

~~673 GT~~

Judgment
38, 1956

No. 6 of 1955.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF GIBRALTAR.

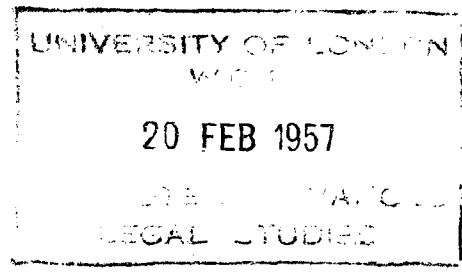
BETWEEN

JUDAH I. LAREDO and DAVID M. BENAİM, Executors
and Trustees of the Will of Simy Marache, deceased . *Appellants*

AND

SAMUEL ABRAHAM MARRACHE, Executor and Sole
Beneficiary of the Will of Simy Marache, deceased . . *Respondent.*

RECORD OF PROCEEDINGS



ALAN, EDMUNDS & PHILLIPS,
415 OXFORD STREET,
LONDON, W.1,
Appellants' Solicitors.

HY. S. L. POLAK & CO.,
20-21 TOOKS COURT,
CURSITOR STREET,
LONDON, W.C.2,
Respondent's Solicitors.

THE CITY OF LONDON
 20 FEB 1957
 LEGAL

No. 6 of 1955.

In the Privy Council.

ON APPEAL **46080**

FROM THE SUPREME COURT OF GIBRALTAR.

BETWEEN

JUDAH I. LAREDO and DAVID M. BENAİM, Executors and Trustees of the Will of SIMY MARACHE, deceased . . . *Appellants*

AND

SAMUEL ABRAHAM MARRACHE, Executor and Sole Beneficiary of the Will of SIMY MARACHE, deceased . . . *Respondent.*

RECORD OF PROCEEDINGS

**INDEX OF REFERENCE
 PART I**

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
<i>IN THE SUPREME COURT OF GIBRALTAR</i>			
1953			
1	Writ of Summons	18th June	1
2	Affidavit verifying Indorsement on the Writ	18th June	2
3	Appearance	6th July	3
4	Statement of Claim	15th December	3
1954			
5	Defence	15th January	4
6	Amended Particulars of Defence	11th February	5
7	Further and Better Particulars	16th February	6
8	Plaintiffs Affidavit of Documents	24th May	6
9	Defendant Laredo's Affidavit of Documents	31st May	7

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
		1954	
10	Defendant Laredo's further Affidavit of Documents ..	16th August ..	11
11	Submission by Counsel for Plaintiff	9th November ..	13
12	Opening address by Counsel for Plaintiff	9th November ..	15
	<i>Plaintiff's Evidence</i>		
13	Joseph Emmanuel Triay		16
14	Catherine Susan Dines		18
15	Joseph Emmanuel Triay—Re-called		20
16	James John Giraldi		20
17	Teresa Olivero		24
18	Alfred Wm. Dotto		25
19	Submission and arguments by Counsel for Plaintiff and Defendants		26
20	Opening Speech by Defendants' Counsel		27
	<i>Defendants' Evidence</i>		
21	Judah Isaac Laredo		30
22	Rebecca Benzimra		38
23	Coty Beyunes		40
24	Rebecca Benzimra—Further cross-examination		43
25	Mazaltob Laredo		44
26	Baruj Azagury	15th November ..	45
27	Esther Benzecry		45
28	Elias Belilo		46
29	Elias Isaac Gabriel Benzaquen		48
30	Submission and Arguments by Counsel for Plaintiff and Defendants		48
31	Ruling by Bacon, C.J., on submission by Counsel	16th November ..	52
32	Summing up by Bacon, C.J.	17th November ..	53
33	Jury's Verdict	17th November ..	74
34	Submission by Plaintiff's Counsel regarding costs	17th November ..	75

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
1954			
35	Judgment	17th November ..	75
36	Formal Judgment	17th November ..	76
37	Notice of Motion for New Trial	3rd December ..	76
38	Notes of Bacon, C.J., on hearing of First Motion	8th December ..	77
39	Order dismissing First Motion for New Trial	8th December ..	78
40	Second Notice of Motion for New Trial	8th December ..	79
41	Notes of Bacon, C.J., on hearing of Second Motion	17th December ..	80
42	Order dismissing Second Motion for new trial	17th December ..	85
43	Order giving Conditional Leave to Appeal	17th December ..	85
1955			
44	Order giving Final Leave to Appeal	14th February ..	86

PART II—EXHIBITS

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE	PAGE
1953			
1	Second Will of Simy Marache—Plaintiff Sole Executor and Beneficiary	29th May	88
2	Hospital Sister's reports covering period of Testatrix's stay in hospital from 22/5/53 to date of death 2/6/53	22nd May to 2nd June	90
3	Letter from Dr. J. J. Giraldi to Mr. J. E. Alcantara	6th June	111
4	Copy letter from Mr. J. E. Alcantara to Dr. J. J. Giraldi and Statement of Elias Belilo, a witness	8th June	112
7	Extract of Note Book said to be of Benjamin Marache		116
8	Unsigned Will of Samuel Marache		119
10	Eight Receipts (1st dated 15th September 1945) from persons who received money from Samuel or Simy Marache in accordance with wishes contained in Note Book (Ex. 7)		120
11	Receipts for rent paid by Judah I. Laredo		124
15	First Will of Simy Marache (Laredo and Benaim executors)	4th July 1946 ..	126
16	First Codicil of Will of Simy Marache dated 4th July 1946	5th September 1946	132

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE	PAGE
17	Second Codicil of Will of Simy Marache dated 4th July 1946	20th July 1951 ..	136
18	Unsigned Will of Simy Marache		139
19	Cheque to Bearer for £100 signed by Simy Marache (endorsed by Esther Laredo)	12th March 1951 ..	142
21	Cheque to Bearer for £30 signed by Simy Marache	15th May 1953 ..	142
24	Cheque to Bearer for £100 by Simy Marache (endorsed by M. Laredo, wife of Judah Laredo)	22nd November 1948	142

PART III—OTHER DOCUMENTS

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
25	Questions to Jury and their Replies	Undated	145
26	Letter from Chief Justice Bacon to Foreman of Jury ..	17th November 1954	145

PART IV—LIST OF EXHIBITS TRANSMITTED TO THE PRIVY COUNCIL BUT NOT PRINTED

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE
5	Birth Certificate of Simy Marache born 24th January 1867	4th November 1954
6	Two Letters from Plaintiffs' Solicitors to Defendants' Solicitors	10th September 1954 and 9th October 1954
9	Death Certificate of Samuel Marache died 22nd June 1946	8th November 1954
12	Counterfoil shop rent receipt book 1/4/46 to 30/4/53 ..	
13	Counterfoil rent receipt book (used) 1/11/45 to 31/3/53 ..	
14	Counterfoil rent receipt book commencing April 1953 ..	
20	Bank Statement of Account of Simy Marache covering period 31/3/53 to 3/11/54	3rd November 1954
22	Deed of Appointment of New Trustees of Hebrew Poor Fund of Gibraltar	23rd October 1952
23	Copy letter from Mr. A. B. M. Serfaty to Financial Secretary	17th February 1947

**PART V—LIST OF DOCUMENTS NOT TRANSMITTED TO
PRIVY COUNCIL**

DESCRIPTION	DATE
	1953
Notice of Motion for grant of Letters of Administration <i>pendente lite</i> to Leopold Jerome Yome	27th July
Affidavit of Samuel A. Marrache in support	27th July
Case on Motion	27th July
Consent of Leopold Jerome Yome to act	27th July
Affidavit of fitness of Lewis Stagnetto	27th July
Certificate of urgency for hearing Motion in vacation	27th July
Order appointing Leopold Jerome Yome as Administrator <i>pendente lite</i>	10th August
Affidavit of Scripts of Defendant Judah I. Laredo	30th November
Affidavit of Scripts of Plaintiff Samuel A. Marrache	7th December
	1954
Particulars of Defence	11th February
Summons for Directions	18th February
Order on Summons for Directions	25th February
Notice of Motion for Special Jury	26th May
Order for striking Special Jury	31st May
Præcipe entering action for trial	1st June
List of Special Jury struck and reduced	3rd June
Summons to postpone date of trial until October 1954	4th June
Affidavit of J. J. Triay	4th June
Order postponing trial of action until October 1954	6th June
Summons for inspection of documents	21st July
Affidavit of J. J. Triay	21st July
Certificate of urgency for hearing Summons in vacation	21st July
Order for inspection	26th July
Defendants' application for Chief Justice's Notes of Evidence	30th November
Notice of Motion for Leave to Appeal	3rd December

DESCRIPTION	DATE
Defendants' application for Chief Justice's Notes on Motions for new trial and for Conditional Leave to Appeal	1955 7th January
Bond for £500 for Respondent's costs of Appeal	14th January
Plaintiff's application for Chief Justice's Notes of Evidence at trial and on Motions for new trial and for Conditional Leave to Appeal ..	24th January
Notice of Motion for Final Leave to Appeal	7th February

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF GIBRALTAR.

BETWEEN

JUDAH I. LAREDO and DAVID M. BENAİM,
Executors and Trustees of the Will of SIMY
MARACHE, deceased *Appellants*

AND

10 SAMUEL ABRAHAM MARRACHE, Executor and
Sole Beneficiary of the Will of SIMY MARACHE,
deceased *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS.

Ordinary Writ—Unliquidated Demand.

ELIZABETH II, by the Grace of God of the United Kingdom of
Great Britain and Northern Ireland and of Her other Realms and Territories
Queen, Head of the Commonwealth, Defender of the Faith.

*In the
Supreme
Court of
Gibraltar.*

No. 1.
Writ of
Summons,
18th June
1953.

20 To JUDAH I. LAREDO of Main Street, Gibraltar, Merchant, and
DAVID M. BENAİM of Main Street, Gibraltar, Merchant,
Executors and Trustees of the Will of Simy Marache deceased,
dated the 4th day of July, 1946, and of two Codicils dated
respectively the 5th day of September, 1946 and the 20th day
of July, 1951. (L.S.)

WE COMMAND YOU, that within eight days after the service of
this writ on you, inclusive of the day of such service, you do cause an
appearance to be entered for you in an action at the suit of SAMUEL
30 ABRAHAM MARRACHE of Gibraltar, Merchant, Executor and Sole
Beneficiary of the Will of Simy Marache deceased dated the 29th day of
May, 1953. And take notice that in default of your so doing, the Plaintiff
may proceed therein and judgment may be given in your absence. *Triay & Triay.*

Witness, The Honourable ROGER SEWELL BACON, M.B.E.,
Chief Justice of Our said Supreme Court the Eighteenth day of June in
the year of Our Lord One thousand nine hundred and fifty-three.

*In the
Supreme
Court of
Gibraltar.*

No. 1.
Writ of
Summons,
18th June
1953,
continued.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The Defendant may appear hereto by entering an appearance either personally or by Solicitor, at the Registry of the said Court, situate at the Court House, Gibraltar.

The Plaintiff claims to be Executor and Sole beneficiary of the last Will dated the 29th day of May, 1953, of Simy Marache, late of No. 222, Main Street, Gibraltar, Spinster, who died on the 2nd day of June, 1953, and to have the said Will established. 10

This Writ is issued against you as the executors and trustees of the Will of Simy Marache deceased, dated the 4th day of July, 1946 and of two Codicils dated respectively the 5th day of September, 1946 and the 20th day of July, 1951, and because you have entered a caveat.

(Sgd.) TRIAY & TRIAY.

A sufficient affidavit in verification of the indorsement on this writ to authorise the sealing thereof has been produced to me this 18th day of June, 1953.

(Sgd.) E. PIZZARELLO,
Registrar. 20

This Writ was issued by Messrs. TRIAY & TRIAY of Gibraltar, whose address for service is 28, Irish Town, Gibraltar, solicitor for the said Plaintiff who resides at No. 22, Turnbull's Lane, Gibraltar.

No. 2.

AFFIDAVIT verifying indorsement in the Writ.

No. 2.
Affidavit
verifying
indorse-
ment
in the Writ.

I, SAMUEL ABRAHAM MARRACHE, of No. 22, Turnbull's Lane, Gibraltar, Merchant, make oath and say as follows:—

1. That Simy Marache of 222, Main Street, Gibraltar, died on the 2nd day of June, 1953, at the Colonial Hospital, Gibraltar, having made and duly executed her last Will and Testament bearing date the 29th day of May, 1953, and thereof appointed me the Deponent Executor. 30

2. That the caveat was entered in the Estate of the above Deceased on the 3rd day of June, 1953, which caveat was duly warned on the 8th day of June, 1953.

3. That an Appearance has been entered to the signed warning on behalf of Judah I. Laredo of Main Street Merchant and David M. Benaim of Main Street, who are therein described as the Executors and the

Trustees of the Will of Simy Marache deceased dated the 4th day of July, 1946, and of two Codicils dated respectively the 5th day of September, 1946, and the 20th day of July, 1951.

