

[PRIVY COUNCIL]

1954 *Present* : Lord Oaksey, Lord Keith of Avonholm and Sir Lionel Leach

MURIEL AMARASEKERA *nee* WIJESINGHE, Appellant, and H. D. ADLIET RATNAYAKE *et al.*, Respondents

PRIVY COUNCIL APPEAL No. 34 OF 1952

S. C. 56 Inty.—D. C. Colombo 10,504

Privy Council—Fresh evidence—Admissibility in appeal.

Where application was made, in appeal, to introduce fresh evidence by a handwriting expert—

Held, that the application could not be entertained as it disregarded the well-known rule as to the introduction of fresh evidence.

APPPEAL from a judgment of the Supreme Court.

Sir Frank Soskice, with *R. O. Wilberforce*, for the appellant.

Dingle Foot, with *Carl Jayasinghe*, for the respondents.

March 22, 1954. [*Delivered by* LORD OAKSEY]—

This is an appeal from the judgment of the Supreme Court of Ceylon dated 23rd January, 1950, dismissing an appeal by the appellant from the judgment of the District Court dated the 25th January, 1949, by which probate of the will dated 23rd May, 1943, of James Albert Ratnayake was granted to the respondent Adliet Ratnayake.

The only issue in the petition has been and is whether the will was a forgery. Their Lordships have listened with attention to the argument addressed to them by Sir Frank Soskice, all, or nearly all, of which had been carefully considered and dismissed by the District Judge, and they agree with the Supreme Court of Ceylon that there is no reason to interfere with the decision of the District Judge, and that a Court of Appeal would be wholly unjustified in interfering. The District Judge who saw the witnesses disbelieved the appellant's husband and found as a fact that he had attempted to suborn one of the witnesses to the will on the question of forgery. The dispositions of the will appear to their Lordships to be just, and the appeal to their Lordships' Board after concurrent findings of fact to be without any merits.

An application was made to introduce fresh evidence by a handwriting expert, but as such application disregarded the well-known rule as to the introduction of fresh evidence it could not be entertained.

For these reasons their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs.

Appeal dismissed.