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NO. 8

The Law and the Common Man

BY

Hon. Dr. C. G. Weeramantry, LL. D. (Lond.)

Puisne Justice

(Continued from our last issue)

Then again here is the old criticism of the legal profession, that it is wrapped up in its own work and not giving of its expert knowledge to the public and not making its due contribution to public life. It is of course true that there is tremendous pressure on a lawyer's time. But there is no doubt that a very honoured place awaits lawyers in society if only they will reach out to it from their offices and chambers. The public is awaiting their emergence to take their due place in society and in the administration of the varied voluntary organisations representative of civic activity. It is necessary in other words for the legal profession to join in the flow of history if it is to fulfil its proper and time-honoured function in society. The emergence of the lawyer in this way will have the most salutary effect on society, for his experience, his knowledge, his judgment and his sense of responsibility when displayed upon this wider stage cannot but result in a toning up of public life generally. I do appeal therefore to the members of the profession to make that necessary sacrifice of their time which I think the conditions of our age demand.

Finally I think it is necessary that the legal profession should be alert to this fact that the time is past for the more mechanical implementation of rules of law. The time has come when the profession should be more keenly aware of the jurisprudential aspect of the law and more keenly aware of their duty to make their due contribution towards the moulding of the law. While law making and the impulse for law reform fall largely within the sphere of the lay public, the profession, by virtue of its special knowledge and experience has a peculiarly valuable contribution to make in this regard—a role which has been going by default in the recent past. Lawyers should not be more practitioners but should tend to become jurists as well, in this age which, more than any other in history, demands so much more from the technically skilled.

Finally I would like to stress that the profession is a dedicated body of men willing to place at the layman's disposal all their talents so patiently and painfully acquired over so long a period. Even more, it is a repository of independence in the face of wealth and position which cannot be matched by any other group of men in our society. Let this be realised by the public and let them look upon the profession as friends and protectors, ever present in time of need, for it is largely owing to the profession that the citizen can walk among his fellows with the dignity of equal liberty under the law and the assurance that no wealth or influence or power will stand between him and the assertion of his rights.

I come finally to the citizen and the courts.

If a citizen should ascend Hultsdorp hill any morning and walk into the courts of law he

would probably see in one court a divorce suit in progress; in another, two people fighting for one perch of land or for a jak tree, in another, a quarrel over the estate of some deceased testator and in another a dispute arising from the refusal of an aggrieved customer to pay a garage repair bill for some paltry sum. Well, he may think to himself what a waste of expenditure all this involves. Why is it that when two persons are fighting for a jak tree or for a paltry sum the State must maintain a judge to sit in open court, pay so many officers of court, and keep up an expensive court-house and all its attendant paraphernalia? Why may not the same result be achieved by a competent and qualified public official seated in his office? The answer lies in the importance of the principle of publicity in the administration of justice. The courts are, as Lord Hewart has said a public spectacle demonstrating to society that if contracts are not honoured damages must be paid, if assault takes place punishment must follow, and if torts are committed damages must be paid. The knowledge that the process for securing this result is available to every citizen operates as a great insurance policy which prevents contracts being broken, torts being committed and crimes being perpetrated. It is the knowledge that the machinery exists and that when it is employed it is employed with skill and without favour that renders its employment unnecessary save only in the exceptional case.

Secondly it is considered by many historians and lawyers to be even more important than the sovereignty of Parliament itself that justice

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Verdict of the People Reveals Variegated View-Points

The Swing to the Left United Front

Swayed by the S. L. F. P.

Unprecedented in the history of parliamentary elections, the 1970 May Election held in Lanka, stands out as a performance which even the most optimistic Coalitionist Leader would not have hoped for. It was a guest of S. L. F. P. - C. P. L. S. S. P. wind that swept the polls and incidentally swept the U. N. P. and allied parties off their seats. The blowing was however dominated by a strong S. L. F. P. direction with the C. P. and the L. S. S. P. keeping to specified areas. And when the wind stopped after full ten hours of chartered course, the result was clear; the up-rooting of well rooted political trees was in the pattern of a periodical cyclone. Here and there some old trees braved the blowing and survived the storm. And the result was the picture of a wind-worn U. N. P. acknowledging decisive defeat.