*In the
Supreme
Court of
Gibraltar.*

(Sgd.) S. A. MARRACHE.

Sworn by the above-named deponent at the Registry of this Honourable Court this 18th day of June, 1953.

No. 2.
Affidavit
verifying
indorse-
ment
in the Writ,
continued.

Before me,

(Sgd.) C. J. WHEELER,
Assistant Registrar.

10 This Affidavit is filed on behalf of the Solicitors for the Plaintiff, Messrs. Triay & Triay of 28, Irish Town, Gibraltar.

No. 3.

APPEARANCE.

No. 3.
Appear-
ance,
6th July
1953.

ENTER an appearance for Judah I. Laredo and David M. Benaim in this action.

Dated the 6th day of July 1953.

(Sgd.) JOHN E. ALCANTARA
of and whose address for service is
No. 234, Main Street, Gibraltar.

20

No. 4.

STATEMENT OF CLAIM.

No. 4.
Statement
of Claim,
15th
December
1953.

The Plaintiff is the executor and sole beneficiary appointed under the Will of Simy Marache late of No. 222, Main Street, Gibraltar, Spinster, who died on the 2nd day of June, 1953, the said Will bearing date the 29th day of May, 1953.

THE PLAINTIFF CLAIMS :—

That the Court shall decree probate of the said Will in solemn form of law.

30

(Sgd.) S. P. TRIAY,
(Sgd.) J. E. TRIAY,
Counsel for the Plaintiff.

Delivered the 15th day of December 1953.

1. The Defendants say :—

The said alleged Will was not duly executed according to the provisions of the Statute 7, Will. 4 & 1 Vict. c. 26.

SUBSTANCE OF CASE.

The Defendants put the Plaintiff to the proof that the provisions of the said statute were complied with.

2. The deceased at the time of the said alleged Will, purports to have been executed was not of sound mind, memory or understanding. 10

SUBSTANCE OF CASE.

At the time the deceased executed the said alleged Will she was of the age of 89 years, suffering from senile decay. Her memory was so defective and untrustworthy that there was an almost total loss of memory for recent events. She was at the time of the execution of said alleged Will in such a condition of mind and memory as to be unable to understand the nature of the act and its effects, the extent of the property of which she was disposing, or to comprehend and appreciate the claims to which she ought to give effect.

3. The execution of the said alleged Will was obtained by the undue influence of the Plaintiff. 20

SUBSTANCE OF CASE.

The Plaintiff took advantage of the extreme old age of the testatrix and of her weak and excitable state, and knowing that her memory was greatly impaired, induced her to make the said Will. The influence of the Plaintiff over the testatrix was so complete that she was not a free agent and the said alleged Will was not the offspring of her own volition, but was obtained by the importunity of the Plaintiff.

4. The execution of the said alleged Will was obtained by the fraud of the Plaintiff. 30

SUBSTANCE OF CASE.

The Plaintiff had full knowledge that the testatrix in order to carry out the wishes of her late brother Benjamin Marrache whose property she had inherited on his intestacy had executed a Will wherein she had bequeathed the bulk of her estate for Jewish Charitable purposes and that Judah I. Laredo was an executor thereof.

The Plaintiff with such knowledge fraudulently procured the execution of a fresh Will by falsely representing that it carried out her wishes. The testatrix did not instruct the Plaintiff to substitute himself as sole beneficiary of her estate. 40

5. The deceased at the time of the execution of the said alleged Will neither knew nor approved of the contents thereof.

SUBSTANCE OF CASE.

The deceased never gave any instructions for the alleged Will, and the said alleged Will was neither read over nor explained to her nor did she read it herself before it was executed, and she was not aware of its nature and effect.

THE DEFENDANTS CLAIM—

(1) That the Court will pronounce against the said Will propounded by the Plaintiff.

(2) Such further or other order as may be just.

10

(Sgd.) JOHN E. ALCANTARA,
Counsel for the Defendants.

Delivered the 15th day of January, 1954.

*In the
Supreme
Court of
Gibraltar.*

—
No. 5.
Defence,
15th
January
1954,
continued.

No. 6.

AMENDED PARTICULARS OF DEFENCE.

The following are the particulars of the Defence required by the Plaintiff :—

No. 6.
Amended
Particulars
of Defence,
11th
February
1954.

1. As to paragraph 2 of the Defence the Defendants will say that the deceased was suffering from senile decay and that for some time before being taken to the Colonial Hospital on the 23rd day of May, 1953, she was suffering from loss of memory for recent events. Though she was, throughout her lifetime a very Orthodox Jewess, on the 20th day of May, 1953, at her house, she forgot the feast of Pentecost and did not realise the meaning or did not know the nature or importance of this very important Jewish feast of Shabuot, which she had always observed. A month previous to this incident, on a Friday, she did not know or seem to realise what day of the week it was and on another occasion about that time she started to sing operatic songs.

2. As to paragraph 3 of the Defence the Defendants will say that the character of the undue influence alleged to have been exerted by the Plaintiff over the deceased was one of a continuous visiting over a period of years, talking to and offering the deceased unsolicited advice about her financial and private affairs and particularly by the Plaintiff offering himself on divers occasions to perform religious services for the deceased and look after her private affairs, and also offering to take the deceased to his house to look after her himself. This continuous visiting of the deceased by the Plaintiff and also by the wife and son of the Plaintiff in the deceased's house and at the Colonial Hospital had the result due to her weak mental and physical condition in the days immediately before her death of finally making her regard the Plaintiff as a protector of her person and property, a position which the Plaintiff used to induce her on the 29th day of May, 1953, to revoke her former will and codicils thereto and sign on that date a will, whereby the Plaintiff was the sole executor and beneficiary.

*In the
Supreme
Court of
Gibraltar.*

No. 6.
Amended
Particulars
of Defence,
11th
February
1954,
continued.

Amended
by leave
of the Court
at the trial.

3. As to paragraph 4 of the Defence the Defendants will say that on or about the 29th day of May, 1953, the Plaintiff persuaded the testatrix to caused a Will to be prepared and engrossed by a Solicitor ~~without having received from the deceased the instructions which the said Will purports to carry out. The Plaintiff also caused the said Solicitor after the Will had been duly engrossed and made ready for signature to attend the deceased at her death bed in the Colonial Hospital without having been so instructed by the deceased and procured her signature by having falsely and fraudulently represented to the deceased that the said Will only purported to substitute the Plaintiff as an executor in the~~ 10
place of Judah I. Laredo who was one of the executors of the true and original last Will and testament of the deceased dated the 4th day of July, 1946, and of the two Codicils dated respectively the 5th day of September, 1946, and the 20th day of July, 1951, having previously thereto falsely and fraudulently represented to the testatrix not in the presence or with the knowledge of the said Solicitor that the Plaintiff, if made sole executor and beneficiary thereof, would carry out the wishes of her late brother Benjamin as contained in the said Will and Codicils.

(Sgd.) JOHN E. ALCANTARA,
Counsel for the Defendants. 20

Delivered the 11th day of February, 1954.

No. 7.
Further
and Better
Particulars,
16th
February
1954.

No. 7.

FURTHER AND BETTER PARTICULARS.

The following are the particulars of Defence requested by the Plaintiff in his Notice for Further and Better Particulars dated the 12th day of February, 1954.

1. The Defendants do not allege that the Solicitor was privy to the fraud of the Plaintiff nor that the false representations were made by the Solicitor or with his knowledge.

(Sgd.) JOHN E. ALCANTARA, 30
Counsel for the Defendants.

Delivered the 16th day of February, 1954.

No. 8.
Plaintiff's
Affidavit of
Documents,
24th
May 1954.

No. 8.

PLAINTIFF'S AFFIDAVIT OF DOCUMENTS.

I, the above-named Plaintiff SAMUEL ABRAHAM MARRACHE of No. 22, Turnbull's Lane, Gibraltar, Merchant, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the Schedule hereto.

40

2. I object to produce the documents referred to in the second part of the Schedule hereto aforesaid, on the grounds that such documents were procured or made by my Solicitors and or legal advisers and or agents, or by their directions for the purpose of my claim in this action, or are otherwise of a confidential and or professional nature and privileged.

In the Supreme Court of Gibraltar.

No. 8. Plaintiff's Affidavit of Documents, 24th May 1954, *continued.*

10 3. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody or power of my Solicitors or agents, Solicitor or agent, or in the possession, custody or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such documents, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said Schedule hereto.

THE SCHEDULE above referred to

PART I (see pages 8 to 11)

* * * * *

PART II (see page 11)

* * * * *

20 Sworn by the above-named Deponent }
at the Registry of this Honourable } (Sgd.) S. A. MARRACHE.
Court this 24th day of May, 1954 }

Before me
(Sgd.) C. J. WHEELER
Assistant Registrar.

This affidavit is filed on behalf of the Plaintiff by his Solicitor Messrs. TRIAY & TRIAY of No. 28, Irish Town, Gibraltar.

No. 9.

DEFENDANT LAREDO'S AFFIDAVIT OF DOCUMENTS.

No. 9. Defendant Laredo's Affidavit of Documents, 31st May 1954.

30 I, JUDAH I. LAREDO, one of the above-named Defendants, of No. 222, Main Street, Gibraltar, Merchant, make oath and say as follows :—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the Schedule hereto.

2. I object to produce the documents referred to in the second part of the Schedule hereto aforesaid, on the grounds that such documents

*In the
Supreme
Court of
Gibraltar.*

were procured or made by our Solicitor and or legal advisers and or agents, or by their directions for the purpose of our claim in this action, or are otherwise of a confidential and or professional nature and privileged.

No. 9.
Defendant
Laredo's
Affidavit
of Docu-
ments,
31st May
1954,
continued.

3. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my co-Defendant, or in the possession, custody or power of any other persons or person on my or his behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such documents, or any other document whatsoever, relating to the matter in question 10 in this suit, or any of them, or wherein any entry has been relative to such matters, or any of them, other than and except the documents set forth in the said Schedule hereto.

THE SCHEDULE above referred to

PART I (see pages 8 to 11)

* * * * *

PART II (see page 11)

* * * * *

Sworn by the above-named Deponent }
at the Registry of this Honourable } (Sgd.) JUDAH I. LAREDO.
Court this 31st day of May, 1954 }

Before me

20

(Sgd.) C. J. WHEELER
Assistant Registrar.

This affidavit is filed on behalf of the Defendants by their Solicitor JOHN E. ALCANTARA of No. 234, Main Street, Gibraltar.

THE SCHEDULE.

Common to affidavits of documents of Samuel A. Marrache and Judah I. Laredo (see pages 6 and 7).

PART I.

NO.	DATE	DESCRIPTION OF DOCUMENT
1		Photograph of Plaintiff and Spouse.
2		Photograph of Plaintiff's child.
3		Photograph.
4		Photograph of Plaintiff's child.
5		Photograph of Plaintiff's sister.
6		Photograph of Plaintiff's child.

30

SCHEDULE—*continued.*

*In the
Supreme
Court of
Gibraltar.*

NO.	DATE	DESCRIPTION OF DOCUMENT	
7		Photograph of Plaintiff, Spouse and sister.	
8		Photograph of Plaintiff marriage group.	
9		Photograph of Plaintiff's sister and child.	
10		Photograph of Plaintiff's child.	
11		Photograph of Vivian.	
12	30th June 1947 ..	Postcard from Luna Marrache to Simy Marache.	
13	18th July 1947 ..	Postcard from M. Nahon to Simy Marache.	
10	14	12th August 1952 ..	Postcard from Judah and Mazaltob to Simy Marache.
15	16th September 1949	Postcard from Samuel and Reina Marrache to Simy Marache.	
16	18th September 1949	Postcard from Samuel and Reina Marrache to Simy Marache.	
17	28th September 1949	Postcard from Samuel and Reina Marrache to Simy Marache.	
18	7th October 1949 ..	Postcard from Samuel and Reina Marrache to Simy Marache.	
20	19	16th October 1949 ..	Postcard from Samuel and Reina Marrache to Simy Marache.
20	20	25th October 1949 ..	Postcard from Esther and Rachel to Simy Marache.
21	26th October 1950 ..	Postcard from Mazaltob to Simy Marache.	
22	14th May 1952 ..	Postcard from Lunita Marrache to Simy Marache.	
23	30th December 1952	Postcard from Luna Marrache to Simy Marache.	
24	10th April 1953 ..	Postcard from Esther Attias to Simy Marache.	
25	Undated	Postcard from Myriam.	
26	Undated	Postcard from A. Diaz to Simy Marache.	
27	14th January 1947 ..	Letter from Esther Sequerra Levy to Simy Marache.	
28	30th March 1947 ..	Letter from Esther Sequerra Levy to Simy Marache.	
30	29	15th September 1949	Letter from Samuel and Reina Marrache to Simy Marache.
30	30	26th March 1952 ..	Wedding invitation containing specimen signature of Simy Marache.
31		Visiting Card from Samuel and Reina Marrache to Simy Marache.	

