.L.R. 245 at 247), and *Peries et al., Appellants, and Perera et al., Respondents* (48 N.L.R. 560 at 567). Reproducing the passage from the 59 N.L.R. case, it declares :

“ The rules of law according to which cases of this nature are to be decided do not admit of any dispute so far as they are necessary to the determination of the present appeal and they have been acquiesced in on both sides. These rules are two : The first that the onus probandi lies in every case upon the party propounding a Will and he must satisfy the conscience of the Court that the instrument so propounded is the Last Will of a free and capable testator. The second is that if a party 10 writes or prepares a Will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and call upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true Will of the deceased.”

Pulle, J., who has quoted the passage, also makes reference to a statement of Lindley, L.J. in *Tyrell v. Painton* :

“ Lindley, L.J., states in respect of the second rule that it is not ‘ confined to the single case in which a Will is prepared by or on the 20 instructions of the person taking large benefits under it, but extends to all cases in which circumstances exist which excite the suspicion of the Court. Reference was also made to the Alim Will case and the decision of the Privy Council in *Harmes* and another *v. Hinkson*. In the last mentioned case Lord Du Parcq delivering the judgment of the Board stated, “ The concluding words of the rule, as it was stated by Baron Parke, emphasize the necessity of the complete removal of doubt from the judicial mind. ‘ The conscience of the Court ’ must be satisfied. Whether or not the evidence is such as to satisfy the conscience of the tribunal must always be, in the end, a question of fact.” 30

In the case of *Andrado v. Silva et al.* (22 N.L.R. 4), the headnote contains a passage taken from the judgment of Davey, L.J., in *Tyrell v. Painton* (1894 P.D. 151). It may be useful to quote that passage which reads :—

“ If the circumstances are such that a suspicion arises that the apparent approval by the testator is not a real approval, that his act was not the expression of his own free will but of a will coerced or dominated by another, then it is for the propounders to remove the suspicion, and if they fail to do so their whole case fails, even though the suspicious circumstances do not constitute a *prima facie* case of undue influence, and even though on a review of the evidence on both 40 sides it cannot be said that undue influence was positively established.”

In the case of *Gunasekere v. Gunasekere* (41 N.L.R. 351), Nihill, J., observes at page 354,

“ Certainly the propounder had to show that the document produced was the properly attested and valid act of the testator but if he proved the due execution of the Will, there was a presumption that the testator knew and approved of its contents, unless suspicion a priori attached to the document by its very nature. If there was nothing

intrinsically unnatural in the document, then after proof of due execution the burden shifted to the objector to show that there was undue influence or fraud or that the deceased was not of a sound disposing mind when he made the will.”

No. 22
Judgment of
the District
Court
6.12.62—
Continued

In the case of *Meenadchipillai v. Karthigesu* (61 N.L.R. 320), at page 322 occurs the following dictum in the judgment of Sansoni, J.,

10 “The rule of law is clear enough. In all cases where circumstances exist which excite the suspicion of the Court, “whatever their nature may be, it is for those who propound the Will to remove such suspicion, and to prove affirmatively that the testator knew and approved of the contents of the document, and it is only where this is done that the onus is thrown on those who oppose the Will to prove fraud or undue influence, or whatever else they rely on to displace the case made for proving the Will” ”

The question I have therefore to ultimately decide is this : Having regard to all the circumstances as would appear from the evidence to which I will presently address myself, can I with confidence say that there is no real doubt in my mind that the Last Will 1285 dated 3.3.61 marked A was executed by the testator with the knowledge that he knew the effect of the
20 document he was signing ?

The relevant facts bearing on this question are as follows:—The deceased V. Natarajan—it will be convenient to refer to him as the testator—was prior to his death on 5.3.61 apparently ailing for some time. There is evidence that about two months prior to his death he was at Durdans Hospital and thereafter at the Central Hospital, but, unfortunately, there is no evidence of any medical man who had attended on him during his stay in these Hospitals. Such evidence would have been helpful particularly in view of the conflicting evidence of two doctors who have testified in these proceedings. I shall in a moment discuss their evidence. Before I do so
30 I may refer to certain other matters which would be of assistance to answer the question I have posed myself.

I will now set out the matters which in the context of the case may be considered as suspicious circumstances. The execution of the Will must in my view be considered in the background of these circumstances for a proper appreciation of the evidence which relates to the execution of this Will on 3.3.61. The circumstances are these: Prior to the Will of 3.3.61 the testator had executed two earlier Wills, the first of which was on 20.12.60, Will P2. By this Will, the testator appointed the petitioner and the objector as executors and trustees of his Last Will and testament. He bequeathed
40 to his grand-daughter Manjula Sugumari, daughter of Manonmany Ponnusamy, Rs. 10,000/- to be paid at the time of her marriage. He gave his son the petitioner Rs. 30,000/- for studies abroad, to be paid by monthly instalments of Rs. 500/-. He gave and devised all his properties including his Pawnbrokers’ business, personal jewels, motor cars, household furniture and the properties particularised in the Will to the Trustees, namely, the petitioner and the objector, “upon trust that the said Trustees shall out of the income of the said properties and business pay the bequests hereinbefore mentioned and shall stand possessed of the said properties and business in trust for the following charitable purposes:— (1) To erect a madam at

Kataragama, Ceylon and feed the pilgrims and the poor; (2) To open a madam in Palani, South India, or in any other part of India if the Trustees desire; (3) To repair any Hindu temples they desire; (4) To give free medical aid to the poor. If the said Trustees think that these charitable works mentioned by me cannot be executed owing to the situation or whatsoever reason I give power to them to do any other charitable works as they think good." The Trustees were also given the power to appoint new Trustees who were to be selected by the surviving Trustee from the following names, "Rajeswari Shanmugarajah (my daughter), Manonmany Ponnusamy (my daughter) Dr. Natarajan Sithamparanathan (my son), R. Mathuranayagam (my 10 nephew) and on their death or inability to function any other descendant or descendants of my children and my nephew R. Mathuranayagam." The Trust was to be named the Neelatchi and Velautham Natarajan Trust. Concluding, the testator has said, "As I have given my two daughters Manonmany Natarajan wife of S. Ponnusamy and Rajeswari Natarajan wife of D. Shanmugarajah adequate dowries at their marriage and even afterwards my said daughters will not be entitled to any claim or share out of my estate after my death." Then on 2nd February, 1961, he executed Will P3. The difference between the Wills P2 and P3 is that in the Will P3, in regard to the election of new Trustees, they were to be confined to 20 the children of the said Trustees named, Dr. Sithamparanathan and Mathuranayagam, or their descendants, and the daughters and their descendants were to be excepted. The name of the Trust was to be the Velautham Natarajan Trust. In this Will too, the testator mentions the fact that he has adequately provided dowries to his two daughters whom he says will not be entitled to any claim or share out of his estate after his death. Both these Wills P2 and P3 have been attested by Mr. Caderamanpulle, Proctor and Notary.

The evidence is that the draft was prepared by the testator in his own handwriting and what the Notary had to do was merely to correct the 30 English of the draft. There is evidence to indicate that the testator was religiously inclined and that he was a devout Hindu. It is indeed surprising that such a man should have almost suddenly changed his mind, and, forgetting his religion, completely altered his Will within so short a time, and executed Will X of 3.3.61 bestowing the entirety of the properties which he then possessed to his children; the children whom he had adequately provided for; and his obligations towards them he has certainly not overlooked. His reference to his children in the Wills P2 and P3 bear this out. In this sense, the Will A which is in question appears to be an unnatural Will. If the situation was that the testator had not provided for his children and 40 had been unmindful of them, it may be said that, realising his days were nearing their end, a pang of conscience prompted him to change the earlier Wills and make the Will he is alleged to have made on 3.3.61. But that is not the position. On the contrary, it can be justifiably presumed that, devout Hindu as the testator was, with the gravity of his illness, his mind turned towards making provision for the benefit of his religion. The execution of Wills P2 and P3 tends to show that he had a fixed intention of benefiting a religious charity.

I am satisfied that the petitioner as well as his sisters were aware that the testator had in December, 1960, and February, 1961, executed two 50 Wills leaving his property to charity, with the objector as one of the

Executors. The petitioner thereupon wrote to V Shanmugam Pillai, the elder brother of the testator, who was in India, to come over to Colombo. About three days after Shanmugam Pillai arrived in Colombo, that is, on 27.2.61, Shanmugam Pillai spoke to the testator about the Will, and I have no doubt that at the request of the petitioner and his sisters, Shanmugam Pillai endeavoured to persuade the testator to alter his Will. What Shanmugam Pillai told the testator can best be said in his own words :

10 “ On the 27th February I told my brother that I was sorry to hear that he had written everything to a trust and made Mathuranayagam a trustee. I said I did not know the relationship to Mathuranayagam and as far as I knew he was not a relation. Then my brother kept quiet, and I explained to him that charity should be done by the children on behalf of the parents. I asked him what is the guarantee that an outsider would do it correctly.

Q. What did he say to that ?

A. He was patiently hearing it. Then we were speaking some other things and then I went to my room.”

Under cross-examination, the witness said that the request he made to the testator was that if he wanted to do charity, let it be done by the 20 children but not to trust the objector. So that, in effect, the advice given by Shanmugam Pillai to the testator was that in place of the objector as Trustee let the names of the children be substituted. The testator does not appear to have given an answer to this request of Shanmugam Pillai. But on 1.3.61, according to Shanmugam Pillai, the testator discussed something with the petitioner about the Will and asked him (the petitioner) to bring the proctor who made the previous Wills. The proctor was however brought only on the morning of 3.3.61. The petitioner has not entered the witness 30 box to substantiate the evidence of Shanmugam Pillai and to explain the delay in summoning the Proctor. I cannot understand why the petitioner should have delayed to pay heed to the testator's request to have the Proctor called. I have very great doubts in my mind of the truth of the evidence of Shanmugam Pillai in regard to the summoning of the Proctor. On a consideration of the evidence, my inference is that the Proctor was summoned by the petitioner at a time when the testator was in a weak state both physically and mentally; and advantage was taken of the testator's condition to make him sign a Will creating in the weak mind of the testator the impression that by that Will he was only cutting out the objector as trustee but otherwise the charitable trusts were to remain. This was the idea put into the head of the testator by Shanmugam Pillai, to which 40 idea the testator was perhaps agreeable as long as the substance of the bequests was not materially altered.

Admittedly on 3.3.61 the testator was in a weak condition, certainly physically. He was in bed and the Will was signed by him seated on the bed, assisted by pillows. It is the petitioner's case that although the testator was physically weak on 3.3.61, mentally he was alert and was fully conscious of the fact that he was revoking Wills P2 and P3 in their entirety by the Will A executed on that day.

