

which was disapproved in *Kiri Puncha vs. Kiri Ukku (Supra)* and for the reasons aforementioned, I hold that that the Court of Appeal has decided this matter erroneously.

For the reasons afresaid, I answer the issue in the appeal in the negative. This appeal is accordingly allowed and the judgment of the Court of Appeal dated 27.08.2003 and the judgment of the District Court dated 30.07.1993 are set aside. In all the circumstances of this case there will be no costs.

AMARATUNGA, J. - I agree.

MARSOOF, J. - I agree.

Appeal allowed

**SANJI PARARAJASINGHAM AND ANOTHER
VS.
DEVI PARARAJASINGHAM**

SUPREME COURT
BANDARANAYAKE, J.
UDALAGAMA, J AND
FERNANDO, J.
SC(APPEAL)No. 74/2002
CA No. 353/1999
DC MT. LAVINIA No. 738/98T
WITH
SC(APPEAL) No. 75/2002
CA No. 352/1999
DC MT. LAVINIA No. 707/97/T
15TH JUNE, 2005 AND 19TH AND 20TH JULY, 2005

Last will - Revocation by second marriage - Prevention of Frauds Ordinance, section 6 - Whether "subsequent marriage" in section 6 includes a second marriage of the testator - Interpretation of statutes.

Muthiah Pararajasingham died on 02.11.1997, his first marriage to one Asoka having been dissolved in July 1993. There were two children by the first marriage Sanji and Vinoji (appellants). On 24.08.1990 Muthiah made his last

will making Sanji the sole heir and one Devi Pararajasingham (respondent) the executor.

The appellant Sanji complained to the District Court (Case No. 738/98/T) that the executor (the respondent) failed to take steps to administer the estate and sought an order that the appellant (Sanji) was the sole heir to the estate. The respondent whom the deceased had married after making his will applied to the District Court (Case No. 707/97/T) for letters of administration on a claim of 1/2 share of the estate to herself and 1/2 share to Sanji and Vinoji on the basis that the deceased had died without leaving a last will.

The District Judge appointed the respondent as the administrator of the estate of the deceased. The Court of Appeal affirmed it by dismissing an appeal by Sanji relying on section 6 of the Prevention of Frauds Ordinance and the judgment in *Mary Nona vs. Edward de Silva* (50 NLR 73) which held that a will is revoked, *inter alia*, by a subsequent or second marriage of the testator, in terms of section 6 of the Prevention of Frauds Ordinance.

HELD:

1. The decision of the Court of Appeal was correct and the contrary view expressed in *Johannes Muppu* (SCC Vol. II No. 4, 14) was obiter.
2. The plain and grammatical meaning of "subsequent marriage" in section 6 of the Prevention of Frauds Ordinance will include a second marriage of the testator for revoking a last will.

Per **BANDARANAYAKE, J.**

"The words of a statute must *prima facie* be given their ordinary meaning"

3. Court cannot alter the plain and clear meaning of the statute. The court must administer it leaving it to the Legislature to give effect to its intention or supposed intention.

Cases referred to :

1. *Ludwig v Ludwig* 2M 449
2. *Shearer v. Shearer's Executors* (1911) CPD 813
3. *Johannes Muppu* SCC Vol II No 4, 14
4. *Mary Nona v. Edward de Silva* (1948) 50 NLR 73
5. *Re Estate Koshen* (1940) 2SR 174
6. *Mudanayake v Sivanagasunderam* (1931) 53 NLR 25

7. *Fernando v Perera* (1932) 25 NLR 197
8. *Sallis and another v. Jones* 1936 Probate Division 43
9. *Re Mainland Lloyds Bank Ltd. v. Mainland* (1939) All ER 148
10. *Miller v Solomons* (1852) Exch 560
11. *Nolon v Clifford* 1 CLR 453

APPEAL from the judgment of the Court of Appeal

Rohan Sahabandu for appellants in SC No. 74/2002 and SC No. 75/2002

A. R. Surendran, P. C. with K. V. S. Ganesharajan and Nadarajan Kandeepan
for respondent in SC No. 74/2002 and for respondent in SC No. 75/2002

Cur. adv.vult.