No. 9.
Defendant
Laredo's
Affidavit
of Docu-
ments,
31st May
1954,
continued.

SCHEDULE—*continued.*

*In the
Supreme
Court of
Gibraltar.*

No. 9.
Defendant
Laredo's
Affidavit
of Docu-
ments,
31st May
1954,
continued.

NO.	DATE	DESCRIPTION OF DOCUMENT	
32		Visiting Card from Esther Laredo and sister.	
33		Visiting Card from Rebecca Benzimra.	
34	15th September 1945	Receipt from Bonina Attias de Benzimra to Samuel Marrache.	
35	15th September 1945	Receipt from Esther S. Bendelak to Samuel Marrache.	
36	22nd October 1945 ..	Receipt from Judah I. Laredo to Samuel Marrache.	
37	15th April 1946 ..	Receipt from Donna Wahnon de Elmaleh to Samuel Marrache.	10
38	18th February 1947	Receipt from Rachel Laredo to Simy Marache.	
39	18th February 1947	Receipt from Esther Laredo to Simy Marache.	
40	23rd August 1951 ..	Receipt from Esther Pariente to Simy Marache.	
41	19th March 1953 to 8th May 1953	Bundle of Invoices from M. I. Abudarham to Simy Marache.	
42	9th January 1953 to 6th May 1953	Bundle of Receipts from Collection Department, City Council.	
43		Receipts from Managing Board Hebrew Community for months of January and February 1953.	
44		Receipt from Nifusot Yehudah for month of March 1953.	20
45	January 1953 to December 1953	Receipts from W.I.Z.O.	
46	5th January 1953 ..	Receipt from Colonial Hospital.	
47	25th February 1953	Receipt from Colonial Hospital.	
48	23rd February 1953	Receipt from Revenue Department.	
49	20th March 1953 ..	Receipt from Crown Lands Office.	
50	23rd April 1953 ..	Receipt from Colonial Treasury to S. A. Marrache.	
51	7th July 1950 to 11th May 1953	Bundle of Wireless Licence Receipts.	
52	31st March 1953 ..	Statement of Account of Simy Marache from Barclays Bank (D.C. & O.).	30
53	30th September 1953	Statement of Account of Simy Marache from Barclays Bank (D.C. & O.).	
54		Cheque Book of Barclays Bank (D.C. & O.).	
55	1st November 1945 to 31st March 1953	Counterfoils of receipts.	

SCHEDULE—*continued.*

NO.	DATE	DESCRIPTION OF DOCUMENT	<i>In the Supreme Court of Gibraltar.</i>
56	1st April 1946 to 30th April 1953	Receipt book and Counterfoils.	No. 9. Defendant Laredo's Affidavit of Docu- ments, 31st May 1954, <i>continued.</i>
57		Receipt book and Counterfoil for month of April 1953.	
58		One Blue Note Book.	
59		One Brown Note Book.	
60		One Brown Note Book cover.	
10 61	15th October 1953 . .	List of Property of Simy Marache found at Colonial Hospital at time of death.	

PART II.

Letters and copies of letters passed between the Plaintiff/Defendants and his/their Solicitor(s) and/or legal advisers and agents, and notes and extracts of pleadings and of all other documents and papers whatsoever prepared by the Plaintiff's/Defendants' legal advisers or by their instructions during the course of the action instituted against the Defendants by the Plaintiff or otherwise relating or appertaining to the same in any way whatsoever.

20

No. 10.

DEFENDANT LAREDO'S FURTHER AFFIDAVIT OF DOCUMENTS.

No. 10.
Defendant
Laredo's
Further
Affidavit
of Docu-
ments,
16th
August
1954.

I, JUDAH I. LAREDO, one of the above-named Defendants, of No. 222, Main Street, Gibraltar, Merchant, make oath and say as follows :—

1. Further to my affidavit of documents sworn on the 30th day of May, 1954, I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the Schedule hereto.

2. I object to produce the documents referred to in the second part of the Schedule hereto aforesaid, on the ground that such documents were
30 procured or made by our Solicitor and/or legal adviser and/or agents, or by their directions for the purpose of our claim in this action, or are otherwise of a confidential and/or professional nature and privileged.

3. According to the best of my knowledge, information and belief, I have not now, and never had in my possession, custody or power, or in the possession, custody or power of my co-Defendant, or in the possession, custody or power of any other persons or person on my or his behalf, any deed, account, book of account, voucher, receipt, letter, memorandum,

*In the
Supreme
Court of
Gibraltar.*

No. 10.
Defendant
Laredo's
Further
Affidavit
of Docu-
ments,
16th
August
1954,
continued.

paper, or writing, or any copy of extract from any such documents, or any other document whatsoever, relating to the matter in question in this suit, or any of them or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said Schedule hereto.

THE SCHEDULE above referred to.

PART I.

NO.	DATE	DESCRIPTION OF DOCUMENT	
1	No date	Instructions of Last Will and Testament of Samuel Marrache.	10
2	1946	Draft Will of Samuel Marrache.	
3	1946	Unsigned Will of Samuel Marrache.	
4	14th January 1947 ..	Letter from Esther Sequerra Levy to A. B. M. Serfaty.	
5	8th February, 1947	Copy letter from A. B. M. Serfaty to Esther Sequerra Levy.	
6	17th February 1947	Copy letter from A. B. M. Serfaty to the Hon. The Financial Secretary.	
7	25th February 1947	Letter from Esther Sequerra Levy to A. B. M. Serfaty.	
8	5th March 1947 ..	Copy letter from A. B. M. Serfaty to Barclay's Bank (D.C. & O.).	20
9	7th March 1947 ..	Copy letter from A. B. M. Serfaty to Esther Sequerra de Levy.	
10	26th March 1947 ..	Receipt signed by Esther Sequerra Levy.	
11	30th March 1947 ..	Letter from Esther Sequerra Levy to A. B. Serfaty.	
12	15th June 1947 ..	Receipt signed by Simy Bensusan Castel.	
13	26th June 1947 ..	Letter from Esther Sequerra Levy to A. B. M. Serfaty.	
14	15th July 1947 ..	Receipt signed by Esther Sequerra Levy.	
15	15th July 1947 ..	Receipt signed by Mazaltob Levy.	
16	16th July 1947 ..	Letter from Esther Sequerra Levy to A. B. M. Serfaty.	
17	23rd August 1951 ..	Copy receipt signed by E. Pariente.	30

PART II.

Letters and copies of letters passed between the Defendants and their Solicitor and/or legal advisers and agents and notes and extract of pleading and of all other documents and papers whatsoever prepared by the

SCHEDULE—*continued.*

Defendants' legal advisers or by their instructions during the course of the action instituted against the Defendants by the Plaintiff or otherwise relating or appertaining to the same in any way whatsoever.

*In the
Supreme
Court of
Gibraltar.*

Sworn by the above-named Deponent }
at the Registry of this Honourable } (Sgd.) JUDAH I. LAREDO.
Court this 16th day of August 1954 }

No. 10.
Defendant
Laredo's
Further
Affidavit
of Docu-
ments,
16th
August
1954,
continued.

10 Before me,
(Sgd.) FRANK SANT,
Assistant Registrar (Ag.).

This affidavit is filed on behalf of the Defendants by their Solicitor JOHN E. ALCANTARA, of No. 234, Main Street, Gibraltar.

No. 11.

SUBMISSION by Counsel for Plaintiff.

1953.—M.—No. 1.

No. 11.
Submission
by Counsel
for
Plaintiff,
9th
November
1954.

IN THE ESTATE of SIMY MARACHE, deceased.

Between SAMUEL ABRAHAM MARRACHE Exor. and
sole beneficiary of the Will dated 29th May,
1953 Plaintiff

20 and

JUDAH I. LAREDO and DAVID M. BENAİM
Exors. and Trustees of the Will dated
4th July, 1946, and two Codicils of Sep., 1946
and July, 1951 Defendants.

Probate Action, with Special Jury.

Will of 29th May, 1953, propounded by Plaintiff disputed by Defendant on five grounds.

F. Ashe Lincoln, Q.C., and J. J. Triay for Plaintiff.

Hassan and Alcantara for Defendants.

30 Jury empanelled :—

1. Leopold D'Amato.
2. Joseph Vallejo.
3. James Savignon.
4. George Michael Gonzalez.
5. Louis Bassadone.
6. Manuel Camisuli.
7. Eric Hoare.
8. James Restano.
9. William James Smith.

40 Jury duly sworn. Foreman : G. M. Gonzalez.

*In the
Supreme
Court of
Gibraltar.*

Ashe Lincoln : I've a submission re striking out part of pleadings.

Per Curiam : Jury to retire.

Jury retire.

No. 11.
Submission
by Counsel
for
Plaintiff,
9th
November
1954,
continued.

Ashe Lincoln : Para. 3 of Defence alleges undue influence. Assuming Defendants proved every allegation, it would not constitute "undue influence" as defined in the cases. See R.S.C. O. 25, r. 4 and O. 19, r. 27. I invoke both rules, and the inherent jurisdiction.

The real issue here is whether the last Will was a true expression of testatrix's wishes, whether when she signed she knew what she was doing. Undue influence must be very well particularized : issues are limited to 10 parlars.

These parlars of undue influence amount to this : Plaintiff by kindly conduct for years won T's affection.

The Parlars shew the pleader fell into the common error of misconstruing "undue influence," in its common parlance sense. "Undue influence" in law means something different : it involves shewing either coercion or fraud.

Where fraud is separately pleaded the plea of undue influence must be treated as limited to coercion.

Boyse v. Rossborough (1857), 5 W.R. at p. 416 ; 6 H.L.C. 2 : Coercion 20 or fraud must be shewn : not necessarily violence—perhaps terror ; or prejudice raised against others by deliberate falsehoods.

Parfitt v. Lawless (1872), 27 L.T. 215, at 216 and 218 : meaning of "coercion" in this context. "No amount of advice or persuasion, whether founded on feelings of regard or religious sentiment would avail so long as free volition to accept or reject it was not invaded."

Baudains v. Richardson [1906] A.C. at p. 184-5. "There must be coercion." The free will of the testator must be shewn to have been over-ridden.

Craig v. Lamoureux [1920] A.C. at p. 356 *per* Lord Haldane. 30

Per Curiam : Doesn't this plea plus parlars amount to importunity of such cumulative weight as to end by overcoming t's volition ? What about the words "making her regard etc."

Ashe Lincoln : No.

Hassan : (1) Burden of proof is on Plaintiff to prove that Will was made voluntarily.

Fulton v. Andrew (1875), 44 L.J. (P.) at p. 29. There are circs. in which a heavy onus may be thrown on those propounding a Will.

Hampson v. Guy (1891), 64 L.T. at p. 780. In the case of a weak-minded t or one in weak health, the amount of influence needed to induce is 40 much less than usual.

Wingrove v. Wingrove (1885), 11 P.D. at pp. 82-3. Coercion may be "very little pressure" on a sick person.

(2) Procedure here: You must read para. 3 of Defence and the Parlars *together*. The Parlars do *not* admit a "relationship of mutual trust"—far from it.

*In the
Supreme
Court of
Gibraltar.*

The Parlars themselves all lead up to the word "making".

R.S.C. O. 25, r. 4: see Notes in Annual Prac.: only a *plain* case should be enough to warrant using this to strike out.

No. 11.
Submission
by Counsel
for
Plaintiff,
9th
November
1954,
continued.

You would be anticipating the verdict if you struck this out at this stage.

Ashe Lincoln: "Undue influence" must be *clearly* shewn—and
10 pleaded.

Ruling: Plea and Parlars are, taken together, sufficiently clear to stand as an averment of "undue influence" in its legal sense. Application refused. Jury return to court.

No. 12.

OPENING ADDRESS by Counsel for Plaintiff.

Ashe Lincoln, Q.C., opens case for Plaintiff.

Simy Marache had two brothers: Benjamin and Samuel Marrache. Benjamin married a Laredo—the aunt of Defendant Laredo.

No. 12.
Opening
Address by
Counsel for
Plaintiff,
9th
November
1954.

20 Plaintiff is son of Abraham Marrache, who, together with *Simy*, were each a child of first cousins. Thus they were related by blood—Closely related by affection. Even 3rd cousinship means much among Jews.

Under 1st Will the Laredo received bequests. Not under the second.

The 2nd Will was drawn up by *Triay*. He went to the hospital and took T's instructions, typed out the Will and checked it para by para with her. Then *Dotto* came in and was present when Marrache again explained contents. How could *Triay* be free from the fraud if fraud there was? Defendants say he was not a party. How possible?

30 Doctor, nurses, Hospital Secretary, attending Solicitor will all say testatrix was of sound mind and perfectly well knew what she was doing. The suggestion of her "mind being disorientated" came from a member of Jewish community who was by her bedside at her death—in accordance with custom—and who was personally interested in the Charities which benefited under the 1st Will.

On the very day of her death the Defendant Laredo gave instructions for the caveat! A curious story: sidelights on the pleadings. And Defendant Laredo lives at a low rent in the house which is a principal property of T's estate!