In the traditional struggle between the major parties of the Tamil speaking people the election wind burst into a strong blowing changing direction swiftly and suddenly. The F. P. saw the Party President and the Secretary being swept

away along with their Iron men. As if to confirm the dramatic turn in political thinking, the T. C., suffered the same fate, the storm making short work of the President, the Secretary and the Youth Front Leader. But more pronounced was the drifting away of the C. P. and L. S. S. P. candidates from the march towards the post of political victory. The North and the East maintained the tradition of returning members not belonging to the C. P. and the L. S. S. P.

The North

The F. P. contested all seats in the North, the T. C. all seats but one. The C. P. 2, the L. S. S. P. 5, the S. L. F. P. 1. The Eela Tamil Front 1 the Tamil Freedom Party 1.

Independents with miscellaneous convictions also contested the Elections. The F. P. retained 10 seats and the T. C. likewise had 3 seats. All others were rejected. The party strength remained the same but the actual voting revealed a very interesting feature of public opinion.

Analysing the voting in the Northern Electorates, the student of politics will find that 159797 were F. P. minded while 175567 favoured the Tamil Congress. Only 12433 voted for the C. P. and a meagre

(Continued on page 3)

TIME IS PRECIOUS

FOR INSTANT WASH

Use Milk White
Washing powderCOLLECT THE WRAPPERS
and
WIN PRIZESMILK WHITE
SOAP WORKS
JAFFNA

F. Pathmanathan (CP)	3,120
S. M. K. Subasinghe (Ind)	584
A. D. A. Senevaratna (Ind)	184
Majority	273

Mannar

V. A. Alakagone (FP)	10,697
S. A. Raveem (UNP)	10,628
N. M. Abdul Cader (SLFP)	513
Majority	69

Trincomalee

B. Neminathan (FP)	12,395
S. M. A. Jamaludeen (SLFP)	8346
R. Navaratnarajah (UNP)	5703
R. G. Senanayake (SMP)	601
Majority	4049

Muthur

A. L. Abdul Majeed (SLFP)	22,727
A. Thangathurai (FP)	19,787
H. D. L. Leelarataa (Ind)	18698
M. E. H. Muhamed Ali (UNP)	15,018
B. G. Srisena (Ind)	253

Batticaloa

C. Rajadurai (FP)	1st M. P.
Rajan Selvanayagam (Ind)	2nd M. P.

Kalkudah

K. W. Devanayagam (UNP)	11,205
P. Manickavasagam (FP)	8420
S. Sivagnanam (Ind)	1660
S. S. Gabriel (Ind)	557
A. M. A. Cafoor (SLFP)	331

Amparai

Senerat Somaratne (SLFP)	18,510
P. Dayaratne (UNP)	14,194
Y. S. Minoris (Ind)	414

Paddiruppu

S. Thambirajah (UNP)	13,370
S. M. Rasamanickam (FP)	12,723

Kalmunai

M. C. Ahmed (SLFP)	8779
A. R. Munsoor (UNP)	7827
A. Udumalebbe (FP)	4930

Nintavur

M. M. Mustapha (UNP)	13,481
M. I. M. Abdul Majeed (Ind)	13,406
C. I. S. Cassim (SLFP)	556

Pottuvil

M. A. Abdul Majeed (UNP)	10,610
N. Tharumalingam (Ind)	9335
M. I. Abdul Jabbar (SLFP)	5209

The Law and the Common Man

(Continued from page 1)

should be publicly and openly administered. On that point Bentham has said "In the darkness of secrecy sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice... "Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial." And again he has observed, "The security of securities is publicity."

To the same effect Hallam observes that there is no real freedom in any State where the judicial process does not take place in public. He too places this even above the sovereignty of Parliament as a safeguard of the liberties of the subject. As with the law and the legal profession, so also with the judicial process as well, it is a need of the times that there should be more acquaintance with it on the part of the public. The present attitude of indifference and apathy ought not be permitted to continue.

To illustrate the complete lack of interest of the citizen in the judicial process may I give you one illustration. The great Justice Holmes was considered by many to be the most eminent

IN THE DISTRICT COURT OF JAFFNA

Case No. T/2586

In the matter of the application for Letters of Administration over the estate of the late Neelayathevi daughter of Sittampalam of Jaffna. Deceased

Gunapooshani widow of Kandavanam of 15 Oddumadam Road, Vannarponnai

Vs. Petitioner

- 1 Subramaniam Balasubramaniam of Wyman Road, Jaffna
- 2 Manickavasagar son of Ramanathan of Eastern Paper Mills Corporation, Valaichensai
- 3 Ramanather Shanmuganathan of 15 Oddumadam Road Vannarponnai
- 4 S. Sittampalam, Periyathoddam, Karaveddi East

Respondents

This matter coming on for disposal before I. M. Ismail Esquire District Judge, Jaffna on the 22nd day of April, 1970 in the presence of Mr. K. Gunaratnam Proctor on the part of the Petitioner, and the Petition and affidavit of the Petition dated the 24th day of March, 1970 having been read.