October 14, 2005

SHIRANI BANDARANAYAKE, J.

These are appeals from the judgment of the Court of Appeal dated 31.05.2002. By that judgment the Court of Appeal affirmed the decision of the District Court dated 31.12.1998 and dismissed the appeal. The petitioner-appellant-appellant in S. C (Appeal) No. 74/2002 and respondents-appellants-appellants in S. C. (Appeal) No. 75/2002 (hereinafter referred to as the appellant) appealed to this Court where special leave to appeal was granted.

The facts of this appeal, *albeit* brief are as follows :

The appellant is a daughter of one Muthiah Pararajasingham, who had passed away on 02.10.1997. The appellant has a sister, Vinoji who is the 2nd respondent-appellant-appellant in S. C. (Appeal) No. 75/2002 (hereinafter referred to as Vinoji). The late Pararajasingham was earlier married to one Asoka Wickramasinghe and they were divorced in July 1993. During that marriage the appellant and Vinoji were born. The said Pararajasingham had executed his last will on 24.08.1990 appointing the appellant as his sole heir and appointing one Nithyalakshmi Devi Pararajasingham, the respondent-respondent-respondent in S.C.(Appeal) 74/2002 and petitioner-respondent-respondent in S. C. (Appeal) No. 75/2002 (hereinafter referred to as the respondent), as the Executor. Later the said deceased had married the respondent. According to the appellant, the said Executor had not taken steps to have the estate administered. The appellant had therefore petitioned the District Court and sought an

order of court that the appellant is the sole heir to the Estate of the deceased (Case No. 738/98/T-S. C. (Appeal) No. 74/2002). Thereafter the respondent Nithyalakshmi Devi Pararajasingham, the second wife of the late Muthiah Pararajasingham and the step mother of the appellant had filed papers in the District Court of Mr. Lavinia (Case No. 707/97/T-S.C.(Appeal) No. 75/2002) seeking an order to administer the property, claiming 1/2 share of the Estate of the deceased and the other 1/2 share to be given to the appellant and Vinoji, the two daughters of the deceased, on the basis that the deceased died without leaving a last will.

The appellant had objected to the said application of the respondent on the basis that the deceased in terms of his last will had bequeathed his Estate to the appellant as his sole heir.

The District Court considered both cases (Case No. 707/97/T and Case No. 738/98/T) together with one judgment binding the other and on 31.12.1998 dismissed Case No. 738/98/T and appointed the respondent Nithyalakshmi Devi Pararajasingham as the administrator of the Estate of the deceased on the basis that the last will was revoked by the subsequent marriage of the Testator, which position was confirmed by the Court of Appeal.

Both Counsel agree that the only question involved in this appeal is to consider the meaning that should be given to section 6 of the Prevention of Frauds Ordinance in order to decide whether the last will of the Testator was revoked by his subsequent marriage. They also agreed that both cases could be considered together with one judgment binding the other.

Learned Counsel for the appellant strenuously argued that in terms of Section 6 of the Prevention of Frauds Ordinance, there was no revocation of the impugned will by the marriage of the Testator to the respondent. His position was that although ordinarily a last will could be revoked by a subsequent marriage of the Testator by virtue of section 6 of the Prevention of Frauds Ordinance, this rule would be applicable only where an unmarried person contracts a marriage for the first time. Accordingly learned Counsel for the appellant submitted that the said provision would not be applicable in a situation where a person had married for the second time.

Section 6 of the Prevention of Frauds Ordinance is in the following terms:

"No will, testament or codicil or any part thereof shall be revoked otherwise than by the marriage of the testator or testatrix or by another will, testament or codicil executed in manner herein before required, or by some writing declaring an intention to revoke the same and executed in the manner in which a will, testament or codicil is herein before required to be executed or by the burning, tearing or otherwise destroying the same by the testator or testatrix or by some person in his or her presence and by his or her direction with the intention of revoking the same."