This is an appropriate stage to consider the medical evidence in the case.

Dr. Austin, F.R.C.S. (England), who has testified in support of the petitioner's case, had been called in on 2.3.61 to examine a swelling of the testator's right cheek. The doctor found the parotid gland infected. There was a swelling like mumps, and the mouth was sore. A mouthwash was prescribed. Dr. Austin says he also did a general examination and found that the testator had primary carcinoma of the liver, commonly called cancer of the liver. The doctor was asked whether cancer of the liver can result in cholaemia. Cholaemia is a condition where the patient gets drowsy followed by unconsciousness, and then dies in a coma. The reply was that cirrhosis of the liver brings about cholaemia, whereas, in the case 10 of cancer, the patient is quite rational until death which comes on suddenly. Dr. Austin explained that cirrhosis causes destruction of the liver, with the result that the liver cannot deal with toxins, with the consequence that cholaemia sets in. Cancer he described as an additional growth in the liver, not a destruction of the liver, the liver being thus able to detoxify. Cholaemia does not set in. On 2.3.61, Dr. Austin found the testator in full control of his senses. There was no question of the testator being in a state of cholaemia on 2nd March, 1961. The Doctor was then asked the question,

“Q. From his condition on that day (2.3.61), could he have fallen into cholaemia ?” 20

The answer was “No, he can die any moment. It is sudden death.”

I see no reason to doubt Dr. Austin's evidence that on 2nd March, 1961, the testator was in control of his mental faculties. And as for the testator's physical condition, the doctor found him walking about. The question however is : could it be inferred that from his condition as found on 2nd March, 1961, on the following day too, he (testator) would have been in no worse condition ? And can it be said that because the testator was mentally sound on 2nd March, 1961, he would have been in the same mental state the following day ? In considering Dr. Austin's evidence it must be remembered that Dr. Austin was called not for the purpose of treating the 30 ailment of the liver but for the specific purpose of examining the swelling of the right cheek, the parotid gland infection. His general examination could not have been a detailed one because he was not required to treat the patient. In the circumstances I do not think I would be unfair by the doctor if I say that his examination in regard to the testator's general condition was perhaps a cursory one. There is no evidence to indicate that Dr. Austin was made aware of the treatment given to the testator for his general condition ; or that his opinion was requested as to whether the case was one of cancer or cirrhosis of the liver. By this I do not mean to say that Dr. Austin's opinion that the testator was suffering from cancer 40 has been recklessly given. No doubt it is an honest expression of opinion, but whether there was sufficient data available to Dr. Austin to arrive at a firm conclusion that the case was one of cancer, not associated with cirrhosis, after this one general examination, I find it difficult to say.

On 3rd March, 1961, which is the crucial date, the testator was confined to his bed. It is not that he was so advised by Dr. Austin. The fact that the testator was confined to bed on 3rd March, 1961, is indicative of the fact that his condition had considerably deteriorated. This is a factor of much significance in the case. But, before I turn to the events of 3rd March, 1961, let me refer to the evidence of Dr. Thanabalasunderam who was called by 50 the objector.

It is true that Dr. Thanabalasunderam was put on the list of witnesses at a belated stage in the case. Summons was moved for his attendance after Dr. Austin had given evidence. Dr. Thanabalasunderam has apparently been a reluctant witness, for more than once, whilst giving evidence, he stated that he was anxious to avoid coming to Court as that would be a waste of his time. Learned counsel for the petitioner characterised that as an impertinent statement. I do not think that the doctor meant the statement to be interpreted in that way. He had obviously made that statement without realising its implications. To my mind it seems a selfish statement and I trust medical men will realise that in giving evidence in Court they are discharging a solemn duty. The charge was made against the doctor that he has endeavoured to twist scientific facts to suit the objector's case. One thing that struck me about Dr. Thanabalasunderam was that he had no clear recollection of the treatment he had prescribed for the testator during the period he attended on him. He had kept no records and he was merely testifying to the impressions he had formed or whatever impressions that remained in regard to the testator's condition when he saw the testator on his several visits. It has been established that the last time he saw the testator was on 13th February, 1961, which is about 15 days before the crucial date, 3rd March, 1961. On that day the testator was found to be "a very sick man. He was thin, emaciated, with swollen legs; he talked very little and that too incoherently. On examination, he was dehydrated; his pulse was rapid and he had his large mass in the abdomen, the tumour in the liver." The doctor's opinion was that the testator was suffering from cancer due to cirrhosis. The incoherent talk was the result of the testator's dehydrated condition and also due to the liver cells failing. The doctor chanced the opinion that cholaemia was setting in. In cross-examination the doctor has stated that drowsiness is the first sign of cholaemia. He agreed that any drug that induces drowsiness was in the circumstances contra-indicated. Therefore, said the doctor, he would not have prescribed pethidine which is a drug to induce drowsiness. The doctor was then confronted with his prescription R1 dated 13th February, 1961, and he was questioned on each item in the prescription. The question and answers have been thus recorded:—

“Q. You would not have given pethidine because it was contra-indicated in the case of cholaemia?”

A. Yes.

Q. You are certain about that—it is dangerous to give pethidine to a man already drowsy from cholaemia?

40 A. Yes.

Q. (Shown R1)—That is your prescription?

A. Yes.

Q. You have prescribed starch and opium enema, which you gave to stop the purging?

A. Yes.

Q. Which had to follow a boric washout?

A. Yes.

Q. You had a boric washout followed by an opium enema to prevent purging ?

A. Yes.

Q. Glucose 5 per cent saline ?

A. Yes.

Q. Saline is to replace loss of fluid ?

A. Yes.

Q. What is this ?

A. Vitamins.

Q. No antibiotics at all ?

10

A. Yes.

Q. In the case of cholaemia what you do is give frequently glucose intravenous with antibiotics ?

A. Yes.

Q. No antibiotic here ?

A. Yes.

Q. Ivax is given for diarrhoea ?

A. That is antibiotic.

Q. It is to check the diarrhoea ?

A. Yes.

20

Q. Antibiotics for the diarrhoea ?

A. Yes.

Q. Pethidine 75 milligrams subcutaneous stat ?

A. Yes.

Q. That is immediate subcutaneous injection of 75 milligrams of pethidine to be given ?

A. That is the last day I saw the patient."

Four other prescriptions of his were also put to him, namely, prescriptions R2 to R5. R2 contained the drug Medral which we now know is a drug given for the relief of pain, and Durabolin, a non-virilising hormone to build up the tissues. R2 is an undated prescription. R3 bears the date of the chemist as 12.1.61, R4 the date 28.1.61, and R5 the date 9.1.61. The doctor has conceded that in none of the prescriptions given by him did he prescribe for cholaemia or for cirrhosis. What he has prescribed is for diarrhoea and relief of pain. It has been suggested by learned counsel for the objector that the testator's condition was beyond medical aid, and for that reason the doctor did not think it necessary to prescribe for cholaemia. But the difficulty is that the doctor does not say so, although that may in fact be the true position. I do not propose, nor do I think it necessary, to make an elaborate investigation of Dr. Thanabalarunderam's evidence. I am not unmindful of his qualifications. He is an M.D. Ceylon, M.R.C.P., London. He has also testified to having done research work on liver, and

has had experience of treating several patients with liver disease. But, as far as the case of the testator is concerned, I am impelled to the view that the doctor has treated it with indifference. Whether in this case the cancer was due to cirrhosis, cancer supervening on cirrhosis—in the textbook on liver diseases by Sheila Sherlock, which is acknowledged to be the standard authority, there appear certain passages to which my attention was directed to indicate that cirrhosis is more often than not associated with primary liver carcinoma, *vide* pages 565 and 566 of the text—the evidence of Dr. Thanabalasunderam is not very certain. In view of the prescriptions given
10 by him, no affirmative conclusion can be drawn that the testator had complete liver failure and that he was in a state of cholaemia. The prescriptions rather negative this position. All that the prescriptions tend to indicate is that the testator was dehydrated as a result of diarrhoea and would naturally have been enfeebled both physically and mentally. He obviously had cancer which caused him pain; hence the prescription of pethidine and Medral. Then there is Durabolin which was also prescribed. Durabolin is a non-virilising hormone given for cirrhosis. Dr. Thanabalasunderam has so said. Therefore it may well be that cirrhosis of the liver was present. The fact remains that the testator was ill with cancer and there have been
20 occasions when he was enfeebled by diarrhoea causing him to be in a dehydrated condition. I think it will be safe to infer that at such times when he was enfeebled his mental state could also have been affected. In such a condition he would not be in a position to think clearly for himself. Dr. Austin has expressed the view that a patient suffering from cancer of the liver may get haemorrhage, and, if haemorrhage sets in, blood transfusions are given for loss of blood. Blood transfusions he said are given to replace the lost blood, “not for cholaemia but for the haemorrhage.” There is certainly an apparent conflict in the medical testimony of Dr. Austin and Dr. Thanabalasunderam. But, were I to prefer Dr. Austin’s opinion to
30 that of Dr. Thanabalasunderam, yet, the problem still remains whether on the 3rd of March, 1961, the condition of the testator was such as to enable him to have a proper appreciation that he was revoking his earlier wills and making an entirely new Will when he put his signature to the Will A. It is therefore necessary to examine the evidence relating to 3rd March, 1961, with care.

On that day, the testator was certainly a sick man. Whereas on the previous day he was able to move about, on this day he was lying in bed. To sign the Will he had to be assisted with pillows. The signature on the Will A shows a most unsteady hand. Prior to signing Will A, the testator
40 had signed the protocol in two places. The Notary Mr. Caderamanpulle’s evidence is that he got the testator to sign twice on the protocol because the first signature was not quite good. The second signature on the protocol P4 is to my mind no better. It is manifest that it has been a very shaky hand. The testator’s signature on Will A is just as shaky and bad as his signatures on the protocol P4. In contrast, his signatures on P2, the Will of December, and P3, the Will of February, 1961, are in a firm hand. In particular, his signature on the Will of February, 1961, is very clearly and firmly written. The unsteady signature was attributed to the fact that the
50 testator signed it on bed keeping the document on a Ledger which was kept over a pillow. That by itself could not account for such a shaky and uncertain signature. A ledger, I take it, is a fairly heavy book which would

No. 22
 Judgment of
 the District
 Court
 6.12.62—
Continued

afford some kind of stability. It was suggested by the Notary that the nib used by the testator to write his signatures on the protocol P4 and on the Will A was a fine nib and the signature as it appears is as a result of having used such a nib. I am not quite enamoured of this explanation. It is in evidence that the earlier two Wills were signed by the testator seated at a table in the same room, the table being close to his bed. In this instance, had the testator been in that condition which the petitioner and his witnesses want me to believe, I cannot understand why he would not have stepped down from his bed and sat at the table close by to place his signature on the Will and the protocol. The testator was, as the evidence indicates, a man 10 who knew the solemnity that was attached to a Will.