Midday adjournment

40 *Hassan*: This case appears unlikely to finish by next Monday, at the present pace. May it be expedited by sitting later each day? I have to perform duties outside the Colony as from next Tuesday.

*In the
Supreme
Court of
Gibraltar.*

Ashe Lincoln, Q.C.: But there are limits to a jury's capacity to concentrate.

Per Curiam: And to a judge's. I will do all I can within reason.

No. 12.
Opening
Address by
Counsel for
Plaintiffs,
9th
November
1954,
continued.

Ashe Lincoln, Q.C. continuing opening:—

Laredo lived in Tangier with his wife during World War II evacuation. The Maraches (T, and her brothers Samuel and Benjamin) lived there too. They all lived together in the Villa de France. On return to Gibraltar, Laredo lived in the Marache house.

The 1st Will was made during T's period of intense mourning for her brother Samuel. 10

Defendant Judah Laredo lived with his wife in a flat in T's house (which he still occupies) at a due (? paid) rent of £6 per month for dwelling-premises-plus-office.

Defendant Judah Laredo and all his co-beneficiary relations (under 1st Will) actually received their legacies during T's lifetime, and even other Laredo relatives who were not even legatees. Laredo exercised baleful influence over T at that period—and T complained to others about it. Laredo got himself made a Trustee of Hebrew Charities. He had arranged everything beautifully!

T was removed to hospital, at her own request, by car by her relative 20 the Plaintiff.

T in hospital asked Plaintiff to bring her a lawyer. He brought a completely independent one: J. E. Triay. Triay took instructions, typed the Will. Witnessed by A. W. Dotto and J. E. Triay.

Counsel reads parlars of para 3 of Defence.

Plaintiff and his wife and young son were T's only *blood*-relations. Affectionate regard naturally produces bequests.

Counsel reads parlars of para 2 of Defence.

Burden as regards undue influence or fraud is on Defendants who allege them. 30

*Plaintiff's
Evidence.*

No. 13.

EVIDENCE of Joseph Emmanuel Triay.

No. 13.
Joseph
Emmanuel
Triay,
Examina-
tion.

Joseph Emmanuel Triay, sworn, says:—Barrister-at-Law, partner in Triay & Triay. On 29 May, 53, at about 10 a.m. Plaintiff came to my chambers and said he had a cousin at Col. Hospital who wanted to make a Will. He asked me to do it all in one visit. I took my portable typewriter. He said he did not know what the contents of the Will were to be. Went then.

T was in a private room. Plaintiff went it. I followed. T was in bed. When she heard my name she told me about my great-uncle and told me to live up to the name of Triay. She told me she's made a previous 40

will by Serfaty and that Alcàntara had taken over his practice. She also mentioned that since Serfaty's death Laredo had asked her to change from Alcàntara to Benady but that she didn't think much of the idea. She said she wanted her old Will completely revoked and a new one made in Plaintiff's favour. I asked her who she wanted as Exor. She said Plaintiff had been extremely kind to her—spoke very highly of him and his family (his child)—he was the only relative she could rely on. She said Plaintiff was to be her Exor. Plaintiff took no part in that conversation.

*In the
Supreme
Court of
Gibraltar.*

*Plaintiff's
Evidence.*

No. 13.

Joseph
Emmanuel
Triay,
Examina-
tion,
continued.

10 I sat on chair and started typing formal parts. As I came to the operative parts (revocation, appointment of Exor. and bequest of estate) I put each point to her and asked her open questions. She told me again. I typed it all out.

20 Then I asked the nurse to attest with Sister Dines. Nurse said it was against Hospital Regulations. Sister confirmed it. I then went to see Dr. Miller, C.M.O., and he asked me to get Dotto the sec. The latter came to the T's room. I then laid the Will before T and asked her if she preferred to read the Will or have it explained to her. T said she preferred explanation. I then made these points (in Spanish, as before): revocation, Exor's appointment, bequest of all to Plaintiff. I was in some doubt as to whether T had acknowledged the Will then, so asked Plaintiff to repeat it all to her. Plaintiff explained it all, correctly. T said "Si" and nodded. Dotto was present.

I asked her to sign. She said she would and that she thought her signature might be a little weak.

She signed. I saw her do it.

Dotto and I then each signed as witnesses in her and each other's presence. T then asked who Dotto was. Plaintiff told her. T then said Dr. Dotto (Dotto's brother) had attended her brother in that very same room.

30 When I went to see Miller and get Dotto, Plaintiff came with me.

I was absolutely satisfied that T understood it was her will, understood its contents too. She seemed very happy to make it. I had no doubt whatsoever she understood it. I took the Will to my Chambers. I produce it. Ex. 1.

Defendants entered a caveat on 3rd June, the day after T's death.

Xamnd.

Cross-
examina-
tion.

When Plaintiff came to my chambers I said it would be difficult to do a Will in one visit. Plaintiff said it was best to avoid the inconvenience of two visits, as T was ill. So I took my typewriter.

40 I think Plaintiff spoke to my father first. My brother was away. I had been called to Bar 6 months, had been in father's chambers 2 years before that. I took the attestation clause (copied in my chambers before leaving). I took no books with me. I had no idea in advance—but it turned out to be this simple form. T was lying back against pillows. A nurse, and a maid of T's, were there. They left as I entered.

*In the
Supreme
Court of
Gibraltar.*

Plaintiff was not one we looked on as a client. He had consulted us on one or two occasions, e.g., when fined for speeding.

*Plaintiff's
Evidence.*

While Plaintiff went to look for the nurses as witnesses, I remained with T. No talk.

No. 13.

Joseph
Emmanuel
Triay,
Cross-
examina-
tion,
continued.

While I typed, Plaintiff was by the bed, and T was talking to him.

T told me Plaintiff was the only person in whom she had confidence and for whom she had affection.

When I typed, I put in the word "Codicils" as a matter of precaution, not knowing there were any.

I had already known "a sound disposing mind" was essential, and 10 that that included appreciation of the various claims of kinship etc. But I did not expressly ask her about anyone else. I was quite satisfied T knew what she was doing, and had made up her mind to favour Plaintiff. I didn't Xxmn her as to her past Will. I'm aware of certain forms of questions that textbooks mention should be put to testators. T's conversation was very natural and normal.

I knew Dr. Giraldi was T's doctor: I had asked Plaintiff and he'd told me. I'm not sure whether he was sent for—at that time I didn't know he was sent for, if he was.

I was completely satisfied that T had a clear view and wish. 20

When Plaintiff explained Will to T, he said: "By this you revoke the previous Will, that of Laredo." I was satisfied Plaintiff explained her present Will properly.

T needed no prompting when I arrived. She knew what she wanted and said it.

Re-
examina-
tion.

Re-examd.

I don't think I would have asked her if she wanted to leave everything to everyone else in Gibraltar.

Adjourned for 20 minutes.

No. 14.
Catherine
Susan
Dines,
Examina-
tion.

No. 14.

30

EVIDENCE of Catherine Susan Dines.

CATHERINE SUSAN DINES, sworn, says:

Sister at Col. Hospital. There when T was there under my care. T was in a private room. I remember seeing J. E. Triay (recd. in ct.) in the hospital: saw him coming out of T's room. He asked me if I'd be a witness to a Will. I said: "No. It is against Regulations of Colonial Service." I suggested he should see Dr. Miller. I saw T a little before, and afterwards. I think she was mentally quite all right—a very determined person. My assistant was Nurse Olivero. I saw Plaintiff at the hospital several times. I saw Defendant Laredo there once or 40 twice.

My duty to make a report in writing on my patients. I have it here. Under 29th May, 1953, I see "Night report" which covers 8 p.m. 28th May to 8 a.m. 29th May. "Has slept for normal periods. Pulse irregular . . . No drugs given. Condition remains the same." Next covers daytime of 29th May: "still rational" though physically weakening. She died 12.10 a.m. 2nd June.

*In the
Supreme
Court of
Gibraltar.*

*Plaintiff's
Evidence.*

Xamnd.

No. 14.
Catherine
Susan
Dines,
Examina-
tion,
continued.

10 I met N. Olivero in the corridor and she asked whether she could attest the Will. She had a pen ready. I told her "No." I was in the corridor. Plaintiff and J. E. Triay both came out of T's room. One of them asked me to witness. I refused. One of them then asked if a doctor was available. The doctors were very busy. I suggested they should contact Giraldi. One of them then asked me to contact him. I phoned him at K.G.V. and explained situation to him. He said he was far too busy to come. I told Plaintiff and J.E.T. and suggested they go to Dr. Miller.

Cross-
examina-
tion.

"I suggested a Doctor as I couldn't think of anyone else. I've no previous experience of wills signed in hospital."

20 I see Night Report 25th May: "Fluid intake encouraged but taking very little: only sips at a time."

I see Day Report 25th May: "Not so well this p.m."

I see Night Report 26th May: "Complains of pain in R. shoulder. Pethedine 50 mgs." (a drug to relieve pain—a little stronger than aspirin)—"given at 10 p.m."

I see Day Report 26th May: "Not so well this p.m."

I see Night Report 27th: "Unable to sleep. I/M Pethedine 10 p.m. no effect." "I/M Peth. repeated at 2.15 a.m."

I see Day Report 27th: "Ring 511 if patient becomes worse. Luminal"—(a drug to calm one down)—"gr. 1 nocte."

30 I see Night Report 28th: "Temp. normal. Condition remains unchanged. I/M Peth. 50 mgs. given 10 p.m. Slept better for short periods. Still passing urine—but not so frequently so. Fluid intake encouraged but has taken very little." She took 4 ozs.

I see Day Report 28th: "Temp. normal. Seen by Dr. Giraldi this a.m. . . . Luminal gr. nocte."

I see Night Report 29th: "Has slept for longer periods. Temp. normal. Pulse weak and irregular. No drugs given. Condition remains the same."

40 I see Day Report 29th: "Condition deteriorating. Taken some fluids. Still rational and very talkative. All treatment given. Condition poor at 3.20 p.m. Coramine 1 c.c. given."

On that day she still knew what was going on. She didn't want to be moved or her back treated or to be bothered with drinks. Report goes on: "Coramine repeated at 5 p.m. Oxygen given. Seen by Dr. Giraldi at 5.50 p.m."

*In the
Supreme
Court of
Gibraltar.*

Doctor usually came also in morning. He was called at 5.50 p.m. If there's any slight change the doctor is called.

*Plaintiff's
Evidence.*

T had very many visitors. We don't think it's good for patients. Children are not allowed in—but sometimes they get in unnoticed. We keep a notice and put it up sometimes.

No. 14.
Catherine
Susan
Dines,
Cross-
examina-
tion,
continued.
Re-
examina-
tion.

Re-exmd. :

Notice says "no visitors—doctor's orders." On 29th May "condition poor at 3.20 p.m." The change for worse was that afternoon

Adjourned to the following day.

No. 15.
Joseph
Emmanuel
Triay,
Re-called,
Cross-
examina-
tion.

No. 15.

10

EVIDENCE of Joseph Emmanuel Triay—Re-called.

Hassan : May I recall J. E. Triay for one question ?

Ashe Lincoln : No objection.

JOSEPH EMMANUEL TRIAY, further says :

I remember my firm appeared or acted for Plaintiff in a claim made against him in Summary Jurn. of this Ct. for services rendered. That was March, 1953—or rather Apl., 1953. And quite recently Plaintiff's father sued for rent—we acted—he paid up.

Re-
examina-
tion.

Re-exmd. :

The action against Plaintiff was settled.

20

To the Court.

The claim was for £50. Action settled for £45. We acted for Plaintiff's father because Benady was away from Gibraltar—the client said so.

No. 16,
James John
Giraldi,
Examina-
tion.

No. 16.

EVIDENCE of James John Giraldi.

JAMES JOHN GIRALDI, sworn, says :

M.D., M.R.C.P. I knew T as a patient from 1946 till her death. I attended her at her house. At least for two periods she had private nurses : first when she broke her leg ; and on a later occasion. No sign of affliction of the mind or mental incapacity, up to her death. Singing operatic songs is no sign of mental incapacity. She was "a little odd," and could sing songs. Shortly before her death I knew she had no chance of recovery and advised she should go to Col. Hospital for better nursing.

In her room at home, in presence of Mrs. Laredo and a nurse, it was decided between me and her, that she should go to hospital. T said she wanted to go in a car, not ambulance. It was understood it would be in

Plaintiff's car. He had done a lot for her. I phoned Plaintiff and asked him to. I said it was desirable. He agreed to take her. T and Plaintiff appeared to be on good terms. T was fond of Plaintiff and his little boy; she often spoke to them. So she entered Hospital, a private ward, and I attended her. I made notes of my attendance. Up to her death I observed no sign of her mental incapacity.

*In the
Supreme
Court of
Gibraltar.*

*Plaintiff's
Evidence.*

On 28th May I noted: "Losing ground. Mentally clear tho' wandering at times." I meant she was fully mentally capacitated but tending to digress from subject to subject.