The contention of the learned Counsel for the appellant is that under the Roman Dutch Law, the Testator's second marriage will not have the effect of revoking his will and therefore section 6 of the Prevention of Frauds Ordinance should be construed in the light of the principles laid down in Roman Dutch Law. In support of his contention learned Counsel for the appellant relied on the decisions in *Ludwig v Ludwig*⁽¹⁾ and *Shearer v Shearer's Executor*⁽²⁾ where it was held that a will was not revoked or invalidated by a subsequent change in the Testator's circumstances.

He also referred to the writings of Wille in Principles of South African Law, where he had stated that 'a will cannot be revoked by the subsequent marriage of the Testator' and the opinion expressed by R. W. Lee in his Treatise on Roman Dutch Law, where he had stated that 'a will cannot be revoked by the subsequent marriage of the testator'.

The contention of the learned Counsel for the appellant is that, the words in section 6 of the Prevention of Frauds Ordinance is clear and if the law before the said Ordinance came into effect, was the Roman Dutch Law, it is quite evident that it is only an unmarried person's will could be revoked by a marriage subsequent to the execution of a will. Therefore he submitted that there is no ambiguity relating to the meaning of the words in the relevant section and that the specific words in the Ordinance which is 'the marriage' is different from the word 'subsequent marriage'.

Learned Counsel for the appellant drew our attention to the observations of Stewart, J. in *Johannes Muppu*⁽³⁾ and the decision in *Mary Nona v. Edward de Silva*⁽⁴⁾ and submitted that the Court of Appeal had relied on the decision in *Mary Nona* (Supra). His position was that, the observations made by Stewart, J., that the subsequent marriage of a surviving spouse would not revoke a will, is the better view out of the two different positions taken in the aforementioned decisions.

Having said that let me now turn to consider the first limb of the submission of the learned Counsel for the appellant that under the Roman Dutch Law, the Testator's second marriage subsequent to the execution of a will, shall not have the effect of revoking it. In other words learned Counsel for the appellant's position is that the word 'marriage' in section 6 of the Prevention of Frauds Ordinance should be construed to refer only to first marriage and not to any other valid marriage the testator would have entered thereafter.

R. W. Lee considering the methods of revocation of wills and legacies (An Introduction to Roman Dutch Law, 5th Edition, Clarendon Press, Oxford, at pg. 342) had stated that, in the modern law, **in the absence of statutory provisions,** 'the revocation of a will based on a marriage cannot be assessed as pointed out by Van der Linden, as it could vary. In his words:

"Van der Linden says that a will is revoked by subsequent marriage followed by birth of issue. But the statement wants authority, and it does not appear that in the modern law, in the absence of statutory provision, a will is revoked either by marriage alone or by marriage followed by birth of issue. In Natal a will is generally revoked by marriage, unless expressed to be made in view of a contemplated marriage, or made in exercise of a power of appointment which does not affect the interest of the heirs *ab intestato*; but no joint will is revoked by the marriage of the surviving spouse."

It is thus clear that Van der Linden's observations had not reached any finality and more importantly that Lee had not accepted Van de Linden's version on a will been revoked by a subsequent marriage followed by the birth of a child. Moreover, none of these statements are authorities, which proclaimed that only the first marriage of the Testator would revoke a previous will and that there is no such revocation when there is a subsequent marriage.

Learned President's Counsel for the respondent, referring to the decision in *Johannes Muppu's case* (Supra) rightly submitted that even assuming without in any manner conceding that section 6 of the Prevention of Frauds Ordinance, should be read in the light of the Roman Dutch Law principles, there is no warrant for the appellants contention that section 6 should be

construed as being applicable only to the first marriage of the Testator, in as much as the Roman Dutch Law only refers to revocation of wills by a subsequent marriage producing issues and not to any principle whereby revocation of a prior will is postulated only by the first marriage of the Testator. In support of his contention learned President's Counsel for the respondent referred to the observations made by Stewart, J. in *Johannes Muppu's case* (Supra). Referring to the words in section 5 of Ordinance, No. 7 of 1840, that 'no will shall be revoked otherwise than by the marriage of the 'testator or testatrix or by another will', Stewart, J., observed that,

"probably the grammatical and logical equivalent of the words" no will shall be revoked otherwise than by the marriage of the 'testator or testatrix' may be taken, rendered into affirmative language, as enacting 'that every will shall be revoked by the marriage of the testator or testatrix'."