The fact of the testator's signature on the protocol P4 and the Will A being irregular, shaky and illegible, as contrasted with his signature on the Will P3 of 2nd February, 1961, is a certain pointer to his physical weakness on 3rd March, 1961. The next question is whether the physical weakness had an effect on the standard of his mental efficiency; whether his mental powers were lowered to such an extent that he was incapable of a true and correct estimate of what took place on 3rd March, 1961. A passage from the judgment of Cockburn, C.J., who delivered the judgment of the Court in *Banks v. Goodfellow* (1870) 22 Law Times Reports 813 at 818, is apposite 20 in this connection. His Lordship said:

“It may be here not unimportant to advert to the law relating to unsoundness of mind arising from another cause, namely, from want of intelligence arising from defective organisation, or from supervening physical infirmity or the decay of advancing age, as distinguished from mental derangement, such defect of intelligence being equally a cause of incapacity. In these cases, it is admitted on all hands that though the mental power may be reduced below the ordinary standard, yet if there be sufficient intelligence to understand and appreciate the testamentary act in its different bearings, the power to make a Will 30 remains. It is enough if, to use the words of Sir Edward Williams in his work on Executors, if ‘the mental faculties retain sufficient strength fully to comprehend the testamentary act about to be done’.”

The problem that faces me is best expressed in the words of the quotation here reproduced: Did the testator's mental faculties retain sufficient strength fully to comprehend the testamentary act about to be done? There is evidence that on the morning of 3rd March, 1961, the testator was given a blood transfusion. I refer to the evidence of the man Wilbert who was a witness for the objector. It is difficult to conceive that Wilbert has conjured up this evidence, although on certain other matters his evidence 40 may not be trustworthy. For instance, in regard to his evidence that on 2nd March, 1961, the testator was incapable of getting about or talking, I prefer Dr. Austin's evidence of the testator's condition on that day, but it is possible that the testator had a haemorrhage on 3rd March, 1961—Dr. Austin does not rule out the possibility—which necessitated a blood transfusion. Had the petitioner given evidence it may have been of assistance to us. There are several circumstances in this case which the petitioner would have been in a position to explain. In view of the testator's condition, the evidence of a doctor of his physical and mental state on 3rd March, 1961, would have been extremely helpful, the more so because 50 Dr. V Ketharanathan, one of the attesting witnesses, has not been called.

It was said that Dr. Ketharanathan is away in Malaya. There is however no evidence to that effect; nor is there any evidence to show that it was not possible to secure his attendance in Court. In regard to the summoning of the Notary too, the petitioner's evidence would have been useful to dispel any doubts. I have already adverted to this aspect of the matter. I am rather puzzled as to the delay in obtaining the services of the Notary if, as Shanmugam Pillai says the testator had on 1st March, 1961, asked the petitioner to summon the Notary. The failure of the petitioner to enter the witness box is, in the context of the case, a suspicious fact which cannot pass
 10 without comment.

The evidence of Mr. Caderamanpulle, the Notary, is that on a telephone message from the petitioner he went to the house of the testator about 8 a.m. on 3rd March, 1961. The testator spoke to him and told him to prepare a Will giving all the property to his children. The executor was to be the petitioner. The testator then told him, "I do not want that Mathuranayagam (objector)," and, with a flash of his hand, said in Tamil "cut that Will off." That is, referring to the previous Will. At the time instructions were taken, Mr. Caderamanpulle states that the two daughters of the testator were in the room. He is not certain whether the petitioner was
 20 there. If the daughters were there it may be presumed that the petitioner too was present. Then about 10 a.m. on the same day Ponnusamy, a son-in-law of the testator, came to the Notary's office to inquire whether the Will was ready. This was for the purpose of bringing Dr. Ketharanathan, who was then working at the Lady Ridgeway Hospital, to sign as a witness. At the same time, the objector came to the Notary's office. Mr. Caderamanpulle, the Notary, spoke to the objector separately. The objector appears to have said, "I hear they are going to make a Will for Natarajan. I warn you because he is charmed." Mr. Caderamanpulle says that he took no notice of this remark. Mr. Caderamanpulle then proceeded to the house
 30 of the testator. The testator was then lying in bed. Mr. Caderamanpulle goes on to say that he handed the Will to the testator who called for his glasses, which were given by one of the daughters. In the room were Shanmugam Pillai, the brother of the deceased, the petitioner, the two daughters, Ponnusamy and the two attesting witnesses, Dr. Ketharanathan and Mr. Koruthu. The testator read the Will and then gave it to Mr. Caderamanpulle to be read aloud. Mr. Caderamanpulle asked the testator, "Do you want it read aloud?" and on the testator replying in the affirmative the Will was read aloud. Koruthu, one of the attesting witnesses, says that Mr. Caderamanpulle prefaced his question by saying "there is no
 40 legal requirement to read the Will." Mr. Caderamanpulle denies having spoken of any legal requirement; Koruthu was equally certain that he did. It may be pertinent to mention that the testator was well aware that a Last Will is a solemn and secret document. It is in evidence that when the previous Will P3 was executed one of the witnesses wanted to know from the testator the contents, to which the testator replied that it was not for him (the witness) to know the contents: it is for him only to sign the Will. I cannot therefore understand the testator wanting to have the Will read aloud, especially after he had read it himself. He could not have been in his proper senses if he made that request. Koruthu's evidence suggests that the Notary
 50 was reluctant to read the Will aloud, although according to the Notary, Mr. Caderamanpulle, he does not appear to have been so reluctant. After the

No. 22
 Judgment of
 the District
 Court
 6.12.62—
Continued

Will was read over it was signed by the testator and thereafter by the witnesses. At one stage of his evidence, Shanmugam Pillai has however stated that it was after the testator signed the Will that it was read out. This may be an insignificant discrepancy. But the presence of the petitioner and his sisters at the signing of the Will and at the reading of it is a strange, if not suspicious, circumstance. At the time of the execution of the previous Wills, they were not present. The only persons then present were the Notary and the attesting witnesses.

Mr. Caderamanpulle's evidence that the testator was of sound mind and understanding at the time he gave instructions and at the time of signing of the Will on 3rd March, 1961, cannot be lightly dismissed. He is a Proctor and Notary who has practised his profession for about 39 years. I am fully conscious of the fact that no charge of dishonesty has been levelled at him. His evidence is certainly entitled to respect, and due weight must be attached to it. Now, speaking of Mr. Caderamanpulle, he appeared to be to me a somewhat over-confident witness. At one point, when he was asked about a conference between the petitioner, the objector and Mr. N. E. Weerasooriya, Q.C., which he, Mr. Caderamanpulle, attended, and whether he had made a note of the conference, Mr. Caderamanpulle's reply was "I have a good memory." The impression he gave was that there was nothing he could forget. But soon thereafter, when questioned whether there was a discussion at this conference between the petitioner and the objector regarding the registration of particulars of the pawnbroker's business, Mr. Caderamanpulle said "I cannot remember." There is an everyday saying that "cock-sure people are often the most mistaken." I have reason to think that Mr. Caderamanpulle was mistaken in regard to the mental soundness of the testator on this crucial day. I would say he was assured by the petitioner, who is a doctor, that the testator was of sufficient mental capacity; and further to induce Mr. Caderamanpulle to attest the Will, a medical man, Dr. Ketharanathan, was procured as a witness. The absence of Dr. Ketharanathan and the failure of the petitioner to testify, therefore, are facts of grave suspicion.

I do not accept the position that the testator spoke to Mr. Caderamanpulle in the clear manner as Mr. Caderamanpulle testifies, although it is likely that the testator did tell him to prepare a new Will. But the idea he would have conveyed was that the objector should be cut off. I am saying this having in mind the evidence of Shanmugam Pillai. This when conveyed to Mr. Caderamanpulle, who was perhaps quick to come to conclusions, he inferred that the charitable trust bequests should be abandoned and the property left to the children. In this connection it is not out of place to mention that when the previous Wills were executed by the testator giving his property to charity, it was Mr. Caderamanpulle who suggested to him "give some properties separately to charity and separately for the son." There is also the further fact not to be ignored that on the day of the testator's death, the petitioner came and took the Will from Mr. Caderamanpulle.

When papers were filed in this case by the petitioner for probate, an affidavit was sworn that no opposition was apprehended to the issue of probate to him. Mr. Caderamanpulle says that the petitioner did not give such instructions but that he, Mr. Caderamanpulle, so prepared the affidavit for signature because he felt that there could be no opposition. This too is a hasty conclusion of Mr. Caderamanpulle to which he has rushed without

deliberation. Had he given this matter some consideration he would have recalled the fact that the objector had mentioned to him on the very morning of the execution of the Will that the testator was charmed. He should have realised that far from there being no opposition, in all likelihood, the Will would be opposed. Considering all these matters in the case and having the entire picture, so to speak, before me, I am compelled to the conclusion that Mr. Caderamanpulle although honest, has been grossly deceived when he assumed that the testator had a disposing mind on the morning of 3rd March, 1961.

No. 22
Judgment of
the District
Court
6.12.62 --
Continued

10 The only other witness to whom I may refer is Mr. Koruthu, the Accountant, one of the attesting witnesses. Mr. Koruthu states that on the morning of this day he came to the house at 9.30 a.m. at the request of Mr. Ponnusamy, the testator's son-in-law, to witness the Will. He met the objector who was in the garden and who was obviously not permitted to enter the house. The witness Wilbert, I think, was utilised for the purpose of keeping the objector out of the house. Koruthu says that he spoke to the testator and asked him how he was getting on. And the testator told him that he was better except that he found it difficult to take food and drink and that he had a swelling in his throat; that he could not open his
20 mouth; he "turned his tongue to a side and showed me his mouth." But, strangely, Koruthu did not ask the testator whether he was treated by a doctor and what the ailment was. This would have been the most natural question. Further, Koruthu states that it was only after the testator's death that he came to know what the ailment was. This is strange evidence indeed. I am satisfied that Koruthu is not telling the truth when he says that he engaged the testator in conversation on this day. Suffice it to say that I have not been impressed with his evidence. I am not prepared to act on it.

In conclusion I would say that there are serious suspicions—to which
30 I have adverted in this judgment—attaching to the execution of the Will A, which the petitioner has not dispelled. And the evidence in the case is such as would not satisfy the "conscience of the Court" that the Will in question is the act and deed of the testator in the sense that he was competent to execute the Will.