It is ordered that the Petitioner abovenamed as grand mother of the deceased and as one of the heirs of the estate of the deceased abovenamed be declared entitled to have Letters of Administration be issued to her and that Letters of Administration be issued to her accordingly unless the Respondents abovenamed or any other person or persons interested shall appear on or before the 9th day of June, 1970 and show sufficient cause to the satisfaction of this Court to the contrary.

This 22nd day of April, 1970
Sgd. I. M. Ismail
District Judge, Jaffna

Drawn by:
Sgd. K. Gunaratnam
Proctor for Petitioner
34 29 & 5

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

No. T/2590

In the matter of intestate estate of the late Sarayanamuttu Seenivasagam of Kallalalai Road, Tirunelveli North, Jaffna; (deceased)

Thangammah widow of Sarayanamuttu Seenivasagam of Kallalalai Road, Tirunelveli North, Jaffna;

Vs. Petitioner

- 1 Seenivasagam Mahendra of Tirunelveli North, Jaffna;
- 2 Seenivasagam Nagendra of do
- 3 Seenivasagam Thevandra of do
- 4 Seenivasagam Rajendra of do
- 5 Poosherani wife of
- 6 Kanagaratnam Wilwarajah of do
- 7 Jeyarani daughter of Seenivasagam of do
- 8 Indrani daughter of Seenivasagam of do

Respondents

This action coming on for disposal before I. M. Ismail Esquire, District Judge Jaffna on the 25th day of April 1970 in the presence of Mr. R. Sivasubramaniam Proctor on the part of the petitioner and affidavit of the petitioner dated 29th March 1970 having been read.

It is ordered that the petitioner abovenamed be and she is hereby declared entitled as the widow of the deceased to have Letters of Administration to the estate of the abovenamed deceased issued to her accordingly unless the respondents or any other persons interested shall show sufficient cause to the contrary to the satisfaction of this Court on the 28th day of June, 1970.

This 25th day of April 1970
Sgd. I. M. Ismail
District Judge, Jaffna.

Drawn by
R. Sivasubramaniam
Proctor for Petitioner
(036 29 & 5)

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

Testamentary Jurisdiction
No. 2587

In the matter of the intestate estate of the late Assimuthu widow of Ramalingam of Moolai

Deceased

Theivanipillai alias Saraswathi pillai widow of Ponnambalam Kathiravelupillai of Moolai, presently of Malaysia by her duly appointed attorney Subramaniam Ambalavanar of Vaddukkodai

Vs. Petitioner

- 1 Ambalavanar Paramalingam and wife
- 2 Sivapakiam both of Moolai

Respondents

This matter coming on for disposal before I. M. Ismail Esquire, District Judge Jaffna on the 25th day of April 1970 in the presence of Mr. S. Coomaraswamy Proctor on the part of the petitioner and the affidavit of the petitioner dated 24th March 1970 having been read.

It is ordered that Letters of Administration to the estate of the abovenamed deceased be issued to the petitioner as one of the heirs of the abovenamed deceased, unless the abovenamed respondents or any others interested shall appear before this court on or before the 28th day of June 1970 and show sufficient cause to the satisfaction of this court to the contrary.

This 25th day of April 1970
K. E. Kathirgalingam
Acting District Judge

Drawn by
S. Coomaraswamy
Proctor for Petitioner
33 29 & 5

IN THE DISTRICT COURT OF JAFFNA

No. P/1218

- 1 Seenivasagam Thambirajah and wife
- 2 Nallammah both of Kandarodai

Vs. Plaintiffs

- 1 Arumugam Sabanayagam and wife
- 2 Annaratnam both of Kandarodai
- 3 Sinnathamby Ponnuthurai and wife
- 4 Manonmany both of do
- 5 Nallathamby Arumathurai of do

Minor 6 Suseelathevi daughter of Nallathamby do

7 Atputham daughter of Nallathamby of do
The 6th and 7th being minors by their guardian-ad-litem the 8th

- 8 Sinnakuddy Nallathamby of do
- 9 Vettivelu Apimanasingam of Udawal

Defendants

It is hereby notified that action No. P/1218 has been instituted in the District Court of Jaffna under the Partition Act No. 16 of 1951 for the partition of the land called Sankavattai and situated in the village of Kandarodai in the Jaffna District

The defendants in the aforesaid action are summoned to appear in Court on the 27th day of January 1970 at 10 O'clock of the forenoon.