Having said that, Stewart, J. further proceeded to observe that there was no occasion for the purposes of *Johannes Muppu's case* (Supra) to determine definitively whether the terms of section 5 of Ordinance No. 7 of 1840 are sufficiently adequate to abrogate the Roman Dutch Law. In Stewart, J.'s words,

" But as will be seen hereafter, there is no occasion for the purposes of the present case to determine definitively whether the terms of the 5th section are sufficiently express to abrogate the Roman Dutch Law, according to which the person should not only be married when the will was made, but the subsequent marriage should be followed by issue to render the prior will void."

In the light of the aforementioned, it is evident that although Stewart, J., referred to the principles of Roman Dutch Law, which are applicable mainly to joint wills and with regard to the application when there is a subsequent marriage, he did not proceed to make any determination regarding the applicability and the effect of any such principle on section 6 of the Prevention of Frauds Ordinance. On the contrary, Stewart, J., has made reference to the English Common Law in *Johannes Muppu's case* (Supra) and his reasoning had been solely on that basis. Consequently, the decision by Stewart, J., in *Johannes Muppu* (Supra) cannot be taken as a binding authority in construing the provision in section 6 of the Prevention of Frauds

Ordinance, which deals with the revocation of a will by a subsequent marriage.

Learned President's Counsel for the respondent, drew our attention to the decision in *Re Estate Koshen* ⁽⁵⁾. This decision in my view, suggests an interesting point. In that matter the Testator was a Muslim who contracted two marriages by Islamic Rites; both of which were in terms of Islamic Law potentially polygamous. His first wife died in 1930 and in 1932 he had made a will which contained three (3) beneficiaries, namely his two sons and a nephew. In 1933 the testator married his second wife and had a large family by her. He died in 1954. The question arose as to the validity of his will made in 1932. Hathorn, j., considering that the case relates only to the succession of property and that it also falls within the principles of *Mehta's* case, held that the Testator's marriage in 1933 was a marriage within the meaning of section 7 of the Deceased Estates Succession Act and in the absence of an endorsement as is described in that section that marriage renders null and void the will made by the testator in 1932.

This decision, thus clearly emphasises the fact that, priority had been placed for the governing provisions laid down in statutes and due consideration had been given to such provisions in interpreting the question of the revocation of a will based on a subsequent marriage.

It is also pertinent to note, both Hathorn, J., and R. W. Lee have been specific that consideration should be given to relevant statutory provisions in deciding the validity of a will executed prior to a second marriage of the Testator.

In such circumstances, the question arises as to whether there is any necessity to consider the position which prevailed under the Roman Dutch Law, despite that being our common law, where there are specific statutory provisions which govern the question under consideration.

It is common ground that express provision has been made under the Prevention of Frauds Ordinance on revocation of a will. Accordingly, any such principle of Roman Dutch Law concerned with revocation of a will has been superseded by the express provisions contained in the Prevention of Frauds Ordinance. In the absence of any doubt or ambiguity, there are no means for the appellant to rely on principles governed by Roman Dutch Law, to be applied in their favour.

Referring to principles of interpretation, Sutherland (Statutory Construction, 3rd Edition, Vol. II, pg. 310) stated quite clearly that,

“where the words of an Act of Parliament are clear, there is no room for applying any of these principles of interpretation, which are merely presumptions, in cases of ambiguity in the statute.”

Maxwell has confirmed this position by stating that it is not allowable to interpret what has no need of interpretation (Interpretation of Statutes, 10th Edition, pg. 4.). Stating that the ordinary and natural meaning to be adhered to in the first instance, Bindra had categorically stated that,

“The words of a statute must *prima facie* be given their ordinary meaning. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there be some strong and obvious reason to the contrary.