I answer the Issues : (1) No.

(2) No.

I make order that the petitioner's application be dismissed; that the order absolute entered in this case be vacated. I further direct that the order nisi entered on the application of the objector be made absolute
40 admitting Will No. 1283 dated 2nd February, 1961 (P3) to probate.

The petitioner will pay the objector the costs of these proceedings.

(Sgd.) V. T. PANDITHA GUNAWARDENA,
Additional District Judge.

6.12.62.

No. 23

Petition of Appeal to the Supreme Court
IN THE DISTRICT COURT OF COLOMBO

In the matter of the Last Will and Testament of Vela-
 utham Natarajan of 292, Deans Road, Maradana
 (deceased).

No. 19842/T.
 S.C. 6 (F) 1963.

In the matter of an application under 536 and 537 of
 the Civil Procedure Code.
 Ramanathan Mathuranayagam of 96, Vauxhall Street,
 Colombo. *Petitioner-Respondent.* 10
vs.

Dr. Natarajan Sithamparanathan of 292, Deans Road,
 Maradana. *Respondent-Appellant.*

To :

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

On this 13th day of December, 1962.

The Petition of Appeal of the respondent-appellant abovenamed appear-
 ing by his Proctor Rita Caderamanpulle, states as follows :—

1. On or about the 12th April, 1961, the respondent-appellant filed a 20
 petition averring that his father Velautham Natarajan died on the 5th
 March, 1961, leaving a Last Will No. 1285 executed on the 3rd March,
 1961, and that the heirs of the deceased were his three children, namely
 the respondent-appellant, Mrs. Manonmani Ponnusamy and Mrs. Rajeswari
 Shanmugarajah. The respondent-appellant as executor named in the said
 Last Will claimed probate of the said Last Will.

2. In his petition and annexed affidavit the respondent-appellant stated
 that he does not apprehend any opposition to the grant of probate to him.
 Affidavits from the Notary who attested the said Will and the two attesting
 witnesses were also submitted. 30

3. On the motion of the proctor for the respondent-appellant who was
 also the Notary who attested the said Will, Order absolute was entered
 declaring the respondent-appellant entitled to Probate.

4. On the 24th of May, 1961, R. Mathuranayagam, the petitioner-
 respondent filed petition and affidavit stating that the said Last Will
 No. 1285 of 3rd March, 1961, referred to above was not the act and deed of
 the deceased testator but that the deceased executed the Last Will No. 1283
 dated 2nd February, 1961, in which both the petitioner-respondent and the
 respondent-appellant were appointed executors. The petitioner-respondent
 prayed that order absolute already entered be set aside and that order be 40
 made declaring the said Last Will No. 1283 of 2nd February, 1961, proved
 and that the petitioner-respondent and the respondent-appellant named as
 executors in the said Last Will No. 1283 granted to probate.

5. After a preliminary enquiry, on the application of Learned Counsel
 for the petitioner-respondent, his petition dated the 24th May, 1961, was

dismissed on the 28th July, 1961, the petitioner-respondent reserving his right to file a fresh petition.

No. 23
Petition of
Appeal to the
Supreme Court
13.12.62—
Continued

6. Thereafter on the 1st August, 1961, the petitioner-respondent filed a second petition and affidavit on the same terms as the petition and affidavit of the 24th May, 1961, referred to in paragraph (4) above but with this addition to the prayer namely for an order under section 377 of the Civil Procedure Code against the respondent-appellant ordering him to show cause why the petitioner-respondent's prayer should not be granted.

7. On the second petition of the petitioner-respondent, dated 1st August, 1961, Order Nisi was entered and directed to be issued returnable on the 26th October, 1961. The Order Nisi stated *inter alia* that the said Last Will No. 1285 of the 3rd March, 1961, be dismissed and the said Last Will and Testament of the testator, Velautham Natarajan, No. 1283 dated 2nd February, 1961, be declared proved and that probate be issued accordingly unless sufficient cause to the contrary be shown on 26th October, 1961.

8. On 26th October, 1961, the original petitioner the present respondent-appellant filed objections denying that the said Last Will and Testament No. 1285 of the 3rd March, 1961, already admitted to Probate was not the act and deed of the deceased, Velautham Natarajan. The respondent-appellant prayed that the order absolute already entered in the case do stand and that the application to have the said Will No. 1283 dated the 2nd February, 1961, admitted to Probate be dismissed.

9. The case went to trial on the following issues :—

(a) Was the Last Will No. 1285 dated 3rd March, 1961, the act and deed of the deceased V. Natarajan ?

(b) Was the deceased competent to execute the said Last Will ?

10. The Learned Trial Judge made order on the 6th December, 1962, answering the issues in the negative, dismissing the respondent-appellant's application of the 12th April, 1961, and that order absolute entered in the case be vacated. The Learned Trial Judge further ordered that the Order Nisi entered on the application of the petitioner-respondent be made absolute admitting the Last Will No. 1283 dated 2nd February, 1961 to Probate.

11. Being aggrieved by the said order the respondent-appellant appeals to Your Lordships' Court on the following grounds, and on other grounds that may be urged by Counsel for the respondent-appellant at the hearing of the said appeal :—

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

(b) That the evidence placed before the Court does not in fact or in law establish that the said Last Will No. 1285 dated 3rd March, 1961, was not the act and deed of the deceased testator Velautham Natarajan.

(c) That the Learned Trial Judge has misdirected himself on the law as well as on the facts in ordering that the respondent-appellant's application dated 12th April, 1961, be dismissed and that order absolute entered in the case be vacated.

No. 23
 Petition of
 Appeal to the
 Supreme Court
 13.12.62—
Continued

- (d) That the Learned Trial Judge arrived at the finding that—Mr. J. M. Caderamanpulle the Notary who attested the deed—“ is a Proctor and Notary who has practised his profession for about 39 years. I am fully conscious of the fact that no charge of dishonesty has been levelled against him. His evidence is certainly entitled to respect and due weight must be attached to it.” and the Learned Trial Judge further finds “ I am compelled to the conclusion that Mr. Caderamanpulle although honest, has been grossly deceived when he assumed that the testator had a disposing mind on the 3rd March, 1961 .” 10
- (e) That although the Learned Trial Judge arrived at the finding in (d) above that Mr. Caderamanpulle was an honest witness the Learned Trial Judge comes to the following conclusions “ I do not accept the position that the testator spoke to Mr. Caderamanpulle in the clear manner as Mr. Caderamanpulle testifies, although it is likely that the testator did tell him to prepare a new Will” which finding could only have been arrived at if the Learned Trial Judge had grave doubts about the honesty and veracity of Mr. Caderamanpulle.
- (f) That the Learned Trial Judge arrives at the following conclusion 20
 “ I have reason to think that Mr. Caderamanpulle was mistaken in regard to the mental soundness of the testator on the crucial day ” although Mr. Caderamanpulle, whom the Learned Trial Judge called an honest witness stated “ I knew the deceased in this case for 30 years. He was my client for 30 years. I spoke to the deceased. I asked him what his instructions were. He told me he wanted to give all his properties to his three children. I asked him ‘ are you giving all your properties to them ? ’ and he said ‘ Yes, nothing excepted. ’ ”
- (g) That the Learned Trial Judge failed to consider the evidence of 30
 Mr. Caderamanpulle, the Notary who attested the said Last Will, whom the Learned Trial Judge called an honest witness.
- (h) That although Mr. Caderamanpulle, the Notary who attested the Last Will, whom the Learned Trial Judge called an honest witness stated that the testator requested him to read the Will aloud, and Mr. Caderamanpulle asked the testator, “ Do you want it read aloud ? ” and on the testator replying in the affirmative the Will was read aloud the Learned Trial Judge finds that “ It may be pertinent to mention that the testator was well aware that a Last Will is a solemn and secret document . . . He 40
 could not have been in his proper senses if he made that request.”
- (i) The Learned Trial Judge finds that “ When papers were filed in this case by the petitioner for Probate, an affidavit was sworn that no opposition was apprehended to the issue of probate to him. Mr. Caderamanpulle says that the respondent-appellant did not give such instructions but that he, Mr. Caderamanpulle, so prepared the affidavit for signature because he felt that there could be no opposition. This too is a hasty conclusion of Mr. Caderamanpulle to which he has rushed without deliberation,” although Mr. Caderamanpulle was satisfied that the Will was 50

duly executed, that all the intestate heirs were provided for and he could not anticipate any opposition.

No. 23
Petition of
Appeal to the
Supreme Court
13.12.62—
Continued

10 (j) That the Learned Trial Judge finds that “ In this connection it is not out of place to mention that when the previous Wills were executed by the testator giving his property to charity, it was Mr. Caderamanpulle who suggested to him ‘ give some properties to charity and separately for the son.’ There is also the further fact not to be ignored that on the day of the testator’s death, the petitioner came and took the Will from Mr. Caderamanpulle,” which finding is unwarranted under the circumstances since the respondent-appellant was present when the Will was attested and was aware of the fact that he was named as Executor in the said Will.

20 (k) The Learned Trial Judge finds that “ on a consideration of the evidence my inference is that the Proctor was summoned by the petitioner at a time when the testator was in a weak state both physically and mentally ; and advantage was taken of the testator’s condition to make him sign a Will creating in the mind of the testator the impression that by the Will he was only cutting out the objector as trustee but otherwise the charitable trusts were to remain,” which finding is completely contradicted by the evidence of the Notary who attested the said Will, Mr. Caderamanpulle, whom the Learned Trial Judge called an honest witness and is not borne out by the evidence in the case.

30 (l) That the Learned Trial Judge rejected the evidence of Mr. C. K. Koruthu, a Chartered Accountant, who spoke to the events leading up to the signing of the said Will and who corroborated Mr. Caderamanpulle, since Mr. Koruthu merely asked the testator how he was but failed to ask the testator whether he was treated by a doctor and what the ailment was, which question the Learned Trial Judge finds “ would have been the most natural question ” and since Mr. Koruthu stated that it was only after the testator’s death that he came to know what the testator’s ailment was, which conduct the Learned Trial Judge finds “ is strange evidence indeed.”

