

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Muniandy Chetty Ramasamy Chetty v. Muttu Caruppen Chetty Suppramaniam Chetty, from the Supreme Court of Ceylon (P. C. Appeal No. 81 of 1912); delivered the 27th October 1913.

PRESENT AT THE HEARING:
LORD DUNEDIN.
LORD MOULTON.
SIR SAMUEL GRIFFITH.

[DELIVERED BY SIR SAMUEL GRIFFITH.]

The main question debated in this Appeal was the admissibility in evidence of a document called "D 1," purporting to be a copy of the joint will, dated 2nd July 1862, of one Saravanna Chetty, who died in 1867, and his wife Nagamma, who died in 1898. The objection was taken that the document purports to be a copy of a copy of the will, and not a copy of the will itself.

Entries in the Register of the District Court of Colombo were put in evidence relating to "Case No. 3345," and recording that on 20th February 1868 an application was filed in the matter of the last will of Saravanna Chetty, deceased, and that probate was granted on the 24th March 1868 to Muttu Caruppen Chetty as executor, the stamp duty payable being 70*l*. These entries would at Common Law be sufficient proof of the fact of the grant of probate as recorded, and their Lordships do not see any reason to doubt that the law of Ceylon corresponds in this respect with the law of England.

If the instrument of probate were itself forthcoming, it would be sufficient proof of the due execution and attestation of the will by both the testator and testatrix and of the contents of the will. But it is not forthcoming, and all the papers relating to Case No. 3345 have been lost. Recourse to secondary evidence therefore became necessary.

The document D 1 bears at its foot on the right-hand side of the page the following words:—

“ True Copy,
 “ W. ANTHONISZ,
 “ Secretary,
 “ 21st February 1868,”

and in the left-hand margin the word “ compared,” followed by the initials “ J. W. M.” The name “ W. Anthonisz ” is in the handwriting of a Mr. Anthonisz, who was the Secretary of the Court in 1868, when the Memorandum purports to have been signed, and the initials “ J. W. M.” are those of a Mr. Mack, who was then the Testamentary Clerk of the Court.

Primâ facie, then, D 1 purports to be a true copy, attested by the Secretary of the Court, of a document in the custody of the Court, after comparison made by his clerk with the original.

On referring to the contents of the document itself, it appears to be a will duly executed by the testator and testatrix in the presence of two witnesses, and attested by one Paulus Perera, a notary, whose notarial certificate is appended to the will, as required by the law of Ceylon.

Following the notarial certificate, on the left-hand side of the page, appear the following words:—

“ True copy granted to the above-named Caaliappa Chetty Muttu Carpen Chetty.

“ Colombo, 30th January 1868,

“ PAULUS PERERA,

“ Notary.”

The Appellant founds upon these words the contention that the document of which D 1 is a copy was not the original will, but the copy granted to Muttu Caruppen, who was the executor named in the will. The learned Judges of the Supreme Court thought that, even if this were so, it ought to be presumed that before Mr. Anthonisz's signature was affixed to the copy D 1 it was compared with the original will, which was then in the custody of the Court.

A consideration of the dates and surrounding circumstances strongly fortifies this conclusion.

On 30th January, when Perera gave a copy of the will to the executor Muttu Caruppen, it was still in his custody. The words "True copy granted, &c.", may be either a description of the document furnished to the executor or a memorandum written upon the original will recording the fact of the copy having been so furnished.

The original will was presumably filed in Court with the application for probate on 20th February, and the document D 1 was attested on the following day. The words "Paules Perera" at the foot of the words "True Copy, &c.", are not in his handwriting, so that D 1 cannot itself be the "true copy" given to Muttu Caruppen, but must be another copy made after those words were written on the document from which the copy was being made. It appears, therefore, that when on 20th February it was desired to obtain an attested copy of the will which had been lodged in Court on the previous day, another copy was made for the purpose, probably not later than the 20th. It appears also that the document from which the copy was made contained the words in question. Now on the 20th Perera had the original still in his custody, and no sensible reason can be suggested why, if he desired to obtain an authenticated copy of the will, the copy for authentication should be made,