When there is no ambiguity in the words, there is no room for construction No single argument has more weight in statutory interpretation than the plain meaning of the word. ‘If the meaning of the language be plain and clear, we have nothing to do, but to obey it - to administer it as we find it, observed Pollock CB in *Miller v Salomons*. If the language of statute is clear and unambiguous, the court must give effect to it and it has no right to extend its operation in order to carry out the real or supposed intention of the legislature (Interpretation of Statutes, 9th Edition, Bullerworths, pp 394-395)”

This position has been accepted by our Courts in several decisions. For instance in *Mudanayake v Sivagnanasunderam* ⁽⁶⁾ it was held that ‘when the language of a statute speaks clearly for itself it is not permitted to rely on extraneous evidence in support of an interpretation, which the words of the statute do not warrant’.

It is thus evident that, when the language of a statute is clear and has no ambiguities, there is no provision for this Court to refer to any other material in view of giving a different interpretation. The only role for the

Court, when there is no ambiguity in the language and when it is plain and clear, is to do nothing, but to simply give effect to the statutory provision. It is thereby clear that the Court has no power to add any words to statutory provision which is clear, plain and unambiguous. The contention of the learned Counsel for the appellant is that, the words, 'the marriage' in section 6 of the Prevention of Frauds Ordinance lays emphasis on 'marriage'. Learned Counsel submitted that 'THE' is a functional word to indicate that following a noun or a noun equivalent is **definite** or has been previously specified by context or by circumstances. The resulting position of the submission of the learned Counsel for the appellant in other terms would be to interpolate the word 'first' between the words 'the' and 'marriage' in section 6 of the Prevention of Frauds Ordinance to read as by the 'first' marriage.

It has been stated time and again as referred to earlier, that when there is no ambiguity in the words in a statute there is no room for construction. If the language of a statute is clear and unambiguous, Courts must give effect to the words so stated in the statute, without attempting to obtain the intention of the legislature. Moreover when the language is clear and meaningful there is no authority for the Court to add to the language of a statute. This position was considered by Jayawardene, A. J. in *Fernando v Perera*⁽⁷⁾ where it was held that,

"Courts have no power to add to the language of a statute unless the language as it stands is meaningless or leads to an absurdity."

It is thus evident that in view of the unambiguous language of section 6 of the Prevention of Frauds Ordinance there is no necessity for interpreting that section in terms of the Roman Dutch Law.

Having said that let me now turn to examine the meaning given in section 6 of the Prevention of Frauds Ordinance in a situation where there is a second marriage after Testator had executed his last will.

The second limb of the contention of the learned Counsel for the appellant was that the court of Appeal should have followed the observations of Stewart, J., in *Johannes Muppu's case (Supra)* and not the decision in *Mary Nona v Edward de Silva (Supra)*. Learned Counsel's

position was that the better view was of Stewart, J. in *Johannes Muppu* (supra) and not what was expressed by then Supreme Court in *Mary Nona v. Edward de Silva* (Supra).

In *Johannes Muppu* (supra) a husband and wife executed a joint will disposing of their common property. The wife died and the husband married for the second time. It was in evidence that after the first wife's death the husband executed conveyances of portions of the property dealt with by the joint will to legatees under the will. The husband afterwards died leaving heirs surviving his second wife. An executor of the joint will having applied for probate after the husband's death, the application was opposed by the second wife, who contended that the joint will was revoked by the second marriage.

The Court held that the husband had adiated the inheritance under the joint will and that, that being so, the joint will was not revoked by the husband's subsequent marriage. It was further held that the provisions of clause 5 of Ordinance No. 7 of 1840, with respect to the revocation of wills by subsequent marriage of the Testator's not to apply to the case of the joint wills made by spouses married before the passing of the Ordinance.

It is to be borne in mind that in *Johannes Muppu's case* (Supra) the question was based on the validity of a joint will and Stewart, J., took the view that the said will is irrevocable in view of the husband adiating the inheritance. In such circumstances there was no necessity for Stewart, J. to consider the application and scope of section 6 of the Prevention of Frauds Ordinance and thereby his position became *obiter dictum* and could not have been taken as authority on the applicability of section 6.