40 (m) Medical evidence was called on behalf of the respondent-appellant and the petitioner-respondent. The Learned Trial Judge rejected the evidence of Dr. Thanabalasunderam, who was called by the petitioner-respondent and whom the Learned Trial Judge finds visited the deceased testator Velautham Natarajan last on 13th February, 1961. In regard to the evidence of Dr. Thanabalasunderam the Learned Judge came to the following conclusion—“ One thing that struck me about Dr. Thanabalasunderam was that he had no clear recollection of the treatment he had prescribed for the testator during the period he attended on him. He had kept no records and he was merely testifying to the impressions he had formed or whatever impressions that remained in regard to the testator’s condition when he saw the testator on several visits,” and “ as for the case of the testator is concerned, I am impelled to the view that the doctor has

50

treated it with indifference.” Dr. Thanabalasunderam was of **the opinion** that the deceased was suffering from liver cell failure and was in a state of cholaemia. The Learned Trial Judge finds that “the evidence of Dr. Thanabalasunderam is not very certain. In view of the prescriptions given by him, no affirmative conclusion can be drawn that the testator had complete liver failure and that he was in a state of cholaemia. The prescriptions rather negative the position.”

- (n) The Learned Trial Judge on the other hand accepted the evidence of Dr. Austin, who was called by the respondent-appellant and **10** who spoke to the testator’s condition on the 2nd of March, 1961, and in regard to whose evidence the Learned Trial Judge arrived at the finding that “I see no reason to doubt Dr. Austin’s evidence that on the 2nd March, 1961, the testator was in control of his mental faculties.” Dr. Austin spoke to the condition of the testator the day before the testator executed the said Last Will No. 1285.
- (o) The Learned Trial Judge finds that “on the morning of the 3rd March, 1961, the testator was given a blood transfusion. I refer to the evidence of Wilbert, who was for the objector.” **20** The Learned Trial Judge has arrived at this finding although Wilbert’s evidence, as to the events on the 2nd and 3rd of March, 1961, is in direct contradiction to the evidence of Dr. Austin, whose evidence the Learned Trial Judge accepts and Mr. Caderamanpulle, whom the Learned Trial Judge called an honest witness.
- (p) The Learned Trial Judge accepted the evidence of Dr. Austin as to the testator’s condition on the 2nd of March, 1961. The respondent-appellant respectfully states that there is no evidence to justify the Learned Trial Judge’s finding that there was an **30** alteration in the testator’s condition on the 3rd March, 1961, unless the Learned Trial Judge thought fit to accept the evidence of Wilbert, whose evidence is contradicted by Dr. Austin and Mr. Caderamanpulle.
- (q) The respondent-appellant respectfully states that the Learned Trial Judge has erred in law and in fact in holding that the execution of the two Wills dated 28th December, 1960, and 2nd February, 1961, “tends to show that the testator had a fixed intention of benefiting a religious charity” and the respondent-appellant respectfully states that the said finding is an unwarranted in- **40** ference, not borne out by the evidence led in the case.
- (r) The respondent-appellant respectfully states that the Learned Trial Judge has erred in law and in fact when he holds that the revocation of the Will of 2nd February is a suspicious circumstance since the testator had a fixed intention to benefit a religious charity and further when the Learned Trial Judge holds that the Will dated 3rd March, 1961, is an unnatural Will for the respondent-appellant respectfully states that the Will of 3rd March, 1961, where the testator leaves his property to his children in equal shares is in law and in fact a natural Will. **50**

(s) The respondent-appellant respectfully states that the Learned Trial Judge failed to consider the evidence led in the case and has arrived at his finding that the said Last Will is not the act and deed of the testator in the sense that he was not competent to execute the Will on inferences which are not warranted and has based his finding on speculation and surmises.

No. 23
Petition of
Appeal to the
Supreme Court
13.12.62—
Continued

Wherefore the respondent-appellant prays :—

- (a) That Your Lordships' Court be pleased to set aside the judgment and decree of the Learned District Judge,
- 10 (b) That the application of the petitioner-respondent dated the 1st August, 1961, for recall of probate of the said Last Will No. 1285 dated the 3rd March, 1961, be dismissed, and Order Nisi entered on Will No. 1283 be vacated ;
- (c) That the order absolute entered by the Learned District Judge dated 12th April, 1961, declaring the said Last Will No. 1285 dated the 3rd March, 1961, proved and admitting the said Last Will to probate be directed to stand.
- (d) For costs, and
- 20 (e) For such other and further relief as to Your Lordships' Court shall seem meet.

(Sgd.) RITA CADERAMANPULLE,
Proctor for Respondent-Appellant.

Settled by,

(Sgd.) P. N. WIKRAMANAYAKE.
(Sgd.) E. G. WIKRAMANAYAKE, Q.C.
Advocates.

No. 24

Decree of the Supreme Court Dismissing Appeal

S.C. 6/63 (F).

No. 24
Decree of the
Supreme Court
dismissing
Appeal—
8.5.66

30 ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF
HER OTHER REALMS AND TERRITORIES, HEAD
OF THE COMMONWEALTH

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Ramanathan Mathuranayagam of 96, Vauxhall Street,
Colombo. *Petitioner.*

vs.

Dr. Natarajan Sithamparanathan of 292, Deans Road,
Maradana. *Respondent.*

No. 24
Decree of the
Supreme Court
dismissing
Appeal
8.5.66—
Continued

Dr. Natarajan Sithamparanathan of 292, Deans Road,
Maradana..... *Respondent-Appellant.*

against

Ramanathan Mathuranayagam of 96, Vauxhall Street,
Colombo..... *Petitioner-Respondent.*

Action No. 19842/T.

District Court of Colombo.

This cause coming on for hearing and determination on the 8th day of May, 1966 and on this day, upon an appeal preferred by the respondent-appellant before the Hon. Hugh Norman Gregory Fernando, Senior Puisne Justice and the Hon. Asoka Windra Hemantha Abeyesundere, Q.C., Puisne 10 Justice of this Court, in the presence of Counsel for the respondent-appellant and the petitioner-respondent.

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

It is ordered and decreed that the respondent-appellant do pay to the petitioner-respondent the taxed costs of this appeal.

Witness the Hon. Miliani Claude Sansoni, Chief Justice at Colombo, the 12th day of May, in the year One thousand Nine hundred and Sixty-six and of Our Reign the Fifteenth.

(SEAL)

(Sgd.) B. F. PERERA, 20
Deputy Registrar, S.C.

No. 25
Reasons for the
Judgment of the
Supreme Court
—19.4.67

No. 25

Reasons for the Judgment of the Supreme Court

S.C. No. 6/63 (F).

D.C. Colombo Case No. 19842/T.

Dr. Natarajan Sithamparanathan

vs.

Ramanathan Mathuranayagam

Present : H. N. G. FERNANDO, S.P.J. and ABEYESUNDERE, J.

Counsel : C. RANGANATHAN, Q.C., with ELMO B. VANNITAMBY
and NIHAL JAYAWICKREMA for the Respondent- 30
Appellant.

H. W. JAYAWARDENE, Q.C., with N. E. WEERA-
SOORIYA(Junior) and G. MARAPANA for the Petitioner-
Respondent.

Argued on : 8th May, 1966.

Decided on : 8th May, 1966.

Reasons delivered on 19th April, 1967.

H. N. G. FERNANDO, C.J.

This was an appeal from an order vacating an order absolute whereby probate was granted of a Last Will dated 3rd March, 1961, on the ground 40

that it was not the act and deed of the testator and that he was not competent to execute the Will. The appeal was dismissed after hearing argument and I regret that this statement of reasons has been delayed chiefly because priority had to be given to the disposal of Election Appeals.

No. 25
Reasons for the
Judgment of the
Supreme Court
19.4.67—
Continued

The testator had carried on the business of a pawn-broker and died leaving a nett estate valued by one contesting party at about Rs. 323,000 and by the other at about Rs. 447,000. He had 2 married daughters and one son. It would appear that he suffered from cancer of the liver, and he died on 5th March, 1961, two days after he executed the impugned Will.

10 The testator had on 20th December 1960 executed a Last Will P2 naming as executors and trustees his son (the appellant) and a person referred to as his nephew (the respondent to this appeal); apart from certain comparatively minor bequests, the trustees were directed by the Will P2 to hold the properties of the testator in trust for charitable purposes, being mainly the advancement of the Hindu religion. The two named trustees or the survivor of them were authorised to select new trustees from among his daughters and the descendants of themselves or of his daughters.

On 2nd February 1961, the testator executed another Will which differed from the previous Will only in that the daughters and their des-
20 cendants were not by the new Will declared eligible to be trustees.

In both these Wills the testator included a recital that he had given adequate dowries to his two daughters, and he made a devise of Rs. 30,000 to his son (the appellant) for studies abroad. In each of them he thus clearly expressed his intention that the bulk of his estate should be devoted to charitable (religious) purposes connected with the Hindu religion.

The third Will of 3rd March, however, differed radically from the two former Wills. In this case, the property was bequeathed in equal shares to the three children of the testator. There were no charitable bequests.

It is perfectly clear that the third Will, if it was indeed the voluntary
30 act of the testator, demonstrated that the motive of religious charity had been abandoned in favour of a decision to benefit the testator's own immediate descendants. There was some evidence which could explain this change of mind or heart.

The testator's children (as the trial Judge states) apparently had knowledge of the content of the Last Will^s of 20th December 1960 and 2nd February 1961, and they took steps to avert the disaster which this knowledge presaged. They wrote urgently to their uncle, the elder brother of their father, who had been in India for nearly 50 years, requesting him to come to Ceylon. This brother did come to Ceylon about 23rd February 1961,
40 and he thought fit to state in evidence that he learned only from the respondent to this appeal that the testator had made a Will appointing the appellant and the respondent as trustees. Having known about this, he decided to speak to his brother on the subject of his testamentary disposition.

The learned trial Judge refers to two sentences in this evidence. "I asked him (testator) to trust his children and not to trust an outsider", and "if he wanted to do charity let it be done by the children" and infers therefrom that "the advice given to the testator was that in place of the objector (*i.e.* the present respondent) as trustee let the names of the

children be substituted.” But the very point thus inferred by the Judge was twice put directly to the witness in cross-examination; and in each case the witness was careful to answer “ what I said was to *give* the property to the children/and they may do charity/and according to the income they get they can do charity.” In these answers the witness did not admit or imply that he advised a mere change of trustees.

