1952 *Present :* **Rose C.J. and Gunasekara J.**

MAUD DAVID, Appellant, *and* GRACE ROBERTS, Respondent

S. C. 96 (Inty.)—D. C. Colombo, 14,398

Will—Written on two sheets of paper—May constitute one instrument—Prevention of Frauds Ordinance (Cap. 57), s. 4.

A will may be composed of numerous papers, which together make one instrument. In such a case, the Court should consider the question whether, in the light of the evidence adduced in the particular case, the papers in question constitute a single instrument in conformity with the requirements of section 4 of the Prevention of Frauds Ordinance or whether they are " separate and independent " documents.

APPEAL from an order of the District Court, Colombo.

C. Thiagalingam, Q.C., with *S. J. Kadirgamar* and *G. L. L. de Silva*, for the intervenient-appellant.

H. V. Perera, Q.C., with *P. Navaratnarajah* and *C. Chellappah*, for the petitioner-respondent.

Cur. adv. vult.

October 28, 1952. ROSE C.J.—

The Petitioner-Respondent has propounded what is claimed to be the Last Will executed by one D. S. David, now deceased, and she asks for Letters of Administration with the Will annexed. The Appellant-Objector as Intervenient has filed his statement of objections alleging various matters affecting the validity of the Will. One of the issues—No. 11—was agreed by the parties to be heard as a preliminary issue and it is only with regard to that issue that this appeal is concerned.

Issue No. 11 reads " Ex facie does the document comply with the provisions of Section 4 of the Prevention of Frauds Ordinance (Chapter 57) ? ". For the purpose of the present argument the appellant concedes that the matter should be considered on the basis of the facts most favourable to the respondent, that is to say, that it should be assumed (for the purpose of this appeal only) that the writing was on two sheets of paper ; that it was entirely written by hand ; that at the bottom of the second page of the first sheet appears the signature of the Testator, D. S. David ; that alongside that signature appears the word and figure " No. 1 " and the signature of what is presumably an attesting witness ; that there is no room at the bottom of this page, either above or below these two signatures, for any other signature ; that on the second sheet appear four other signatures No. 2 to 5 which presumably are signatures of the other attesting witnesses ; and that the two sheets, at the relevant time, were pinned together.

The relevant words of Section 4 of the Prevention of Frauds Ordinance are as follows : " It (the Will) shall be signed at the foot or end thereof by the Testator . . . . such signature shall be made or acknowledged

by the Testator in the presence of five or more witnesses present at the same time, and such witnesses shall subscribe the Will in the presence of the Testator, but no form of attestation shall be necessary ".

The question as to whether a particular Will which is contained in more than one paper in fact forms one instrument and therefore complies with the requirements of this statute is frequently one of difficulty but it seems to me that the principle applicable can be derived from certain English authorities which relate to statutes in substantially similar terms and which in my opinion are not inconsistent with the decisions of our own Courts in Ceylon. Section 9 of the (English) Wills Act of 1837, which, as regards the signature of witnesses, is re-enacted in the Wills Amendments Act of 1852 is in substantial conformity with our own Section 4 of Chapter 57. In *In the Goods of Horsford* [1] the deceased signed his name and the witnesses attested his signature on a piece of paper upon which no dispositive part of the Will was written. This paper was attached with a string to the paper on which the Will was written, just opposite to the termination of the writing. The witnesses deposed—and their evidence was apparently accepted—that the papers, to the best of their knowledge, were in the same state when they signed them as they were at the trial, that is to say, that they were attached by string.

It was held that the execution was valid. Sir James Hannen at page 214 said, " The evidence of the attesting witnesses is not very clear as to what occurred at the time of execution but I have come to the conclusion that the sheet was attached to the codicil at that time and that the Testator acknowledged his signature to the witnesses before the attestation ".

The principle upon which the learned Judge no doubt arrived at this decision appears to be stated by himself in a later case in *In the Goods of Hatton* [2] where he said, " The Will may be composed of numerous papers, which together make one instrument ". In that particular case the learned President (as he then was) held that the Will was not entitled to probate on the ground that on the facts the two documents in question were " separate and independent " documents, the position being that the intended Will was written in duplicate, one copy being signed by the deceased only and the other by the attesting witnesses.

In a comparatively recent English case *In the estate of Mann* [3] the above observations of Sir James Hannen were referred to with approval and the principle was carried even to the extent of holding that an endorsement by the Testatrix on an envelope (containing the dispositive part of the Will) of the words " The Last Will and Testament of Jane Catherine Mann " was sufficient to entitle the envelope to be regarded as an attached paper and that therefore the documents should be admitted to probate. It is to be noted that in this case the learned Judge came to the conclusion on the facts that the circumstances precluded any possibility of fraud.

[1] *L. R. (1874) 3 P. D. 211.* [2] *(1881) 6 P. D. 204.*
[3] *(1942) 2 A. E. R. 193.*

It seems to me that this is the correct test to be applied to a case of this kind ; that is to say, that the trial Court should consider the question, in the light of the evidence adduced in the particular case, whether the papers in question in fact constitute a single instrument or whether they are " separate and independent " documents.

I would add that the appellant relied upon a case reported in *1 Supreme Court Circular* [1]. It is to be noted, however, that the report is short and deficient in reasons; nor in the absence of a clear statement of the facts is it necessary to assume that the learned Judge acted upon a different principle from that stated in the cases to which I have referred. Moreover, in a later case reported in *Leader Law Reports* [2] a more liberal view, from the point of view of the propounder of the Will, is adopted.

For these reasons I am of opinion that the learned District Judge was correct in holding that *ex facie* the papers which the petitioner-respondent is endeavouring to propound as a Will are capable of being held to form a single instrument. Whether or not the learned District Judge ultimately comes to that conclusion must, of course, depend upon the evidence and the inferences to be drawn from the surrounding circumstances.

That being so, the appeal is dismissed. The appellant must pay the costs of this appeal and such costs of the lower Court as are attributable to the determination of issue No. 11.

GUNASEKARA J.—I agree.

Appeal dismissed.