No. 16,
James John
Giraldi,
Examina-
tion,
continued.

- 10 On 29th May, if I did as always do, I visited her about 8.30 p.m. I found her mental condition quite clear. I then went to K.G.V. There, I was called to the 'phone by Sister Dines, asking if I would come to Col. Hospital to witness T's will. I was unwilling and said so. I couldn't go from one hospital to another at a moment's notice. At about 11.30 to 12 noon I went again to Col. Hospital and saw T again. Her condition was practically the same as in morning. No change in her mental condition. "Reported to be mentally disorientated" or "reputed" means I was told so. But I did not agree with it, according to my own observation.

Hassan objects to witness being asked who told him.

- 20 Witness: It was not any medically qualified person who told me T was "mentally disorientated." I must have seen her later again on 29th May. No change in mental condition. She died on 2nd June, '54.

Examined.:

I never had any doubt about T's mental capacity. After T's death Alcàntara came to see me. I may have given him my impression of T's mental state. I can't remember sending Alcàntara any note. I remember stating I would not give him an opinion on T's mental condition—I wrote to him—I see the letter, returning to him a statement made by him and a questionnaire made by him.

Cross-
examina-
tion.

- 30 Hassan seeks to read Alcàntara's statement sent to witness, which he refused to sign.

Ashe Lincoln objects.

I uphold objection.

Hassan seeks to read the questionnaire.

Ashe Lincoln: No objection.

Hassan reads the questionnaire.

Witness continues:

- 40 Triay senior for about 6 months tried to get me to make a statement for him. I declined. I only made a statement, later, on condition that a copy be sent to the other side. I did it because it was obvious that the case would come to court.

Since T's death I've visited the Marrache household a number of times and Plff. has mentioned to me the fact that there was a dispute. But Plff. did *not* "ask me to give evidence that T was sane."

In the
Supreme
Court of
Gibraltar.

I knew eventually that there was litigation—but not the details.

Plaintiff's
Evidence.

No. 16.

James John
Giraldi,
Cross-
examina-
tion,
continued.

I produce my letter declining to make statement to Alcàntara, and his questionnaire. Ex. 3.

I produce Alcàntara's reply to me enclosing a statement taken from Belilo. Ex. 4. I remember telling *you* in the Medical Hall that *Belilo's* statement was substantially correct.

I agree I told Alcàntara some of the facts in an interview. I told Alcàntara that I had refused to go to witness the Will, but *not* that it was because T was unfit to sign any legal document. I did tell him that I was annoyed when I found on the afternoon of 29th May that T had been 10 disturbed without my consent—and that I had told Sister Dines so.

On the phone to K.G.V., Sister Dines did ask me to come and witness Simy M's Will. I said I wasn't going to be ordered about like that—or words to that effect. When I eventually reached the Col. Hosp. I found the Will had been made. I was annoyed because under proper Hospl. etiquette in my view I should have been asked for permission that the patient be disturbed. Obviously that is a matter of principle: even relatives have to ask permission to visit a patient. It is clear to me, from the fact that I made no report to the C.M.O. about Sister Dines' conduct, that I had not told her that T was mentally unfit to sign any 20 legal document.

As to Ext. 4 :—

The *time* at which I was annoyed was my *first* visit to Col. Hospl. *after* Will was executed, whenever that was. I remember finding some people in the corridor. I agree I asked Plff. *who* had allowed a lawyer to be brought to disturb T without my permission. Plff. sd. "I act on instructions." I said "Instructions *de nadie.*" I was very annoyed—possibly saying "I'm going to revoke it !!!"

Plff. said "Triay came and Dr. Miller was inside."

I may have said "even the police couldn't take a statement from 30 my patient without my permission."

I was annoyed—she had been *disturbed*—my patient who *might* have been resting.

I went straight in to see T with the Sister—took no heed of who was there, if anyone.

On coming out of T's room I may well have said to Plff. "Sam, *ven conmigo* " and we went into Sister's office and he explained what had happened. When we came out I was less angry.

My anger was based on the belief that some other *medical* authority had permitted *my* patient to be *disturbed*. In fact, none had, as it turned 40 out.

As to T's transfer to Col. Hosp. :—We told T she was going to have an X-ray photo. She was a very determined lady and didn't like doctors or hospitals. So we made an excuse. She was in fact a chronic lung case.

When old, she had two fractures through falls, which led to further internal troubles. She had vomiting and so on, due to a cancer of the stomach. She was a little deaf.

*In the
Supreme
Court of
Gibraltar.*

Night before she went to Hospl.—or some time about then—I discussed it with Laredo. Laredo was chez T quite often. I couldn't have said 3 men would go from the Hospl. to help. T herself pronounced against the ambulance.

*Plaintiff's
Evidence.*

No. 16.

James John
Giraldi,
Cross-
examina-
tion,
continued.

I remember talking with Mrs. Laredo by 'phone, but I can't recall details, on day T went into Hospl.

10 I think Plff.'s taking her to Hospl. in his big car arose when T pronounced against the ambulance.

We very often find patients reluctant to go by Ambulance and allow cars. I was not against *this* patient going by car. There was no row about it. I can't recollect details.

T was in fact admitted 22nd May.

Re T's condition :—

My notes reflect my own impressions at time of visits and sisters' reported observations. The note on 28 May "Losing ground etc." was made on morning of that day? I certainly saw T not less than twice a day. On 28th I saw her certainly twice.

On 29th the note may have been made in morning or evening. "Lucid with Doctor, but reported mentally disorientated." It's an unusual note—not very relevant *at the time*. It meant that I thought her lucid but *someone* was trying to impress me with the contrary. I can't be sure who told me. I'm almost sure it was one of the Hebrew watchers. I think it was. The entry could have been made on any of my 3 visits to T on 29th; not *likely* to have been made the time when I was annoyed. Maybe it was in early morning *or* at 5.50 p.m. when I visited.

Midday adjournment.

30 I see Report Book re food and liquid taken by T. She was receiving fluid nourishment per rectum. *This* report relates to food and fluid taken by the mouth. T was having *continuous* "rectal drip." She was of course getting weaker.

She was not mentally incapable, before or after—"not necessarily enough to make a Will" [*sic*]. As for the state of affairs on that morning of 29th May. I *could* have been present when the Will was made—but it's *not* desirable for med. prac. to be either a witness or present at a Will. To be definite as to her state of mind at a given moment I should have had to examine her immediately before and after.

40 *Re-exam'd.*

I did examine her early that day and later. In my view she was of a disposing mind that day.

Re-
examina-
tion.

*In the
Supreme
Court of
Gibraltar.*

To the court.

I can't be sure as to the exact time I went for *second* time to see T on 29th. It may not have been till 5.50 p.m.

*Plaintiff's
Evidence.*

No. 16.
James John
Gibaldi.
To the
Court.

Further re-
examina-
tion.

T had a strong will. Difficult to persuade her as to treatment; she had to be convinced. She definitely understood argument. In Hospl. she had her own ideas about nursing and expressed them. Up to and including 29th May she never seemed to me unable to recognise people or talk sensibly—and it was never pointed out to me by any private nurse or nurse in the hospital that she was unable to do so.

Further *re-examd.*, with leave. 10

I visited T certainly on one occasion, possibly on two, *after* the Will, on 29th. I *examined* her in presence of the Sister alone, *after* the Will. She made no complaint to me about anything that had happened that day.

No. 17.
Teresa
Olivero,
Examina-
tion.

No. 17.

EVIDENCE of Teresa Olivero.

TERESA OLIVERO, sworn, says :—

Nurse at Col Hospl for nearly 7 years. In May, 1953, on duty in private corridor. Remember arrival of T at Hospl.

All her family came every day to see her. I saw J. E. Triay 20
at hospl once with Plff. A little later I was called into T's room. I was asked if I could sign something—don't know what. I took pen from pocket and went out and told Sister Dines she and I were to sign. She said we were not to do so. She told me to find Matron. I looked for Matron—she said I mustn't sign—I was to see C.M.O. I returned to private corridor and saw Dines.

I attended T. She often talked with me. She was very fond of all the Marrache family. Plff's sister was often there. Plff's son was there twice. T was very pleased to see him there. T was a bit difficult to lead—she used to refuse treatment and so on. 30

Cross-
examina-
tion.

XXD.

At first I thought it harmless to sign, but would first see what I was signing! I went to see Sister for her to sign too. She said we couldn't. Never signed anything in Hospl. before. Never had the Regulations read to me. Didn't know children not allowed. Saw Plff's son there in fancy dress once. T was difficult to lead as regards *treatment*—don't know about anything else. I saw Plff's son there three or four times: the *last* time in Fancy dress.

Don't remember any Notice on T's door.

Re-
examina-
tion.

Re-examined.

I was in the office—bell rang—T had called me in to admire the little boy. I also saw Laredo [recognised in court.] there many times—*always* in the corridor—never saw him inside the room. 40

No. 18.

EVIDENCE of Alfred Wm. Dotto.

*In the
Supreme
Court of
Gibraltar.*

ALFRED WM. DOTTO, sworn, says :—

Secretary of Col. Hospl. for 27 years—still there on 29 May, 1953. I remember J. E. Triay and Plff coming to my office—they wanted to see the C.M.O. Both said so, but did not say why. I took them to see the C.M.O. Shortly they came out and said Dr. Miller had authorised me to go with them and attest T's Will. I agreed. I went to T's room, entering with Plff and J. E. T. T was sitting in bed against pillows Triay
10 produced a document and laid it on the bed for T to read and sign. Then T intimated that she would rather have it explained to her. So Triay started to explain it. At this stage Plff intervened to tell Triay that T was rather deaf and to lift his voice. Triay then said : "Will you explain it yourself—three things : first, that she is making her last Will and revoking all former Wills ; secondly, that she is appointing you sole Executor ; thirdly, that she is leaving all she possesses to you." Triay said all that in Spanish. Then Plff repeated more or less what Triay had told him, in Spanish. T assented. In my opinion there couldn't be any doubt that she understood what was said.

*Plaintiff's
Evidence.*

No. 18.

Alfred
Wm.
Dotto,
Examina-
tion.

20 I see Ext. 1. I saw T sign her name. Then I signed in her presence and in Triay's. Then Triay signed in our presence.

After the signing T asked Plff who I was. Plff told her my name. Then T said her brother had been attended by my brother, which I knew to be correct. Then I left.

XXD.

Plff was nearest to T in her room. He explained the Will into her ear in Spanish. "You revoke your former Will, the Laredo one. You make me sole Executor and leave me all you possess. Don't fear—you'll live 100 years."

Cross-
examina-
tion.

30 T expressed some doubt as to strength to sign, but signed all right.

I probably spoke with Balensi. I had a talk with S. P. Triay as a *friend*. I said I thought it was rather irregular that the sole executor and beneficiary should be present at the execution of a Will. He said "That will not invalidate a Will but will be used as evidence of undue influence."

Re-examined :

That's exactly what has happened !

Ashe Lincoln, Q.C. : By consent, these documents :—

- 40 (1) a certificate shewing date of T's birth.
(2) a 9 Oct., 1954, letter from Triay and Triay to Alcàntara enclosing Giraldi's statement.
(3) letter from Triay & Triay to Alcàntara sending statements by attesting witness—10 Sep., 1954.
(1) shews T's age as 86, at death.

Re-
examina-
tion.

Ext. 5.

Ext. 6.

SUBMISSION and ARGUMENTS by Counsel for Plaintiff and Defendants.

No. 19.
Submission
and
Arguments
by Counsel
for
Plaintiff
and
Defendants.

Ashe Lincoln, Q.C. I've discharged Plff's burden *prima facie*. Onus now shifts as to undue influence and fraud.

Hassan : I've a submission.

Jury retire.

Hassan : Rebutting evidence will be at *discretion*. I shall oppose any application to allow it, if made. See R.S.C.O. 37 r. 1—note on p. 637.

Submit that Plff has not discharged burden which is on him. I refer only to the issue of undue influence : Plff must go further than he has so far. 10

See *Fulton v. Andrew* (1875) 44 L.J. (P.) at p. 28, bottom of 2nd col. to top p. 29 incl.

Per Curiam : That case was on a different footing. It appears clearly that it relates to the issue of knowledge and assent, *not* to undue influence, in the passage cited, and also that the facts as to the reading-over to testator were there quite different from the present ones, viz., in *that case only* the beneficiaries (who had been instrumental in getting the Will prepared) were present and they *alone* were said to have read it over whereas here that was not the case. In my view Plff has discharged the required onus on all issues up to now, in so far as it rests on him as a matter of law. *Fulton v. Andrew* is far away from this case. 20

Ashe Lincoln, Q.C. : In fairness, I must warn my friend of the danger he incurs if he really submits in effect " no case " at this stage.

Hassan : I am really uttering a warning myself—that I shall oppose any rebutting evidence *except* on the issues of " undue influence " and fraud. No " extension of the evidence on other issues " can be permitted hereafter. That is all.