The trial Judge does not say that he disbelieves the evidence of this witness that he told the testator to give the property to his children. But the conclusion he makes on this evidence is explicable only on the basis of such disbelief. There is little doubt that the witness was biased in favour 10 of his nephew and sisters, and the bias is reflected in his evidence. For instance, although he admitted that he had been summoned urgently from India by a letter from his nephew, he would have it that he was not informed by the nephew of the content of the two earlier Wills. According to him, he was informed about a Will by one Mathuranayagam, who is the appellant in this case and who had been named a trustee in the two earlier charitable Wills. Thereafter on 27th February 1961, he questioned his brother (the testator) who told him that he had given everything to charity. According to the witness, he then told his brother “ that charity should be done by the children on behalf of the parents” This was the first reference by the wit- 20 ness (in evidence in chief) to the advice he gave his brother. If such were the terms of his advice, they did not clearly bear the meaning that the children should be made absolute heirs; such a meaning could have been conveyed in simpler and more direct language. It was only during his cross-examination that the witness claimed to have used such language. In all the circumstances, I cannot hold in appeal that the trial Judge wrongly concluded that the testator was only advised to name his children as trustees. The terms of the advice (as cited above) are not incompatible with that conclusion. Proctor Caderamanpulle had attested the previous Wills of December 1960 and February 1961. His evidence was to the effect that 30 the testator instructed him on 3rd March 1961, to prepare a new Will leaving the property equally to the three children, but the learned trial Judge has held that the testator only gave instructions for a change of trustees, and that the Proctor had wrongly inferred that the trusts should be abandoned. The Judge states that he does not doubt the honesty of this Proctor, and his opinion is that the Proctor is “ over confident ” and “ cock-sure ” These deficiencies apparently sufficed in the mind of the trial Judge to explain why the Proctor drafted a document so radically different from that which (in the Judge’s opinion) he was actually instructed to prepare. 40

Consideration of the Proctor’s evidence would have caused less difficulty at the stage of appeal if the trial Judge had stated his disbelief of the evidence. But the conclusion of the Judge as to the purport of the instructions which the testator gave to the Proctor is in line with his conclusion (which I have already up-held) as to the advice given by the testator, *i.e.* to name his children as trustees. The fact that the Judge rejected the Proctor’s evidence on the basis that the proctor was careless, and not dishonest or untruthful, is not sufficient reason to hold at this stage that the evidence should have been accepted.

I should point out here that the Judge’s view, that the testator merely 50 decided to make a change of trustees and not of his dispositions, gains

support from the fact that the second Will of 2nd February 1961 was made only for the purpose of excluding from Trusteeship his two daughters and their descendants, who had been declared in the first Will of 20th December 1961 eligible to be trustees.

No. 25
Reasons for the
Judgment of the
Supreme Court
19.4.67—
Continued

There was conflict between the testimony of Dr. Austin (for the appellant) and that of Dr. Thanabalasunderam (for the respondent), as to the probable mental and physical condition of the testator on 3rd March 1961. The trial Judge thought it unsafe to base a conclusion either way on this testimony. In the case of Dr. Austin, his evidence that the testator was in
10 good physical and mental condition on 2nd March did not satisfy the trial Judge that the condition must have remained the same on the next day. The reasons for this attitude are stated in the judgment :—

- (a) The physical weakness of the testator was apparent from his shaky and illegible signature; (the Proctor asked him to sign a second time because the first signature “ did not seem good ”).
- (b) The Judge accepted the evidence of one Wilbert that the testator had been given a blood transfusion before the Will was signed.
- (c) Two doctors, one the testator’s son, who is the appellant in this case, and the other an attesting witness to the Will, were present
20 when the Will was signed. The trial Judge viewed with suspicion the failure to lead the evidence of either of these doctors as to the actual condition of the testator.

The evidence shows that the Will was prepared and signed in haste on 3rd March 1961, and that it was the appellant who summoned the Proctor early that morning to receive instructions. The trial Judge viewed with reasonable suspicion the claim that the testator on his death-bed abandoned completely his earlier fixed intention to institute a trust for religious purposes and decided instead to leave all his property to his children. In fact the two earlier Wills expressly stated that the two daughters had been
30 provided for by dowry ; the testator had presumably borne the cost of educating his son, and the earlier Wills left a sum of money for his further medical studies. The evidence led for the appellant did not suffice to satisfy the conscience of the Judge that the testator did indeed decide upon so complete a change in his disposition. Sitting in appeal, we did not feel justified in holding that the trial Judge should have reached a different conclusion.

(Sgd.) H. N. G. FERNANDO,
Chief Justice.

ABEYESUNDERE, J.

I agree.

40

(Sgd.) A. W. H. ABEYESUNDERE,
Puisne Justice.

Application for Conditional Leave to Appeal to the Privy Council
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to Her Majesty in Council under the provisions of the Appeal (Privy Council) Ordinance Chapter 100, Volume 4 of the Legislative Enactments of Ceylon (1956 Revised Edition).

S.C. Application
No. 232/66.
S.C. 6/1963 (F).
D.C. Colombo
No. 19842/T.

Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana. *Respondent-Appellant-Petitioner*. 10
(hereinafter referred to as *Petitioner*)

vs.

Ramanathan Mathuranayagam of 96, Vauxhall Street, Colombo. *Petitioner-Respondent-Respondent*.
(hereinafter referred to as *Respondent*)

To :

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

On this 6th day of June, 1966.

The humble petition of the petitioner abovenamed appearing by 20 Rita Caderamanpulle, his Proctor, states as follows :—

1. On or about the 12th April 1961, the petitioner made an application to the District Court of Colombo for Probate of Last Will No. 1285 executed on the 3rd March 1961 by his father Velautham Natarajan who died on 5th March 1961.

2. The petitioner as Executor named in the said Last Will claimed Probate, and on the motion of his Proctor, Order Absolute was entered declaring the Petitioner entitled to Probate.

3. Thereafter on the 1st August 1961 the abovenamed Respondent filed papers stating that the said Last Will No. 1285 was not the act and deed of the deceased testator, but that the deceased had executed Last Will No. 1283 on 2nd February 1961, in which both the Respondent and the Petitioner had been appointed executors. The Respondent prayed that Order Absolute already entered be set aside and that order be made declaring the said Last Will No. 1283 proved, and that the Respondent and the Petitioner named as executors in the said Last Will No. 1283 be granted Probate. Order Nisi on this application was entered on 28th August 1961 and directed to be issued returnable on 26th October 1961.

4. On 26th October 1961 the Petitioner filed objections denying that the said Last Will and testament No. 1285 of 3rd March 1961 already admitted to Probate was not the act and deed of the deceased Velautham Natarajan. The Petitioner prayed that the Order Absolute already entered in the case do stand and that the application to have the said Last Will No. 1283 of 2nd February 1961 admitted to Probate be dismissed.

5. The case went to trial on the following issues :—

(a) Was the Last Will No. 1285 dated 3rd March, 1961, the act and deed of the deceased V. Natarajan ?

(b) Was the deceased competent to execute the said Last Will ?

6. The learned trial Judge made order on 6th December 1962 answering both these issues in the negative and dismissing the Petitioner's application for Probate made on 12th April 1961 and directing that Order Absolute entered on the said application be vacated. The learned trial Judge further ordered that the Order Nisi entered on the application of the Respondent
10 be made absolute, admitting the Last Will No. 1283 dated 2nd February 1961 to Probate

7. Being dissatisfied with and aggrieved by the said judgment and decree of the learned trial Judge, the Petitioner appealed therefrom to Your Lordships' Court.

8. The said Appeal was heard by Your Lordships' Court on 8th May 1966 on which day Your Lordships' Court dismissed the said Appeal with costs, and reserved the reasons to be delivered later.

9. Being aggrieved by the said order and decree of Your Lordships' Court, the Petitioner is desirous of appealing therefrom to Her Majesty in
20 Council.

10. The said Order and Decree of Your Lordships' Court of 8th May 1966 is a final judgment of Your Lordships' Court.

11. The matter in dispute on the said Appeal amounts to or is of the value of Rs. 5,000/- or upwards, and/or the said Appeal involves directly or indirectly a claim or question to or respecting property or a civil right amounting to or of the value of Rs. 5,000/- or upwards.

12. The Petitioner has duly given the Respondent notice of his intended application to Your Lordships' Court for leave to appeal to Her Majesty in Council as follows :—

30 " Please take notice that I, Dr. Natarajan Sithamparanathan the respondent-appellant abovenamed intend to make an application to the Supreme Court for leave to appeal to Her Majesty in Council against the judgment of the Supreme Court dated 8th May 1966 in the above styled appeal within thirty days from the said date of the said judgment."

(a) by sending to the said Respondent and his Proctor by registered post on 19th May 1966 notices directed and addressed to each of them signed by the Petitioner. The Petitioner files herewith receipt marked "A" in proof of posting the notice sent by the Petitioner to the Respondent.

40 (b) by sending a notice signed by the Petitioner directed and addressed to the Respondent under a certificate of posting dated 19th May 1966. The Petitioner files herewith receipt marked "B" in proof of such posting.

(c) by sending to the said Respondent and his Proctor Mr. M. Ranganathan by registered post on 20th May 1966 notices directed and addressed to each of them separately signed by the Petitioner's Proctor.

(d) by sending a notice signed by the Petitioner's Proctor directed and addressed to the Respondent under a certificate of posting dated 20th May, 1966.

No. 26
Application for
Conditional
Leave to Appeal
to the Privy
Council
6.6.66—
Continued

13. By reason of the aforesaid averments the Petitioner is entitled to :—

- (a) an Order from Your Lordships' Court allowing the Petitioner's application for conditional leave to appeal to Her Majesty in Council under the provisions of the Appeals (Privy Council) Ordinance, subject to the usual terms and conditions, and
- (b) an order from Your Lordships' Court staying all the proceedings in the said case pending the final determination of the Petitioner's appeal to Her Majesty in Council.

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased to :—

- (a) grant the Petitioner's application for conditional leave to appeal to Her Majesty in Council under the provisions of the Appeals (Privy Council) Ordinance, subject to the usual terms and conditions,
- (b) make order staying all proceedings in the said case pending the final determination of the petitioner's appeal to Her Majesty in Council,
- (c) make order for costs, and
- (d) grant such further or other relief as to Your Lordships' Court may seem meet.

(Sgd.) RITA CADERAMANPULLE,
Proctor for Respondent-Appellant-Petitioner.

Documents filed with petition.

1. Proxy.
2. Affidavit.
3. Documents marked A and B.

Settled by :

E. B. VANNITHAMBY, Esquire,
Advocate.

30

No. 27
Minute of Order
granting
Conditional
Leave to Appeal
to the Privy
Council—
16.11.66

No. 27

**Minute of Order Granting Conditional Leave to Appeal to the
Privy Council**

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S.C. Application
No. 232 of 1966

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

S.C. 6/63(F)
D.C. Colombo
Case No. 19842/T.

Dr. Natarajan Sithamparanathan of 292, Deans Road,
Maradana.....*Respondent-Appellant (Petitioner)*.

vs.

Ramanathan Mathuranayagam of 96, Vauxhall Street,
Colombo.....*Petitioner-Respondent (Respondent)*.