In *Johannes Muppu's case* (Supra), Stewart, J., had considered the issue in hand on the basis of the corresponding statutory provisions in the English Statute, namely section 18 of the Wills Act and came to the conclusion that the will of the Testator is revoked only when a testator marries for the first time. Section 18 of the Wills Act states that,

"Every will made by a man or woman shall be revoked by his or her marriage....."

Section 18 of the Wills Act had been considered by several English decisions where it has been stated that the Testator's second marriage

would revoke a will executed prior to the marriage. Considering this position learned President's Counsel for the respondent cited *Sallis and Another v. Jones* ⁽⁸⁾ where the Testator who was a widower, by his will executed in June 1927 appointed his two daughters his executrices. He married his second wife in November 1927. In the final sentence of his will the Testator had declared that 'this will is made in contemplation of marriage.' After his death in 1936, testamentary proceedings for the grant of probate were instituted by his daughters on the basis of his will executed in June 1927; the second wife resisted the application contending that in terms of section 18 of the Wills Act, the said will was revoked by the testator's marriage to her and that thereafter the testator died intestate.

Section 177 of the Law of Property Act of 1925, excluded the operation of section 18 of the Wills Act, if the will was made before a marriage is expressed to be made in contemplation of a particular marriage and is followed by the solemnization of that marriage. However, in *Sallis's* case Bennett, J., was of the view that, for the operation of section 177 of the Law of Property Act, the will should contain 'something more than a declaration containing a reference to marriage generally'. Therefore Bennett, J., was of the view that the case had to be decided in terms of section 18 of the Wills Act and it was held that the will in question was revoked by the subsequent marriage of the deceased.

In *Re Gilligan* (deceased) the court had to consider the scope of section 18 of the Wills Act of 1837. The court while considering the purpose and effect of section 18 stated that the section provided that wills shall be revoked by subsequent marriage and more importantly was of the view that 'the event which the section contemplates is the re-marriage of a person who has made a will and the circumstances in which a will so made shall be revoked by such subsequent marriage.'

In *Re Mainland, Lloyds Bank Ltd., v Mainland* ⁽⁹⁾ the Testator had executed a will prior to entering into his second marriage. After his second marriage he had executed another will. Considering the validity of the will Lord Greene, M. R. was of the view that,

"Section 18 provides that a will shall be revoked by marriage.

Here revocation takes place, not by virtue of some action of the testator directed to the revocation of the will, but as

a collateral consequence, imposed by law, of an action performed *alio intuitu*under section 18, where revocation follows as a matter of law, whether or not the testator wishes it”.

The English Wills Act has no direct relevance to the matter in issue. However, the purpose of citing English authorities was for the reason that as correctly pointed out by learned President's Counsel for the respondent, Stewart, J., in his judgment in *Johannes Muppu* (Supra) had referred to section 18 of the Wills Act in the process of determining whether the subsequent marriage of *Johannes Muppu* had revoked the will executed prior to his second marriage.

All these decisions therefore clearly indicate that section 18 of the Wills Act provides without any doubt that a will which had been executed prior to a second marriage would be revoked as a result of that marriage. In such circumstances, the view taken by Stewart, J., in *Johannes Muppu's* case (Supra) that in terms of section 18 of the Wills Act, the will of the testator is revoked only when a testator married for the first time cannot be accepted. Having given consideration to that decision I am not in agreement with the view taken by the learned Counsel for the appellant that the Court of Appeal should have followed the observations of Stewart, J., in *Johannes Muppu's* case (Supra).

Learned President's Counsel for the respondent on the other hand relied on the decision of *Mary Nona v Edward de silva* (Supra) decided by the Supreme Court in 1948, which had clearly disagreed with the view expressed by Stewart, J. in *Johannes Muppu* (Supra).

In *Mary Nona's* case, the question arose in relation to a joint will made by one Charles de Silva and his wife Elizabeth in 1921. By clause A, both movable and immovable property belonging to both of them were given to one Margaret, a daughter of Charles by a previous marriage. Clause B went on to state that if Charles was the survivor he would be entitled absolutely to all the property belonging to the joint estate, and that if Elizabeth was the survivor she would be entitled to the control of all the property and to enjoy the rest and profits thereof, but that Elizabeth would not be at liberty to sell or dispose of that property. Charles died in 1922 and after Charles's death Elizabeth contracted a marriage with one Warakulle who died in 1938 leaving Elizabeth considerable property. Elizabeth died in 1943. Considering the question whether the second marriage contracted by Elizabeth had revoked her will, Wijeyewardene, A.