Ashe Lincoln, Q.C. : I should never argue otherwise. 30

Hassan : Some matters were opened as to which not proof has been given, e.g., blood-relationship (alleged) of Plff to T, and Laredo's reason for litigating.

Per Curiam : Those are side-issues. I'm sure Mr. Ashe Lincoln wouldn't have mentioned them unless he had the means to prove them. No relevance to the point you (*Hassan*) raised as to rebutting evidence. That is the only matter I am now dealing with. When the time comes, I shall have to exercise the discretion.

Short adjournment.

OPENING SPEECH by Defendants' Counsel.

*In the
Supreme
Court of
Gibraltar.*

Jury return to court.

Hassan opens Defence case.

The onus is on me as regards "undue influence" and "fraud"; on Plff as regards the remaining issues.

Plff's Counsel opened that Laredo had brought this case to be able to administer the charitable funds left by 1st Will.

1st Will legacies £1,850 (N.B. Actually £1,900).

10 1st Codicil legacies £550.

2nd Codicil legacies £500 (old monies rebequeathed because of deaths of certain legatees).

In 1st Will £600 to 1st Dft.

£100 to Plff.

£100 to Plff's (now dead) brother.

£200 to Plff's. sister.

In 1st Codicil legacies to 8 original legatees were doubled, including those of Plff. Plff's. deceased brother and 1st Dft's. 2 sisters.

20 It was Benjamin Marrache, the head of the family, who wanted his accumulated wealth to go to Hebrew charities—hence T's 1st Will. Benjamin elder brother.

Ashe Lincoln : I object—irrelevant.

Hassan : Relevant on issue of fraud—see Defence para. 4.

Per Curiam : Yes, if evidence that T *knew* B's wishes.

Hassan, continuing :—

On the Maraches' return to Gibraltar, there was found a note by Benjamin Marrache in his note-book : there will be evidence of its contents and of T's knowledge of those wishes of her brother. (Reads from note-book.)

30 T and her brother Samuel Marrache "made wills" which together (whichever died first) carried out the wishes of Benjamin Marrache.

Plff. had "a scheming heart," not a kind heart. He sought to ingratiate himself. He used his small son for same purpose. Dfts. do *not* suggest that J.E. Triay or Dotto were parties to the fraud. There will be evidence of the scheming acts of Plff. Also of T having said, both before and after signing of 2nd Will, that she was carrying out Benjamin's (her dead senior brother's) wishes.

40 Witnesses ; 1st Dft. Laredo, *et alios*. The two maids attending T were maids of Plff's. father—they went to serve in that household after T's death.

Laredo had a "sobering influence" on T as against the baleful one of Plff.

No. 20.
Opening
Speech by
Mr. Hassan,
Counsel for
Defendants.

*In the
Supreme
Court of
Gibraltar.*

No. 20.
Opening
Speech by
Mr. Hassan,
Counsel for
Defendants,
continued.

T constantly spoke of carrying out Benjamin's wishes.

Ashe Lincoln : Now that my friend has concluded his opening, I must observe that apparently he proposes to withdraw some parts of his pleading, i.e., parts of his parlars under para. 4 of Defence (fraud). He has stated that he makes no allegation of fraud against Triay, but those parlars are necessarily inconsistent with that statement.

Hassan : I do *not* allege fraud on the part of Triay. I put that on record as further parlars.

Per Curiam : I am well aware that you did, but the question is whether it can possibly be open to you to seek to prove the other (first) parlars under para. 4, as pleaded. Are they not inevitably inconsistent with the assertion that no fraud is alleged against Triay? Consider this matter before tomorrow morning's sitting. 10

Adjourned to following day.

11th Nov. 1954.

Jury out of Court.

Hassan : I cannot consent to withdrawal of allegation of fraud. Fraud could be found by the jury irrespective of J. E. Triay. But I am prepared to apply for amendment of the parlars of para. 4 (fraud) to clarify the matter. R.S.C. O.28 r. 1 empowers court to allow an amendment, 20 however late. I have drafted a proposed amendment and have just now provided Plff's. Counsel with a copy.

(Counsel hands in copy of amended parlars.)

See Cases 835, 836 and 838 in E. & E.D. Practice Volume, pp. 97-98.

The original parlars. under para. 4 were asked in Jan. 1954 and given in Feb. 1954. Action was due originally for trial in June, but postponed. On 16 Feb. 54 the further parlars. exonerating Triay were delivered.

From 16th July, 1953, Plff. possessed a statement from Dotto—supplied to Dfts on 10th Sep., 1954 together with Triay's statement.

True that from 10th Sep., 1954, onwards the Dfts. might have sought 30 to amend the original parlars.—but they didn't tumble to it—otherwise concentrated.

Ashe Lincoln, Q.C. : Hassan says in effect : " we made a grave specific charge of fraud—without any evidence ever in our possession to substantiate it." He now seeks to get out of that and to present an entirely new charge of fraud, without suffering any penalty.

Will attested 29 May, 1953. Caveat 3rd June, 1953. It was not until Sep., 1954, that Alcàntara asked for statements of attesting witnesses. They were sent at once, on 10th Sep., 54—two months ago—but no attempt to amend. Only when I pressed him did Hassan try to amend. 40

Original parlars. under para. 4 should be compared with proposed amendment.

Implication of first part of amendment is now inconsistent with second part of amendment itself. This also raises an entirely new allegation of fraud : see final four lines in red.

See Ann. Prac. 1955, p. 456 : general principles.

See
document
" A "
annexed.

DOCUMENT "A."

Amendment of Particulars of paragraph 4 of the Defence as first submitted to the court by Counsel for the Defendants (at 10.30 a.m. 11th November, 1954).

*In the
Supreme
Court of
Gibraltar.*

No. 20.

Opening
Speech by
Mr. Hassan,
Counsel for
Defendants,
continued.

3. As to paragraph 4 of the Defence the Defendants will say that on or about the 29th day of May, 1953, the Plaintiff persuaded the testatrix to caused a will to be prepared and engrossed by a Solicitor ~~without having received from the deceased the instructions which the said will purports to carry out.~~ The Plaintiff also caused the said Solicitor after the will
10 had been duly engrossed and made ready for signature to attend the deceased at her death bed in the Colonial Hospital without having been so instructed by the deceased and procured her signature by having previously thereto falsely and fraudulently represented to the deceased that the said will only purported to substitute the Plaintiff as an executor in the place of Judah I. Laredo who was one of the executors of the true and original last will and testament of the deceased dated the 4th day of July, 1946, and of the two Codicils dated respectively the 5th day of September, 1946, and the 20th day of July, 1951, and that as sole executor and beneficiary thereof he would carry out the wishes contained
20 in the said will and codicils.

Per Curiam : Are any substantial costs involved ?

Ashe Lincoln : No. Only small amount : fees.

Per Curiam : If the parlars had been in this proposed new form throughout, would your evidence up to this point have been different ?

Ashe Lincoln : No, I can't say it would.

Per Curiam : Does any question of an adjournment on account of surprise arise ?

Ashe Lincoln : No.

Per Curiam : Then only the *form* of amendment remains ?

30 *Ashe Lincoln* : The main point is that this *still* reflects on the honesty of Triay. In other words, Defendants do not accept his evidence, clearly. In other words, they still impute dishonesty.

Hassan : See Defendant's application for further parlars, made 12 Feb., 1954.

Defendants *do* accept Triay's evidence, but say that Plaintiff personally had previously tricked Testatrix into believing that if she left *him* all her property *he* would carry out the wishes of her deceased brother Benjamin and herself (that the moneys should go to Hebrew charities).

Per Curiam (to Ashe Lincoln) : What do you say about that ?

40 *Ashe Lincoln* : If that were *really* made clear by the amended parlars I should no longer oppose any amendment. But, as they stand, it is not. And of course Defendants must be bound by their *parlars* of fraud—strictly bound—so far as that issue is concerned.

*In the
Supreme
Court of
Gibraltar.*

Per Curiam : Yes. And I agree that Defendants' case is not yet made clear beyond doubt by this proposed amendment. Take a short adjournment to put the matter right, between you, if possible. I reserve my decision until that is done.

No. 20.
Opening
Speech by
Mr. Hassan,
Counsel for
Defendants,
continued.

Short adjournment.

Hassan : We are agreed on the form. A clean copy will be prepared.

Ashe Lincoln : It is agreed.

Per Curiam (having seen new form) : Amendment allowed, Defendants to pay costs of and occasioned by it (see pages 5 & 6).

Jury return to court.

10

*Defendants'
Evidence.*

No. 21.

EVIDENCE of Judah Isaac Laredo.

No. 21.
Judah
Isaac
Laredo,
Examina-
tion.

JUDAH ISAAC LAREDO, sworn, says :—

222 Main St. Commission agent. One of two Vice-Pres. of Bd. of Hebrew community. One of three Trustees of Hebrew Charities. I knew T since I was very small boy. Her brothers were Benjamin & Samuel—other brothers died long ago without children. Benjamin was considered Head of Family (Pres. of Board of Heb. Com. for some time). Benjamin was my uncle by marriage.

Finances quite satisfactory. Married, no children. My spinster 20 sister has means of her own.

T. was very religious.

Benjamin, his wife, T and Samuel were evacuated to Tangier in 1940. Prior to that they lived in T's property—shop and 2 flats. They had a furniture business in the shop. One flat was occupied by Benjamin & wife ; the other by T and Samuel. I then lived in Main St. on 2nd floor above Brown the tailor.

My wife evacuated to Tangier in Oct., 1940, and I remained in Gib. till compulsory evacn. in May, 1941 (lived in my flat). Maraches then lived in Hotel Lutesi in Tangier.

30

When I was evacuated I lived in a flat in Calle Velasquez Tangier—but in the last stage (a year) I lived in Villa de France : owner of my flat wanted it. Maraches had moved to Villa de France before me, independently.

Benjamin died in Tangier Feb., 1945, while I was there. His wife had died there in Dec., 1944. I was present when Benjamin died. When he died, Samuel produced his small note-book and Samuel said to me that he wanted to proceed, in agreement with his sister, as soon as possible to "legalise" B's wishes indicated in that book. That was on very day of B's death. I produce the note-book. Ex. 7.

40

We re-discovered this book in T's house after her death.

I knew B's wishes as expressed in Ex. 7 : that the whole property be sold as soon as possible, that half the legacy be used to supply a canteen for meals for poor children, the other half for the Hebrew School—investing proceeds of sale of property—interest thereon and the interest on his War Loan to be applied as above. B also noted in book that certain legacies were to be paid on the liquidation of the stock-in-trade in the shop.

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

Soon thereafter T and Samuel were repatriated. I returned to Gib. 2 months later.

No. 21.

Judah

Isaac

Laredo,

Examina-

tion,

continued.

When B died, Samuel told me he would be very glad to offer me one of the flats in their house—at £6 per month (with an option to use a room as an office) plus rates. My own flat had been requisitioned. T and Samuel went up to live in the late B's flat, top floor. I still live there.

I was always on very good terms with T and Samuel.

Samuel shewed me a copy of a Will he had prepared and said he was keen "to legalize" the Will as soon as possible. I produce the draft Will Ex. 8 the actual original (Doc. 10C)—undated (in 1946) & unexecuted.

Life interest to T—after that, $\frac{1}{2}$ to one Hebrew charity, half to another. Samuel died in that same year 1946, about June. S's death cert. Ex. 9.

While Samuel was alive, T did nothing about a Will. S told me that that was by mutual agreement with T.

When Samuel died, T said she wanted to make a Will to carry out B's and S's wishes.

On a death, 8 days' strict mourning. After 8 days from S's death T prepared her Will with A. B. M. Serfaty's help. I had nothing whatever to do with that matter.

I had helped B and S from time to time. After S's help, T asked me to continue to help her and I assented.

On B's death S paid me £300 and I gave a receipt to S, 22nd Oct., 1945. (Agreed bundle of 8 receipts including that one, put in Ex. 10). That money was paid by S to accord with B's wishes in Ex. 7. B had made a list of proposed gifts :

Esther Levy, niece of B's wife : £200.

Myself : £300.

Each of my two sisters : £300.

Elmaleh (rel. of M's) : £50.

Hijas de Pariente : £50. No relation of mine.

Hijas de Benzimra : £50 } no relations of mine.

Hijas de Bendelac : £50 }

Samuel thus "practically immediately" carried out B's wishes. (Receipts do *not* shew this : pd. out by S *and partly by T* between 15 Sep., 1945, and 18 Feb., 1947 & one in 1951.)

Midday adjournment

Relations with T :—

At her request I went on Fri. & Sat. nights to her flat for "blessing of the wine"—and on Feast-days. When she wanted anything—e.g. repairs, or to draw cheques, etc.—she sent for me. I used to advise

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

No. 21.

Judah
Isaac
Laredo,
Examina-
tion,
continued.

re repairs; she sent for Linares. She paid monthly cheques for her expenses "to Bearer." She asked me to make out the cheque for a stated amount, I did so, and she signed it. So also for cheques to meet bills for repairs. She signed them many times in my presence.