No. 27
Minute of Order
granting
Conditional
Leave to Appeal
to the Privy
Council
16.11.66
Continued

The application of Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana, for Conditional Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 8th day of May 1966 in S.C. 6 of 1963 (Final) 10 D.C. Colombo Case No. 19842/T, having been listed for hearing and determination before the Honourable Hugh Norman Gregory Fernando, Senior Puisne Justice, and the Honourable Anthony Christopher Augustus Alles, Puisne Justice, in the presence of Elmo Vannitamby Esquire, Advocate for the Respondent-Appellant-Petitioner and N. E. Weerasooriya (Jnr.), Esquire, Advocate for the Petitioner-Respondent, order has been made by Their Lordships on the Sixteenth day of November 1966 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

20

No. 28

Application for Final Leave to Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S.C. Application
No. 531/66.

In the matter of an application for Final Leave to Appeal to Her Majesty in Council under the Appeals (Privy Council) Ordinance, Chapter 100 Vol. 4 L.E.C.

No. 28
Application for
Final Leave to
Appeal to the
Privy Council—
16.12.66

S.C. 6/63 (F)
D.C. Colombo
30 No. 19842/T.

Dr. Natarajan Sithamparanathan of 292, Deans Road,
Maradana..... *Respondent-Appellant-Petitioner*.
(Hereinafter referred to as *Petitioner*).

vs.

Ramanathan Mathuranayagam of 96, Vauxhall Street,
Colombo..... *Petitioner-Respondent-Respondent*.
(Hereinafter referred to as *Respondent*).

To :

The Honourable the Chief Justice and the Justices of the Supreme Court of the Island of Ceylon.

On the 16th day of December, 1966.

The humble petition of the petitioner above-named appearing by his 40 Proctor Rita Caderamanpulle, sheweth as follows :—

1. The petitioner on the 16th day of November 1966 obtained conditional leave from this Honourable Court to appeal to Her Majesty the Queen

No. 28
Application for
Final Leave to
Appeal to the
Privy Council
16.12.66—
Continued

in Council against the judgment of this Court pronounced on the 8th day of May 1966.

2. The said leave was granted on the usual conditions and the petitioner has, in compliance with the conditions ordered under rule 3(a) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance read with rules 7(1) and 8(a) of the Appellate Procedure (Privy Council) Order 1921, on the 13th day of December 1966 deposited sums of Rs. 3,000/- and Rs. 300/- respectively at the Treasury in favour of the Registrar of this Honourable Court and obtained receipt No. L/16 625691 dated 13th December 1966. The petitioner deposited the said sums on a deposit note 10 obtained from the said Registrar.

3. The petitioner, in further compliance with the said rules hereinbefore referred to, has on the 14th day of December 1966 duly hypothecated the said sum of Rs. 3,000/- by bond with the said Registrar and also tendered necessary stamps for the Certificate in appeal.

4. The petitioner respectfully submits that he has duly complied with the conditions ordered under the said rules hereinbefore referred to by entering into good and sufficient security to the satisfaction of this Honourable Court and by depositing the sum of Rs. 300/- with the said Registrar.

5. By reason of the aforesaid averments the petitioner is entitled to 20 an order from this Honourable Court allowing the petitioner's application for final leave to appeal to Her Majesty in Council under the provisions of the Appeals (Privy Council) Ordinance.

Wherefore the petitioner prays that this Honourable Court be pleased to grant the petitioner:—

- (a) final leave to appeal to Her Majesty the Queen in Council against the said judgment of this Court dated the 8th day of May 1966,
- (b) costs of this application, and
- (c) such further or other relief as to this Court shall seem meet.

(Sgd.) RITA CADERAMANPULLE, 30
Proctor for Petitioner.

Documents filed with Petition:

- 1. Affidavit.

Settled by:

E. B. VANNITAMBY, Esquire,
Advocate.

No. 29
Minute of Order
granting Final
Leave to Appeal
to the Privy
Council—
23.1.67

No. 29

Minute of Order Granting Final Leave to Appeal to the Privy Council IN THE SUPREME COURT OF THE ISLAND OF CEYLON

S.C. Application No. 232 of 1966. (Conditional Leave) In the matter of an application for Final Leave to 40 Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

S.C. No. 6/63(F) Dr. Natarajan Sithamparanathan of 292, Deans Road,
 D.C. Colombo Case Maradana *Respondent-Appellant-Petitioner.*
 No. 19842/T. *vs.*
 S.C. Application Ramanathan Mathuranayagam of 96, Vauxhall Street,
 No. 531/66. Colombo *Petitioner-Respondent-Respondent.*
 (Final Leave)

No. 29
 Minute of Order
 granting Final
 Leave to Appeal
 to the Privy
 Council
 23.1.67—
Continued

The application of Dr. Natarajan Sithamparanathan of 292, Deans Road, Maradana, for Final Leave to Appeal to Her Majesty the Queen in Council from the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 8th day of May 1966 in S.C. No. 6 of 1963 (Final) D.C. Colombo Case No. 19842/T, having been listed for hearing and determination before the Honourable Vaitilingam Manicavasagar, Puisne Justice and the Honourable Anthony Christopher Augustus Alles, Puisne Justice, in the presence of E. B. Vannitamby, Esquire, Advocate for the Respondent-Appellant-Petitioner and there being no appearance for the Petitioner-Respondent, order has been made by Their Lordships on the Twenty-third day of January 1967 allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

(Sgd.) N. NAVARATNAM,
Registrar of the Supreme Court.

PART II

EXHIBITS

Last Will No. 1278 Attested by J. M. Caderamanpulle, Notary Public

J. M. CADERAMANPULLE

Proctor and Notary,
Hultsdorf.P2
Last Will
No. 1278
attested by
J. M. Cadera-
manpulle
Notary Public
--28.12.60

No. 1278

This is the Last Will and Testament of me Velautham Natarajan of 292, Deans Road, Maradana, Colombo.

I hereby revoke and cancel all Last Wills and Codicils heretofore made 10 by me and declare this my Last Will and Testament.

I appoint my son Dr. Natarajan Sithamparanathan and my nephew Ramanathan Mathuranayagam of 96, Vauxhall Street to be the Executors and Trustees of this my Last Will and Testament.

I give and bequeath unto my grand-daughter Manjula Sugumari, daughter of Manonmany Ponnusamy Rupees Ten Thousand (Rs. 10,000/-) which amount shall be paid to her only at the time of her marriage.

I give to my said son Dr. N. Sithamparanathan a sum of Rupees Thirty Thousand (Rs. 30,000/-) for furthering his studies abroad. This sum of Rupees Thirty Thousand (Rs. 30,000/-) shall be paid by monthly instalments 20 of Rupees Five Hundred (Rs. 500/-) by the Trustees from the trust fund.

I give and devise all my properties movable and immovable to wit my Pawn Brokers Business, my personal jewels, my motor cars and household furniture articles and effects, Premises Nos. 88, 94, 96, 98, 90/5 to 90/16, Vauxhall Street, Slave Island, Premises No. 29, Church Street, Slave Island, Premises No. 292 and 288/1, Deans Road, Maradana, and my house at South Street, Rammad, South India (which property in India I inherited from my father) to my said Trustees upon Trust that the said Trustees shall out of the income of the said properties and business pay the bequests hereinbefore mentioned and shall stand possessed of the said properties and 30 business in trust for the following charitable purposes :—

- (1) To erect a Madam at Kataragama Ceylon and feed the pilgrims and the poor.
- (2) To open a Madam in Palani South India or in any other part of India if the Trustees desire.
- (3) To repair any Hindu Temples they desire.
- (4) To give free medical aid to the poor.

If the said Trustees think that these charitable works mentioned by me cannot be executed owing to the situation or whatsoever reason I give power to them to do any other charitable works as they think good.

40 The said Trustees shall have power to sell my properties or any part thereof and invest the said proceeds in any other investment or investments. They shall also have power to sell my said business and do another business out of the proceeds of such sale or continue my business of Pawn Broker.

P2
 Last Will
 No. 1278
 attested by
 J. M. Caderamanpulle,
 Notary Public
 28.12.60—
Continued

The said Trustees shall appoint new Trustee or Trustees in place of the deceased or retiring Trustee or Trustees or in place of Trustee or Trustees failing or refusing to act. Such new Trustee or Trustees shall be selected by the surviving Trustee or Trustees from the following only viz., Rajeswari Shanmugarajah (my daughter), Manonmany Ponnusamy (my daughter) Dr. Natarajan Sithamparanathan (my son), R. Mathuranayagam (my nephew) and on their death or inability to function any other descendant or descendants of my children and my nephew R. Mathuranayagam. Only two Trustees shall hold office at one time.

It is my desire that the said Trust shall be named Neelatchi and 10 Velautham Natarajan Trust.

I also declare that only the income of my said properties and of my said business or any investment representing the same shall be utilised for the purpose of executing the trust hereby created.

It is my desire that the trust be always carried on jointly by two Trustees or their successors as aforesaid.

As I have given my two daughters Manonmany Natarajan wife of S. Ponnusamy and Rajeswari Natarajan wife of D. Shanmugarajah adequate dowries at their marriage and even afterwards my said daughters will not be entitled to any claim or share out of my estate after my death. 20

In Witness Whereof I the said Velautham Natarajan have set my hand to this and another of the same tenor and date as these presents at Colombo on this Twenty-Eighth day of December, One Thousand Nine Hundred and Sixty.

(Sgd.) V. NATARAJAN.

Witnesses :

(Sgd.) M. KANDASAMY.

(Sgd.) R. A. NADESAN.

(Sgd.) J. M. CADERAMANPULLE,

Notary Public. 30

I, Joseph Marian Caderamanpulle of Colombo, Notary Public, do hereby certify and attest that the foregoing Last Will having been duly read over by Velautham Natarajan the testator who has signed as " V. Natarajan " and who is known to me in the presence of Dr. Murugesupillai Kandasamy of 40, Moor Road, Wellampitiya, and Ramachandran Alaghoo-pillay Nadesan of 25, Alfred Place, Colpetty, the subscribing witnesses who are also known to me the same was signed by the said testator and also by the said witnesses in my presence and in the presence of one another all being present at the same time at 292, Deans Road, Maradana, Colombo, on this Twenty-Eighth day of December, One Thousand Nine hundred and 40 Sixty.

I further certify and attest that in the original the words " at Colombo " in the Testimonium Clause were interpolated before the said Last Will was read and signed as aforesaid.

P2
Last Will
No. 1278
attested by
J. M. Caderamanpulle
Notary Public
28.12.60
Continued

(Sgd.) J. M. CADERAMANPULLE,
Notary Public

Date of attestation.
28th December, 1960.