By Order of Court
Sgd. S. Perathamby
O. C.

This 12th day of October 1969
39 29 & 5

judge that sat on the American Supreme Court bench, and by any standards he was certainly a judicial phenomenon of his age. He made probably the most outstanding judicial contribution to the development of the American Constitution and of the liberties of the subject in that country and served long years on the Supreme Court Bench. When he reached his 90th birthday, whilst still in office, a New York newspaper sent out a team of reporters to interview the average citizen in order to gauge the public reaction to the life and work of this great judge. Sad to relate, many a citizen when questioned by this team of reporters, asked whether they were being questioned about "that young fellow on the Supreme Court bench who is always disagreeing with the other chaps."

Such a reaction could not possibly have proceeded from any enlightened citizen who was taking an intelligent interest in the maintenance and growth of liberty in his country.

We would also desire a more general realisation that the work of the judiciary is not an impersonal process but is the work of human beings striving to achieve by the purely human means at their disposal that perfection in the administering of justice which is really the attribute of a power higher than ourselves. Judges

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

Testamentary Jurisdiction No. 2592/T

In the matter of the intestate estate of the late Arumugam Nadarajah of Alvai North, Alvai

Deceased

Annapooranam wife of Murugupillai Arumugam of Alvai North, Alvai

Vs Petitioner

Murugupillai Arumugam of Alvai North, Alvai

Respondent

This matter coming on for disposal before I. M. Ismail Esquire, District Judge, Jaffna, on the 7th day of May 1970, in the presence of Mr. S. Kanagaratnam Proctor on the part of the Petitioner and the Petition and Affidavit dated 22nd day of April 1970, of the Petitioner having been read.

It is ordered that the Petitioner be declared entitled to have Letters of Administration of the estate of the said deceased issued to her as his mother Unless the Respondent abovenamed or any other person or persons interested shall on or before the 6th day of July 1970, at 10 A. M. show sufficient cause to this court to the contrary

This 7th day of May 1970 Sgd.

K. E. Kathirgamalingam Actg. District Judge 17-5-70

Drawn by Sgd. S. Kanagaratnam Proctor for Petitioner 32 29 & 5

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

Testamentary Jurisdiction No. 2583/T

In the matter of the intestate Estate of the late Ponnammah wife of Ponnammah wife of Vallipuram Sathasivam of Kondavil East, Kondavil

Petitioner

- 1 Sathasivam Kathirgamathan,
2 Sathasivam Yogananthan
3 Sathasivam Arunthavanayagi all of Kondavil East, Kondavil

Respondents

This matter coming on for disposal before I. M. Ismail, Esquire, District Judge of Jaffna on the 31st day of March, 1970 in the presence of Mr. A. Thanabalasingam and his assistant Mr. S. Sithamparanathan, Proctors on the part of the petitioner and the affidavit of the petitioner dated 18th day of March, 1970 having been read.

It is ordered that the petitioner abovenamed be and he is hereby declared entitled as surviving spouse of the deceased abovenamed to have Letters of Administration to the above estate issued to him accordingly unless the respondents abovenamed or any other person or persons interested shall on or before the 2nd day of June 1970 and show sufficient cause to the satisfaction of this Court to the contrary.

This 31st day of March, 1970

Sgd I. M. Ismail District Judge

Drawn by Sgd. A. Thanabalasingam Proctor for Petitioner (O.30 22 & 27)

ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

Testamentary Jurisdiction No. 2585

In the matter of the Last Will and Testament of the late Canagasabai Arulampalam of Kod-dady, Jaffna

Deceased

Arulampalam Mahadeva of Hospital Road, Kod-dady, Jaffna

Petitioner

This matter coming on for disposal before I. M. Ismail Esquire, District Judge, Jaffna on the 31st day of March 1970 in the presence of Mr C. C. Somasegaram Proctor on the part of the petitioner and the affidavit of the petitioner dated 15th day of March 1970 and the affidavit of the 2nd witness to the said Last Will having been read.

It is ordered that the Last Will and Testament of the abovenamed deceased dated 16th May 1955 and attested by A. Arulambalam Notary Public under No. 476. original of which is filed of record in this case, be and the same is hereby declared proved and probate thereof issued to the petitioner as the Executor named therein unless any others interested appear before this court on or before the 2nd day of June 1970 and show sufficient cause to the satisfaction of this court to the contrary.