C. J., clearly stated that the second marriage she had entered into had resulted in revoking her last will. Expressing his view, Wijeyewardene, A. C. J. further stated that,

“It was contended by Mr. H. V. Perera that section 6 of the Prevention of Frauds Ordinance, did not have the effect of invalidating a will of a married person by reason of a second marriage subsequent to the execution of the will, and he relied on the opinion expressed by Stewart, J., in *Re the estate of K. D. Johannes Muppu* (1879) 2 Supreme Court Circular 14. That opinion was an *obiter dictum*, as it was not necessary for Stewart, J., to consider section 6 in view of the definite decision reached by him that the last will in that case had become irrevocable, since the testator and testatrix there had massed their estates and the surviving testator had adiated the inheritance. **With due respect to the learned Judge, I find myself compelled to disagree with the view expressed by him as to the scope of section 6 (emphasis added)**”.

Learned Counsel for the appellant submitted quite strenuously that, in *Mary Nona v Edward de Silva* (Supra), although the Supreme Court decided that the opinion of Stewart, J., in *Johannes Muppu* (Supra) was *obiter* and cannot be agreed upon, that there was no analysis of section 6 of the Prevention of Frauds Ordinance and that there was no comparison with other authorities like in Stewart, J.'s judgment.

It would not be correct to state that in *Mary Nona's* case, (Supra) the Court had not given due consideration to the applicability of section 6 of the Prevention of Frauds Ordinance or to applicable case law. The Court had examined the issue in question and had referred to *Johannes Muppu's* Case (Supra) as a decision relied on by the Counsel. After considering the submissions of the Counsel and the said decision, Court had held that the opinion of Stewart, J. was an *obiter dictum*. It appears that *Johannes Muppu* was the only authority available on the subject and therefore it would not have been possible for the Court to have considered any other judgment, decided by our Courts.

Also if I may reiterate, when there is no ambiguity in a specific provision there will not be any necessity for any sort of construction. Pollock C. B., in *Miller v Solomons* ⁽¹⁰⁾ quite clearly stated that,

"If the language used by the legislature be clear and plain, we have nothing to do with its policy or impolicy its justice or injustice, or even its, 'absurdity', its being framed according to our views of right or the contrary, we have nothing to do but to obey it, and administer it as we find it; and I think to take a different course is to abandon the office of judge and assume that of a legislator (emphasis added)".

A similar view was expressed by Connor, J. in *Nolon v Clifford*⁽¹¹⁾ when it was specifically stated that,

"The first and most important rule in the construction of statutes is to give effect to words according to their grammatical meaning. If that meaning is clear, then, whether an alteration is made in the common law or the statute law or not, and whether of a serious character or not, is of no moment, effect must be given to the words the legislature has used."

Considering the aforementioned position it is abundantly clear that the words given in section 6 of the Prevention of Frauds Ordinance with reference to the phrase '**by the marriage of the testator or testatrix**' conveys the meaning of more than one marriage of the Testator or the Testatrix and has not restricted itself only to the first marriage of the Testator or the Testatrix. In such circumstances, out of the two decisions, which considered the effect of the said provision, I am of the view that the observation of Wijeyewardene A.C. J., in *Mary Nona v Edward de Silva* (supra) represents the correct position of the scope and applicability of section 6 of the Prevention of Frauds Ordinance that a will could be revoked by the second marriage of the Testator subsequent to the execution of the will.

For the aforementioned reasons, I answer the issue in the affirmative and state that the last will made by the Testator, namely the deceased Muthiah Pararajasingham, was revoked on his subsequent marriage.

I accordingly dismiss the appeal and affirm the judgment of the Court of Appeal dated 31.05.2002.

There will be no costs.

UDALAGAMA, J., — I agree.

FERANDO, J., — I agree.

Appeal dismissed.