(SEAL) J. M. CADERAMANPULLE,
Proctor S.C. and Notary Public,
Colombo.

R5
Copy of
Prescription of
Dr. R. S.
Thanabala-
sunderam
issued by the
City Dispensary
- 9.1.61

Copy of Prescription of Dr. R. S. Thanabalasunderam,
issued by the City Dispensary

Pres. No. 2749-34 Colombo 196

Orig. Date 9-1-61

(Handwritten mark)

Copy of the Prescription
DISPENSED BY
THE CITY DISPENSARY *R5*
UNION PLACE
COLOMBO 2.

Telephone No 9997

For Mr. V. Natarajan

R/

Melbal tabs 4 mg (25)

91 B

+ 9 Physeptene 5 mg tabs 9

91 B

This Prescription cannot be re-
peated without the written instruc-
tions of a qualified Medical Practi-
tioner Under Ordinance No. 5 of 1910.

Dr. R. S. Thanabalasunderam

Prescription of Dr. R. S. Thanabalasunderam

Prescription of
Dr. R. S.
Thanabala-
sunderam—
12.1.61

V. Natarajan

Phone: 9309

"Neela Giri"
292, DEANS ROAD,
MARADANA
COLOMBO - 10.

195

(3)

R3

V. Natarajan 176

12.1.61

℞ Hydrex (2 tabs)

(25) + (20)

℞ Praxif

℞ Colace 3;

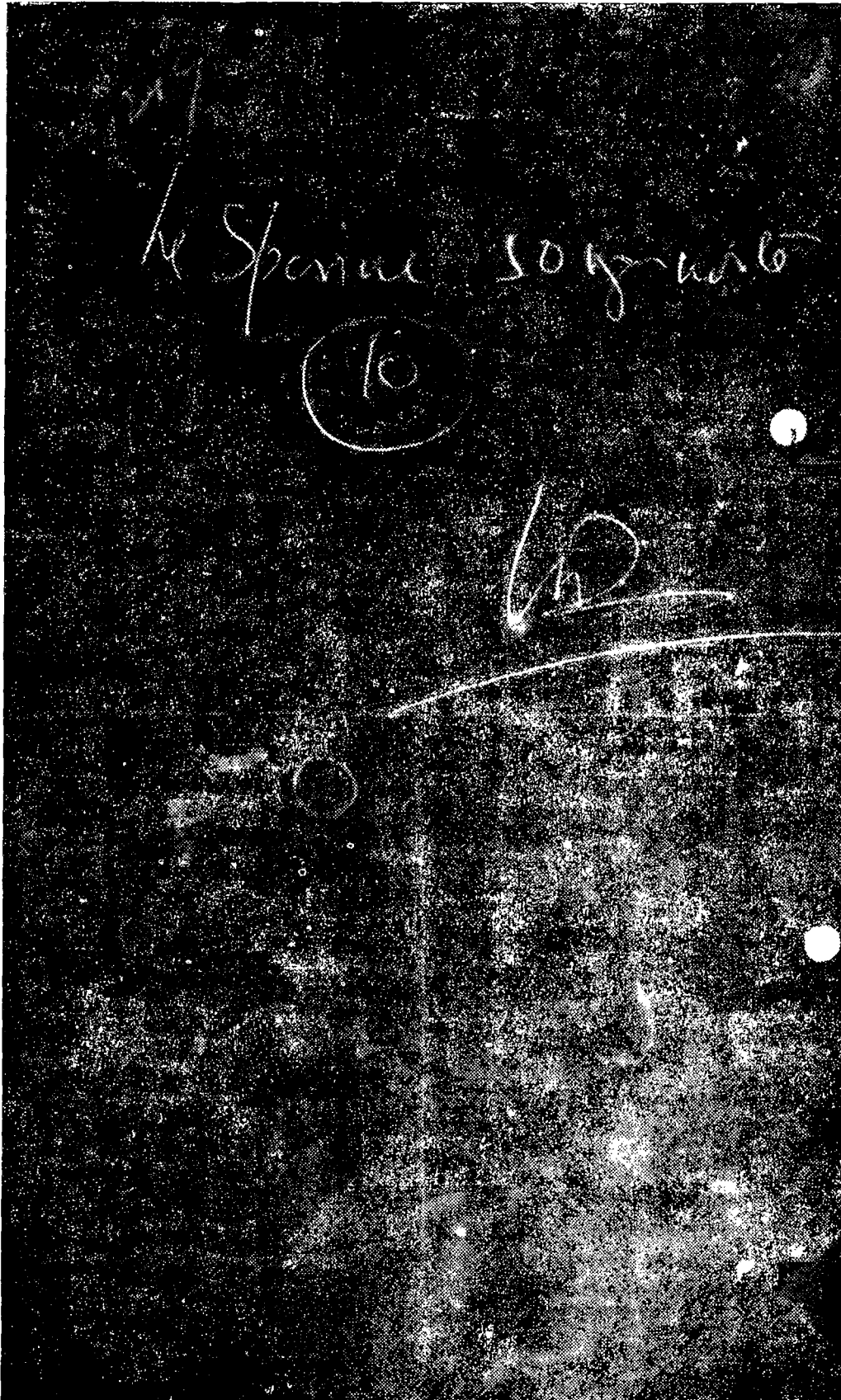
℞ Cholodyl 3;

℞

Handwritten signature and notes at the bottom of the page.

R4

Prescription of
Dr. R. S.
Thanabala-
sunderam
16.1.61—
Continued



P1

Letter sent to
Government
Agent, Western
Province by
V. Natarajan
27.1.61

P1

Letter Sent to Government Agent, Western Province, by V. Natarajan

TRUE COPY

V. NATARAJAN.
Phone : 9309.

“ Neela Giri ”,
292, Deans Road,
Maradana,
Colombo 10.
27th January, 1961.

The Government Agent,
Western Province,
Colombo.

10

Pawn Brokers Licence

Dear Sir,

I shall thank you to be good enough to issue 2 (two) licences to the persons named below, who are my son and nephew, respectively, to join me as partners :

1. Natarajan Sithamparanathan.
2. Ramanathan Mathuranayagam.

They are Ceylonese by descent and are prepared to pay the deposits necessary. I am enclosing two applications signed by the abovenamed 20 partners.

I am, dear Sir,
Yours faithfully,
(Sgd.) V NATARAJAN.

Certified correct.

(Sgd.) (on Re. 1/- stamp)
Illegibly.
Govt. Agent,
Colombo District.

The Kachcheri,
Colombo, 6.11.62.

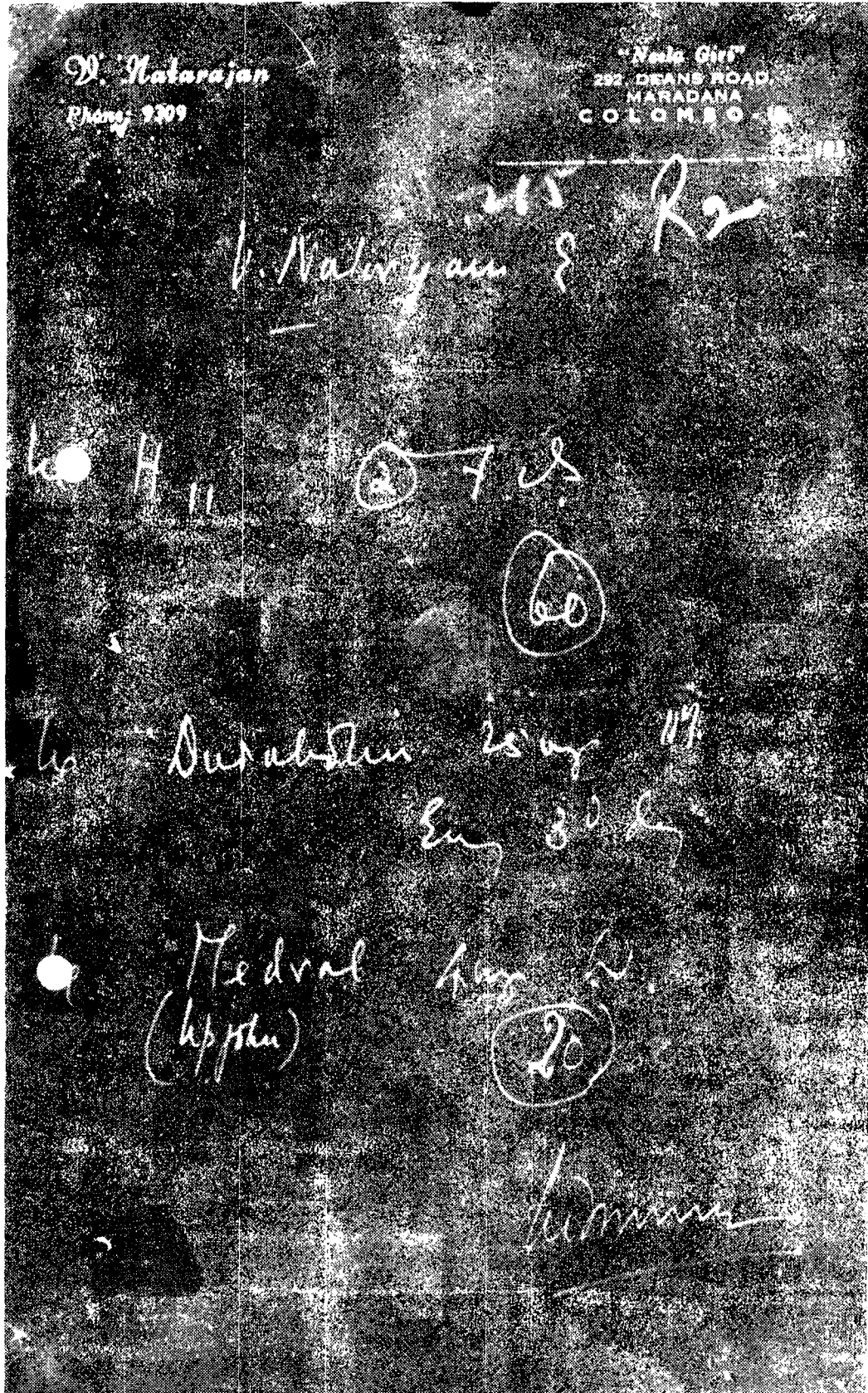
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R2

Prescription of
Dr. R. S.
Thanabala-
sunderam

R2

Prescription of Dr. R. S. Thanabalasunderam



R2
Prescription of
Dr. R. S.
Thanabala-

sunderam
Continued—

H₂O 2 Tablets Three
times a day
after meals.

Medrol 1 tab twice
a day.

Dr. R. S. Thanabala