I paid my rent in cash, generally by sending it up to her by my maid or wife. I never made out rent-receipts. I see rent-receipts given me by T for Jan.-Apl., 1953 (Ex. 11)—in my deceased sister's writing—T asked her to write these receipts out. My sister lived elsewhere in Main St. She did errands for T.

I see these receipt-forms (Ex. 12) filled in in advance in my sister's 10
handwriting. They are for the shop May-June-July, 1953. Also c/fs.
previous.

I see this book of c/fs. for receipts (Ex. 13) for my rent 1951-1953.

I see these receipt-forms filled in in advance (Ex. 14) by my sister :
my rent May-June-July, 1953.

When T in bed prior to hospitalization I visited her more frequently
to see how she was.

T was always very friendly towards me.

I saw Plaintiff visiting T very frequently—also his wife, sister and
boy, and at times his father—they had to cross our hall to get to T's flat. 20

T told me she never told Plaintiff of her affairs. She said Plaintiff
had asked her to give him a life-interest in her property (?) and that he
and family should go to live with her. T sd she had rejected idea. T sd
it was funny to live with a family which always quarrelled.

T told me those things between Samuel's death and her illness—
practically certain in 1951 or 1952. T told me Plaintiff & his father were
" primos de balcon "—no relations.

Once she told me Plaintiff had been in and put up a photo of his
marriage—and once a photo of the child.

(" Child now 5 "—Hassan.)

30

T broke a leg. Lease of shop came to an end, but there was a 5-year
option. Benady (representing estate of his father) and Alcantara and
I went to T's flat. We were in dining room. Plaintiff came into flat
and went straight into bedroom. T was unable to sign. Benady sd she must
appoint a signatory. She named me. I signed renewal of lease for her.
I also signed receipts for rent of shop for T while she was ill.

T had a safe near bed. She kept keys. She sometimes asked me to
open it. I sd Yes if she was near. Once she asked me to get some money
out of it. I did—we found £300 in notes, left there (as T sd) by Samuel.
I handed her £50 and banked £250 for her at Barclays. That was the only 40
occasion.

T used to pass on to me her pass-sheets to check them.

T often used to ask how Hebrew School was getting on. T used to
tell me she had a memento of Benjamin she wanted to give to the School :
a lamp.

T had two maids. When the census form came I filled it up for her ; warned her illegal to include maids, because they were in name of Plaintiff's father. She sd she'd asked them to change that, but they never had.

*In the
Supreme
Court of
Gibraltar.*

T had a day-nurse when she broke her leg—nurse stayed about 2 to 2½ yrs.—left a few months before May, 1953.

*Defendants'
Evidence.*

T sent her nurse to me with stamps of insurance card, and card, and I used to stamp it.

No. 21.
Judah
Isaac
Laredo,
Examina-
tion,
continued.

I never stamped maids' (Maria's and Carmen's) cards.

10 T told me she had extra medicines, etc., and I advised her to let a store-room in her house (patio) T told me she'd rented the store for £10 per month and that Plaintiff had taken away its contents (her furniture, etc.).

I often left Gibraltar for short times—on annual holidays—with my wife. We closed our flat. In 1952 we were in London 15 days. T asked me on each occasion to arrange for one of my sisters to go to "bless the wine".

20 T had 3 months in bed before going to Hospital in May, 1953. She was sick often, very thin, weak. "She has generally been a weak lady." She was deaf—considerably so just before hospital.

About 15 May I was dining with my wife. Called upstairs. Found T was singing: the first time I had heard her. It seemed like an Opera. She was saying unusual things.

At beginning May, 1953, it was The Pentecost. I'd advised her a few days before. At Pentecost I found her looking very pale. I shouted at her: "It's Pentecost." She sd. "I don't know"—she was in a very abnormal state.

30 On a Fri. night shortly before 22nd May I went for blessing of wine. I told her it was Friday. She couldn't understand. I gave up the ceremony.

On 21st May, 1953, Giraldi came and saw T. He suggested to her she shd. go to hospital. She asked me my view. I sd. doctor must be right. She agreed. Dr. sd. he wd. send ambulance next day. She agreed *then*. Dr. sd. he'd telephone next day 2 hours in advance. I was *not* there next day.

40 I see this will of 4th July, 1946, and these two Codicils Ex. 15. I first saw these after her death—Alcàntara shewed me them. T called me her "Trustee" during her life. I knew *nothing* of their terms during her life. Most of the beneficiaries not relations of mine. The charitable bequest (residue) was often mentioned by T: she sd. she was happy to have completed the desire of Benjamin whom she regarded as a father. She sd. her desire was the same as her brothers'.

I was not present when T made Will or either codicil. I see effect of the Codicils Ex. 16 & 17.

Alcàntara was never my Solor. Never had one at all.

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

*No. 21.
Judah
Isaac
Laredo,
Examina-
tion,
continued.*

I visited T practically every day in hospital, nearly always with my wife. Sometimes my wife visited alone.

When T died, I refrained from interfering with arrangements as a result of something Elias Benzaquen told me. I was *not* concerned with sending the Hebrew "watcher" to the hospital.

Hassan : I want to put in Testamentary document No. 1 Ex. 18—the unsigned draft Will of Testatrix dated "1946". Alcántara states it came from the records of the late A. B. M. Serfaty.

Ashe Lincoln : I accept that statement and am prepared to admit the document on the strength of it—but there is no evidence that it was 10 ever shewn to T.

Per Curiam : Let it be admitted in evidence on that footing. It is desirable not to burden the jury with any unnecessary documents ; the remainder of Serfaty's records as produced with the Afft. of scripts do not seem to help.

Short adjournment.

*Cross-
examina-
tion.*

Xxmnd.

I'm fighting this action because I want to establish T's wish to which she referred on several occasions.

I'm under impression that T was very deaf and signed 2nd Will 20 under impression that she was substituting Plaintiff for me as Executor. To that extent I accept Triay's evidence—with that qualification. And Dotto's. Giraldis said she was deaf.

I noticed T was "stone deaf" some months before she went to hospital. If there's nothing in pleadings about deafness, I told Hassan about it several times.

I was on good terms with the Marraches—helped B to write letters.

I lived in Calle Velasquez first—2 or 3 blocks from where T & brothers lived—in Tangier. Coincidence. Lived in Villa de F. because cheap. Not because T lived there. 30

My rent was fixed by Samuel M. (in Gib. flat) : 5-rooms on Main St., one of them my office. I never fixed the rent. He did. It was £6 p. month plus rates. I've no receipts in favour of *him* : only in favour of T. Only c/f's in my sister's hand. T used to ask sister to do things for her. Sister died quite recently.

I drew the monthly cheques for T made out to bearer. I made them for the amounts she told me to. I think T's expenses of living would be £50 per month. I paid her in cash, which she never banked, my rent. In July, '51, she cashed £50 through me, in Aug., '51, £60, in Sep, '51, £60, in Nov., '51, £70—Total drawings in bearer cheques in 1951 was 40 £741-10-0 ; plus £31 p. month in cash. I never collected the cash on the bearer cheques : T often called my decd. sister Esther to collect it. I see the cheque for March, 1951, Ex 19 for £100 endorsed by my sister : cheque to *bearer*.

My own expenses were perhaps about £500 per annum.

I complain about this 2nd Will because it doesn't resemble Benjamin's wishes.

S told me about the Note book, just after B's death. S told me the donatives were intended to come out of the sale of stock of shop in Gibraltar.

Counsel : Was Benjamin able to make a Will if he wished ?

Witness : makes long speech about B's delicate health without answering the question.

10 I see the receipts given by people for the " donatives " mentioned in Note book. S sd the donatives were to come out of the sale of the stock-in-trade of the furniture shop. I.e. these were to be independent of the other notes. Result was I got £300 from S in Oct., 1945 (Ex. 10 doc. 36) ; and each of my sisters got £150 in Feb., 1947, from T. I never asked S if he had paid my sisters, nor told my sisters they were entitled.

When S died, I did not enquire whether he had made a Will. I agree I sd. S had shewn me a draft of his Will—but I never pointed out to him that he hadn't pd. my sisters and hadn't left them £150 each either. But those payments were supposed by B to be " separate affairs —payable out of S's stock in trade ".

20 S never made his Will. He shewed me Ex. 8 " around a year before his death." (Note : apparently incorrect—see date " 1946 " in draft—but evidently some considerable time before S died on 22 June, '46.)

At S's death T asked me personally to distribute some monies.

T told me on several occasions she wasn't related to Plaintiff. I believed it. I'm Vice-Pres. of Hebrew Community. I agree it is our custom that the nearest relatives should place a deceased's body in the grave. I agree a Mr. Benyunes and Plff did it in fact. I was at the funeral and did not.

30 T told me she was going to make a Will after the 8 days' mourning. But she told me nothing and I asked her nothing.

Nine months after S's death T paid £150 to each of my sisters. I was a witness of the receipts they gave (Ext. 10, docs. 38 and 39). I believe Serfaty prepared the receipt-forms. I agree T paid my cousin £200 (Esther Levy) the following month. I did not take an active part in those arrangements. I hear a letter (read) from Serfaty to Esther Levy mentioning my intervention in question of exporting her money to Lisbon. But it was T who instructed Serfaty to arrange it all.

40 T did tell me she was " happy to have completed her brothers' wishes in respect of her building and estate " [*sic*—those were the words she used. She meant as to the *residue* of her estate. She said " for the poor." She told me " for the Talmud Torà." I didn't say she said " for the poor ".

I agree that Clause 17 of Will of 4 July, 1946, of T does not carry out B's wishes.

I never heard that Benjamin distrusted the Trustees of the Hebrew Community. I know he resigned as President some years before the War.

In the
Supreme
Court of
Gibraltar.

Defendants'
Evidence.

No. 21.

Judah
Isaac
Laredo,
Cross-
examina-
tion,
continued.

*In the
Supreme
Court of
Gibraltar.*

I can't remember if I proposed (or seconded) the passing of the Trustees' accounts. I never heard of B resigning because of a defalcation of 10,000 duros.

*Defendants'
Evidence.*

To the court.

No. 21.

When B died in Tangier S shewed me the note-book *and its contents here relevant.*

Judah
Isaac
Laredo,
Cross-
examina-
tion,
continued.

Further X X D.

I see this photo of Plff and his wife and a letter from Plff. (Counsel reads it.)

Plff put photo of himself and bride in T's flat about time of wedding 10 in 1949. It remained there till T's death.

T, whenever she spoke about Plff and his wife, spoke on a normal level.

My wife had keys of T's flat when she was in hospital finally. I was there with the solors. when we all went there together ; I agree no money was found in the safe.

I didn't say T " wasn't of sound mind " or was " insane ". (Counsel for Defts. here interrupted the XXmn., protesting that witness should not be asked whether he wished to withdraw the plea of unsoundness of mind. I ruled against him.) But I persist in saying she wasn't of sound mind. 20

I never heard of T having referred to me as " Cara Pipa " or " Tio Gordo ".

When I found her lying on her bed with a pale face and unable to understand me, I didn't think she was ill, so took no steps.

Plff's sister told me 8 or 10 days before she died that T had said she wanted Plff to close her eyes when she died. I said " She's not dead yet ".

The evening before she died I was at the Hospl. till 9 p.m. Then I went home to bed. I was phoned at about 1 a.m. to say she was dead. I stayed in bed. I went to Hospl. that morning at about 9 a.m. 30

The day of the funeral I went to Solicitor's office and arranged for a caveat to be entered. I agree I *hadn't* seen her Will of July, 1946. I thought I was " helping a charitable lady ".

I agree that this action was due to be heard in June. I agree I didn't ask my sister, since deceased, who was concerned with handling T's affairs, to give evidence. My sister Rachel is still alive.

Adjourned to following day.

12th Nov. 1954.

Hassan : I apply that Dr. Giraldi be recalled for further questioning. Dr. Giraldi has made certain comments since giving his evidence which shew 40 that he could give further evidence. That is my " information ".

Ashe Lincoln : What Hassan seeks to do is is, evidently, to cross-examine Giraldi on something he is supposed to have said " in Main St."

There would be no end to any case if witnesses could be recalled to be cross-examined on gossip. If Giraldi has committed perjury, let him be prosecuted.

*In the
Supreme
Court of
Gibraltar.*

Hassan : I don't wish to cross-examine Dr. Giraldi on anything he has said in Main St. My "information" is that he could give further evidence, judging from his remarks since leaving court.

*Defendants'
Evidence.*

Per Curiam : Application refused. There would be no end to any case if this ground were allowed. There was a very full examination and cross-examination. The application made in this form before a jury, is
10 most undesirable : it might well tend to prejudice them.

No. 21.
Judah
Isaac
Laredo,
Cross-
examina-
tion,
continued.

JUDAH LAREDO, further XXD. :—

Benjamin said about giving poor children a meal : not about shoes or clothing. There *are* poor children in Jewish Community of Gibraltar who need feeding.