This 31st March 1970.

Sgd. I. M. Ismail District Judge

(O.27 22 & 29)

Esquire, District Judge Jaffna on the 31st day of March 1970 in the presence of Mr C Mahesan, Proctor on the part of the petitioner and the petition dated 18-3-1970 and affidavit of the petitioner dated 16-3-1970 having been read.

It is ordered that the petitioner as the son of the deceased be declared entitled to have Letters of Administration over the estate of the deceased abovenamed issued to him and that Letters of Administration be issued to him accordingly unless the respondents abovenamed or any other person or persons shall appear on or before the 22nd day of June 1970 and show sufficient cause to the satisfaction of court to the contrary.

This 31st day of March 1970

K. E. Kathirgamalingam Actg. District Judge, Jaffna Drawn by (Sgd.) C. Mahesan Proctor for Petitioner 29 22 & 29

The Law and the Common Man

(Continued from page 2)

must occasionally err as all human beings must err but we hope our errors are few and far between and can only emphasise that if errors do occur they are not for want of striving. It would be well to remember the words of Justice Cardozo that the judges "do not stand aloof on those chill and distant heights. The great tides that affect humanity do not turn aside in their course and pass the judges by." Let it be remembered therefore that the judges are but human and striving towards the attainment of that ideal of perfect justice so dear to us all, and that they are human beings striving to this end to the limit of their abilities and within the limits of their human frailties.

It is indeed a happy augury for this country that succeeding generations of judges have by their rectitude, their devotion and their scholarship built for the judiciary a high place in the people's esteem and affection. The built in respect for the judges and the courts which is characteristic of our people makes it easier to suggest that ways and means should be found to bring the judicial process even closer to the understanding of those whom it seeks to serve. In regard to the judicial process itself I would like to emphasise that in the sitting of truth from falsehood, in the disregard of power and position, in the shedding of pride and prejudice, partisanship and intolerance and in the thirst for what is true and just which accompany the judicial process we see also some of the attributes of the divine. For these reasons, all those who are engaged in that quest for justice shed the dross of their human nature and stand transfigured even momentarily with those higher attributes. It is for this reason that all who are engaged in this search whether as lawyers or as judges whether as officers of court or as jurors are specially honoured in every society and in every age. Well has it been said that there is no work more worthy of the human mind and no greater duty that we in this world can propose to ourselves than to exert our best energies in the quest for justice and in the ascertainment of truth. To quote an old English judge: 'This court in which we sit is a temple of justice, and the advocate at the bar as well as the judge upon the bench are equally ministers of that temple. We are all judges, jurors, advocates and attorneys together concerned in the search for truth; the pursuit is a noble one and those are honoured who are the instruments engaged in it. Let us never forget that the attainment of justice and the pursuit of truth are higher and nobler results than any which in this place we can propose to ourselves.' Now it is into that honoured circle that we would wish to draw the private citizen. The work we are doing is too tremendous, it is too significant, it is too difficult for us to do it alone. We need his co-operation and with his co-operation the quality of our work will improve. He as a citizen must not fail to take an intelligent interest in this quest for justice, a quest which involves not merely one of the highest forms of human activity in the State but constitutes one of the high watermarks of civilisation itself.

சான்றிதழ் வழங்குவதற்கு உடனடியாக உரிமையாளர் பெயரில் அல்லது உரிமையாளர் பெயர் இல்லாதவிடங்களில் உரிமையாளர் பெயர் குறிப்பிட்டு அனுப்ப வேண்டும்.

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ORDER NISI

IN THE DISTRICT COURT OF JAFFNA

Testamentary Jurisdiction Testy No. 2584

In the matter of the Intestate Estate and effects of the late Kishan Deves widow of Bajarangal of 159, K. K. S. Road, Jaffna

Deceased

Bajarangal Prahladrai of 159, K. K. S. Road, Jaffna

Vs. Petitioner

- 1 Laxmi Devi wife of Prahladrai of 159, K. K. S. Road Jaffna
2 Mohri wife of Purnamal Poddar of 19, Balmukand Makar Road, Calcutta
3 Pans widow of Prahladrai Nathoramka L/o Purnamal Paddar of 19, Balmukand Makar Road, Calcutta
4 Ilayachi wife of Ratanlal Singhania of P 40 B.K. Paul Bvenue, Calcutta

Respondents

This matter coming on for disposal before I. M. Ismail