[IN THE PRIVY COUNCIL]

1962 *Present :* **Lord Denning, Lord Hodson, Lord Devlin, Mr. L. M. D. de Silva, and Sir Malcolm Hilbery**

E. L. PEIRIS, Appellant, *and* M. A DE SILVA, Respondent

Privy Council Appeal No. 19 of 1960

S. C. 245 Inty. of 1956—D. C. Colombo, 15908

Privy Council—Concurrent findings of fact—Rule of practice that they should not be disturbed—Rejection of evidence of professional men touching their professional work.

Where, on an issue whether or not a will was a forgery, the trial Court disbelieved two professional men (proctors) on their oath in matters closely touching their professional work, and the Supreme Court, on appeal, accepted the finding of fact—

Held, that the Judicial Committee of the Privy Council does not, as a matter of generality, disturb concurrent findings of fact.

APPEAL from a judgment of the Supreme Court.

Ralph Millner, for the appellant.

E. F. N. Gratiaen, Q.C., with *Walter Jayawardena*, for the respondent.

Cur. adv. vult.

February 15, 1962. [*Delivered by* LORD HODSON]—

This is an appeal from a judgment of the Supreme Court of Ceylon dated 19th December, 1956, dismissing an appeal from a judgment of the District Court of Colombo dated 28th September, 1956, which dismissed a petition by the appellant dated 20th October, 1954, whereby she prayed for the recall and revocation of the probate of the will of Mr. Sellapperumage William Fernando, which had been granted to the respondent on the 16th June, 1954.

The deceased man died on the 22nd February 1954, and the two contestants are his daughters. The appellant, Evelyn Peiris, is the daughter of his wife Nancy, and the respondent, Millie de Silva, is the daughter of a former wife. The position is that the respondent, who claims under a will of the deceased which was made on the 13th May 1950, established that will as the last will of her father; she is entitled to the whole of the estate under that will.

After the death, the appellant sought to raise objections to the validity of that will; she first failed to establish her objections, but eventually in September 1954, after the order absolute establishing the will had been made, she presented a petition against it, basing her opposition on the alleged existence of a later will of her father, which was not in the same terms as the earlier will, but, after providing for legacies, left the estate equally between the two daughters. The date of the supposed later will is the 4th June, 1951. That will was never produced, but what is called the protocol of the will was produced from the office of a proctor, who had, as he said, prepared the original of the will, which was duly executed by the deceased and two witnesses, and who had given the original to the deceased to take home, retaining the protocol in his own office. The protocols are, as a matter of practice, kept in bound volumes in the proctor's offices, and the document which was before the court was said to be taken from one such bound volume and said to have been brought into existence on the day on which it bears date, which is the same date as the supposed will.

The only issue before the court was whether or not the later will was a forgery. The issue was framed so as merely to ask the court to decide whether the deceased duly executed the last will of the 4th June, 1951, but the issue of forgery was clearly raised in the answer to the petition; and the court rightly dealt with the issue as raising sufficiently the question of forgery. It is upon that question, and that question only, that the result of the case depended.

The learned judge who heard the case heard the evidence of the proctor who was said to have prepared the will and the protocol, and disbelieved it. He heard the evidence also of the first attesting witness, who was also a proctor, and he disbelieved that. He did not hear the evidence of the second attesting witness, because he had died. In connection with the last attesting witness, he heard the evidence of a handwriting expert. Although he appreciated that the handwriting expert cast doubts on the authenticity of the signature of the second attesting witness, he arrived at his conclusion of fact without reliance on the evidence of the handwriting expert, but simply on his disbelief of the witnesses called on behalf of the will. Furthermore, he had the evidence of the appellant herself, who had purported to identify her father's signature on the document, and he rejected that evidence.

Forgery was the only issue in the case, although a great deal of time was spent in exploring the history of the deceased man and his relation with his wife and with his children over the years; but the finding of fact was clearly stated by the learned judge, and, on appeal to the Supreme Court, the learned judge's finding of fact was accepted.

There are concurrent findings of fact, and Mr. Millner, on behalf of the appellant, has done all he could possibly do to seek to persuade the Board that this is a case in which an exception should be made to the rule of practice that concurrent findings of fact should not be disturbed; his main argument has been that this is a case of such gravity, a criminal allegation being involved, that the Board ought to look closely even into concurrent findings of fact, especially having regard to the allegation that professional men, the two proctors, have been disbelieved on their oath in matters closely touching their professional work. Their Lordships are of opinion that that submission is not of sufficient weight for this Board to depart from the practice that concurrent findings of fact should not, as a matter of generality, be disturbed.

For these reasons, their Lordships will humbly advise Her Majesty that this appeal be dismissed. The appellant must pay the respondent's costs of this appeal.

Appeal dismissed