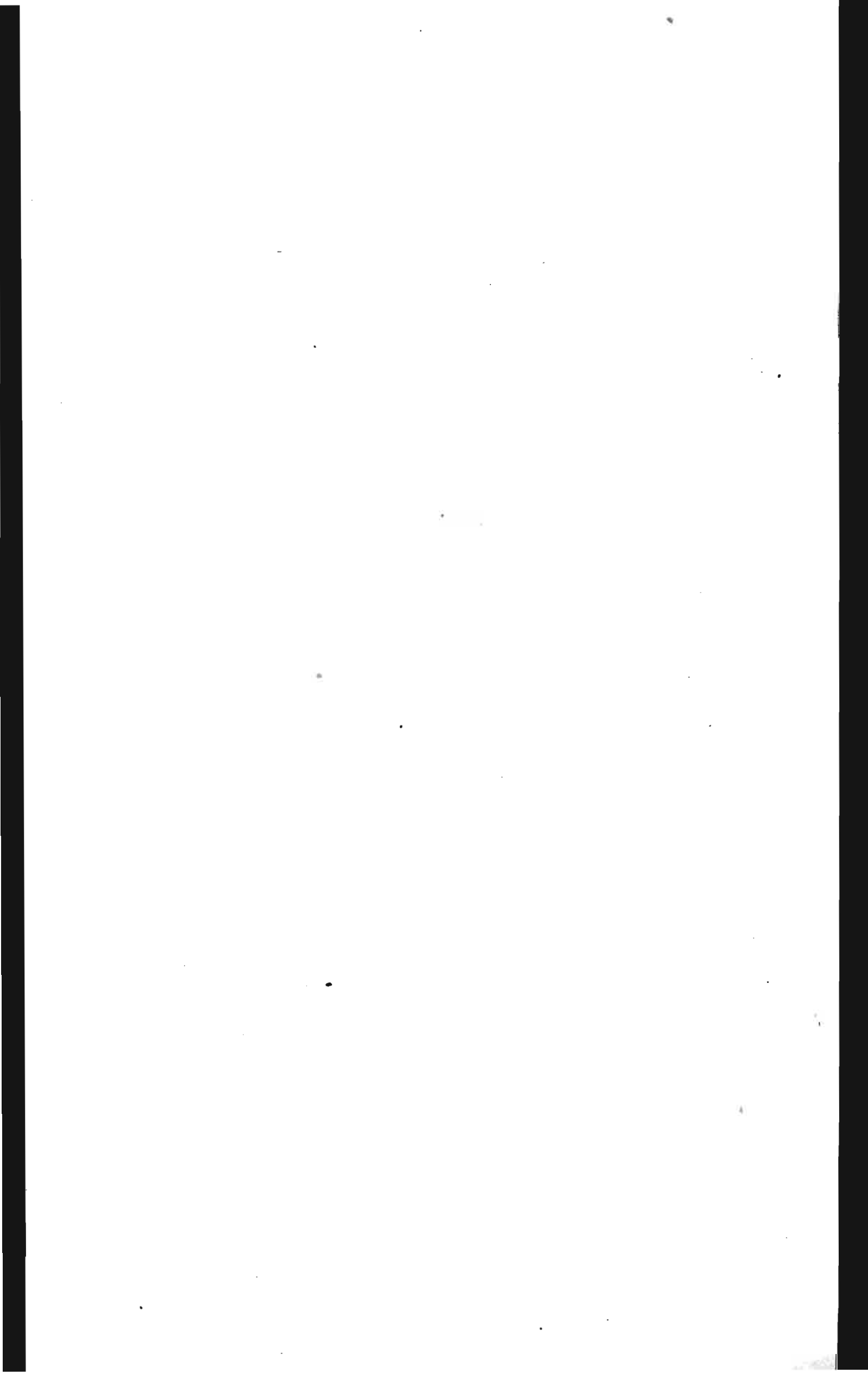
not from the original but from another copy of it.

If, on the other hand, the will then bore upon it the words in question, they would also be inserted in the copy made for authentication. They would be upon the original will when filed, and would naturally and properly be included by the officer of the Court in the document which he was to authenticate as a true copy of a record of the Court. Moreover, it is difficult, if not impossible, to suggest any reason why the officer of the Court should authenticate a copy of any document which was not such a record.

The identity of the will propounded in 1868 with that now in question is not open to dispute.

Their Lordships are therefore of opinion that there is no foundation in fact for the objection taken by the Appellant.

A point was made as to the use of the words "True Copy" in the formal authentication. In their Lordships' judgment the provisions of the Ceylon Evidence Ordinance 1905 relating to the admissibility in evidence of certified copies of public documents ought to be read as applicable to certificates given before the date of the Ordinance, but they do not think that in such cases the use of the word "certify" is essential, provided that it appears that the officer intended to attest the accuracy of the copy. For these reasons their Lordships will humbly advise His Majesty to dismiss the Appeal with costs.



In the Privy Council.

MUNIANDY CHETTY RAMASAMY
CHETTY

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MUTTU CARUPPEN CHETTY
SUPPRAMANIAM CHETTY.

DELIVERED BY SIR SAMUEL GRIFFITH.

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