I was appointed a Trustee of the Hebrew comm. about 1951, and Vice-President in Dec., 1951—I did *not get* myself appointed as such.

When T had any bills to pay she called me up to make out her cheques for her. I used to check the bank pass-sheets for her also. So T relied on me to tell her if things were right or wrong in her bank. I see that she
20 only had a £237 balance on 20th May, 1953, after drawing her last cheque. I never warned her she was rapidly exhausting her resources.

Bank a/c of T put in (admitted as evidence).

Ext. 20.

I see this cheque 15th May, 1953, £30, which I made out on her instructions. I had no doubt she knew what she was doing. I can't say why it wasn't cashed till 18th May.

Ext. 21.

In Aug., 1952, I went by sea to London for 15 days and flew back.

In Aug., 1950, I went on holiday to Madrid.

95% of my business is as a Commission Agent—and under the Trade Tax I was paying £5 a year because that was the rate for Commission
30 Agents.

Counsel : Is this what you say—that when T gave all her estate to Plff she did it because she thought that he would carry out the wishes of Benjamin ?

Witness : I believe she thought Plff. would carry out the contents of the first Will. I *think* the wishes of her brother B were "indicated more or less" in her 1st Will. I heard Triay's evidence that T was told what she was doing. But I think she was so deaf she didn't understand it. Agree I wasn't there ; I didn't see.

Re-examined.

Re-
examina-
tion.

40 I see this appointment of myself and 4 others as Trustees of H. Fund in October, 1952. I was appointed by Managing Board, one of them Plff's father-in-law. I *had* been appointed Vice-President 10 months before.

Ext. 22.

I have never kept any of T's money.

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

No. 21.
Judah
Isaac
Laredo,
Re-
examina-
tion,
continued.

David Benaim is my co-executor in the 1st Will. I've kept him fully informed.

I see Ext. 19 (T's cheque for £100 in March, 1951). In March we have the Feast of Purim (expensive—collections for Charities). T was very charitable.

T was doing what she liked with her money. "I don't think she was very much capable."

When Samuel (the brother) died I was a principal functionary.

Benjamin's wish (according to S. after B's death) was that Plff and Plff's father should *not* accompany the body. 10

I see Ext. 8 (Samuel's draft Will of 1946—unsigned). That was closer to the B note-book than T's 1st Will was. I see Ext. 18 (T's draft Will of 1946—unsigned) which was in similar terms to Ext. 8.

I see Copy letter Serfaty to Fin. Sec. 17 Feb., 1947 (Doc. 11c). Ex. 23. I didn't have anything to do with the writing of it.

I never saw *Ext.* 7 (the note-book) before I was shewn it by S in Tangier.

T's cheques were "more or less monthly".

In end of 1948—early 1949 T lived for 4 months on one cheque for £100. 20

I know of a Charitable Society here for providing clothes and footwear to Jewish people. It functions well.

I've kept myself very comfortably. I offered £100 p.a. for 10 years to a Charity a couple of months ago.

To the court.

I wasn't there when T executed her Will. Perhaps they told her Dotto's name "in a high voice" and other things in a low one!

No. 22.

EVIDENCE of Rebecca Benzimra.

No. 22.
Rebecca
Benzimra,
Examina-
tion.

Rebecca Benzimra, sworn, says:—17 College Lane. Milliner. My 30
gt. grandfather married a 1st cousin of T's father. I considered T as a
distant cousin. I visited her often. In 1946 I went to Morocco for abt.
6 months. After my mother's death, T gave me £1 per month and my
sister £1 per month, pocket money. Didn't need it. Took it to please
her! She sd. she couldn't afford more. She was living on her income.
She was charitable. She sd. her capital didn't belong to her—it belonged
to Talmud Torà. She sd. that constantly after 1946. T broke her leg
about 3 yrs. ago and stopped the £1—sd. she had too many expenses.

I saw T on Saturday 16th May, 1953. She was not very well. No
mention then of her going to Hospl. 40

On Friday 22nd May, I went to Col. Hosp. to see T. She complained about a pain in her arm—had a bad fall as she was entering car to go to Hospl. Also about her stomach.

*In the
Supreme
Court of
Gibraltar.*

I stayed with T an hour and talked with her. I went again on Sat. 23rd. Her maids were there—they always were. Plaintiff's father came in too. When he sat next to her I heard T for *first time* speaking *against* Laredo. I had heard her praise him previously. She sd. "I don't want to see him. He doesn't take an interest in me. And I've got him as my trustee." Plaintiff's father sd. "You've got him because you want him."

*Defendants'
Evidence.*

No. 22.
Rebecca
Benzimra,
Examina-
tion,
continued.

10 I went on 24th (Sunday) afternoon. She wasn't very bright. I stayed with her and talked with her for an hour. The maids were there. No one else.

I went on Monday 25th. Maids and Luna Marrache were there. I talked with T, but found she was very deaf. I talked with her a little, stayed longer.

I went on Tuesday 26th. I saw a notice on door: "No visitors allowed, by patient's request." Door was closed. I knocked. Maid came out. I asked. Maid sd. I cd. go in. Miss Luna M was there. T wasn't looking very well. She was a thin lady always—thinner on this
20 occasion. I approached her. She sd. "I think I'm dying." I sd. "No—you look well." She sd.: "You tell me that because you love me." I didn't *want* to disturb her, so sat quietly.

Can't remember if I went on 27th.

On Thursday 28th in afternnon I went. Plaintiff and his wife were there. Also Massias a Watcher (Hebrew watcher), Plaintiff's brother in law, who sd. he was from the Hebrá. I stayed about an hour. She recognised me.

On Friday 29th I met one of T's maids, carrying a bowl, about 4.30 or 5 p.m. I went straight to Hospl., meeting Plaintiff's father en route.

30 She looked very very ill. Luna M was there, and the maids. Mrs. Benyunes was there. Mr. & Mrs. Laredo came in about 6.30 p.m. Also Tobélem, a watcher, was there. I didn't talk with T—only a sign of recognition.

On 30th morning I went, about 10 a.m. Luna M, Mrs. Benyunes, and Tobélem were there. T looked very very ill. I did not speak with her. I stayed a while, then went out into corridor with Tobélem. While outside, Mrs. Benyunes called me in. I went in. I heard T say to Luna: "The radiogram & the records for your fiancé." Then T looked at me and said: "For you the small picture in the wardrobe. Maria knows where it
40 is." Then she turned and looked at Mrs. Benyunes: "I've also remembered you in my will." Looked at me: "I've remembered you also." I didn't know, at the time, that I was mentioned in any will. She sd.: "I don't want luxuries. My tombstone shd. be humble and simple. Because I want all the money for the poor. They need it more than I do."

We decided that Mrs. Benyunes shd. tell Laredo abt. the tombstone.

I left T for lunch. Returned 3.30 to 4. Luna, maids, Mrs. Benyunes; & Laredo came later. Plaintiff's wife came in alone while I was there.

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

No. 22.
Rebecca
Benzimra,
Examina-
tion,
continued.

She sd. her boy was downstairs—should she bring him? I sd. I thought Prima Simy wasn't fit for it. The boy came—was brought in. T seemed asleep. Plaintiff's wife sd. "Prima Simy, here's my boy." She opened her eyes, looked at boy, looked happy. She sd. "do the salute." Boy saw oxygen app. by bed. Boy was taken away. I stayed longer.

On Sunday 31st I went. T very ill. Hebrá was there. No conversation.

On Monday 1st June morning I went.

On Tues. 2nd June I went to the mortuary.

Previously, T often talked of her brothers as being affectionate and charitable. She sd. their wishes were that all the monies shd. go to 10 Jewish charities.

Cross-
examina-
tion.

Xmnd. :

I have no personal financial interest. No idea till a week ago that I had £100 under 1st Will. I went to Laredo when I heard of the 2nd Will—on the 3rd June. The whole community knew that Laredo and Benaim were trustees under the 1946 Will—Laredo had told me so himself. Nothing had ever been said about B wanting *me* to benefit.

Complete surprise when S brought me £50 after B's death. I had very often seen B and was friendly.

I thought T was very comfortably off. We had pocket money from 20 her—didn't need it—but didn't make her any presents of importance. I didn't tell Laredo about it. T often sd. Laredo was a "Defender of the poor." T never discussed with me *any* of her legacies, but *did* constantly mention Talmud Torà. I can't remember at all when she last mentioned it. I can't say at all how long her nurse remained with her when she had a broken leg.

Midday adjournment.

The witness doesn't appear at the sitting of ct.

Accordingly interposed—

No. 23.
Coty
Beyunes,
Examina-
tion.

No. 23.

30

EVIDENCE of Coty Beyunes.

COTY BEYUNES, sworn, says :

Cousin of T. T's mother was the sister of my grandmother. My mother was 1st cousin of T. I've always regarded T as a cousin. Up to a little time ago I visited her often. Then I hurt a leg. I went to see T once every 3 or 4 months after that. Previously I went once a fortnight or week.

I saw T some 5 or 6 months before she went to Hospl. On 22nd May I saw her *there*; I loved her much, so went at once. I found her in bad health. She was talkative: "Already you know I'm in hospl?" She sd. 40

they were going to photograph her stomach. That was 5 p.m. to 6 p.m. Her maids were there. She spoke of her illness—of religious reasons why not allowed some jelly by Laredo. The Misses Benzimra arrived. I went.

*In the
Supreme
Court of
Gibraltar.*

On Monday 25th I went : Notice on door agst. visitors. As a cousin, I knocked and opened. Maid let me in.

*Defendants'
Evidence.*

She was ill, but talked. Once she addressed me by name and asked me to stay by her. Visitors came and went. Always the Marraches went. On the Monday Luna M.

*No. 23.
Coty
Beyunes,
Examina-
tion,
continued.*

10 On Tuesday 26th I went. Still the Notice. I went in. She was asleep or in a lethargy and I couldn't talk with her. I stayed 5-7 p.m. no others came.

On Wed. 27th I went. T seriously ill. At first didn't talk much. Later, Plaintiff's boy came in fancy dress with Mrs. Massias (boy's grandmother) and the M's all came. T and the boy talked about the fancy dress. I remained all evening. Plaintiff's father was there. T said to him : "Abraham, kiss your daughter." That was because there was a bit of trouble between him and his daughter Luna. Abraham M and Plaintiff then left.

20 On Fri. 29th I went, at 5 p.m., as always. Stayed till 10.30 p.m. She was very ill. At moments it seemed she wd. have a collapse. Plaintiff's wife, Luna M., the Misses Laredo, the Misses Benzimra, all came at one time or another.

30 On Sat. 30th *morning* I went because I'd left her so ill on 29th. Rebecca Benzimra & Luna M. came. Luna went near the bed & Benzimra went out. T sd. something and I went out to speak to Benzimra. B and I went back : T was telling Luna she had a gram. & records—she wanted them to be given to Luna's fiancé (Jack Benzacry) because he understood them. Jack had a radio shop. Then T sd. to Rebecca Benzimra : "A little picture—maid knows where it is—is for you." Then T sd. to me : "Cotita I remembered you in my will." Turning to Benzimra : "Also you." Then she cried and sd. : "I don't want luxuries. I want a simple stone. All my money for the poor. They need it more than I." We consoled her and left—half an hour later. T had gone back into lethargy.

40 On Sat. 30th I went again. Benzimra & Luna were there. We decided to tell Laredo re tombstone. I told him. The Plaintiff's boy came. T was always very happy to see him. After the boy left she sd. to Plaintiff : "Samuel, speak to your sister." Plaintiff went out to corridor, I behind him. I sd. to him : "Forgive my interfering in your pte. life. Speak to your sister. That poor woman is asking you to." Plaintiff sd. : "No. Even if I do now, I won't afterwards." I stayed abt. $\frac{1}{2}$ to $\frac{3}{4}$ hr. more. No conversation with T.

On Sunday 31st morning I went. Giraldi and Sister Dines were there. I asked G how T was. He said : "The same." I left.

On Monday 1st June afternoon I went. She was gravely ill. I left 8 p.m.

On Tues. 2nd June to mortuary.

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

No. 23.
Coty
Beyunes,
Examina-
tion,
continued.

I had known that when Samuel died he'd left his affairs in order, but not that I was interested as a donee.

In 1946 after S's death I visited T daily. She was in mourning. She sd. one day: "What troubles when death comes! I've already settled my affairs. All my money—my capital—for the poor. My brothers wanted to form a canteen in the Talmud Torà. But since the war we haven't space. So that money shd. be kept for the poor—for the school—for the clothing. Serfaty knows that all I have is for the poor. Some presents for some acquaintances." She never told me I had an interest. 10

In 1946 or 1947 she used to say B didn't want to have anything to do, alive or dead, with the Marraches.

About early 1953 T was very upset about the quarrel between Plaintiff and his sister. She had great sorrow—great pity for Lunita M.

*Cross-
Examina-
tion.*

Xrmd. :

T was very upset about Plaintiff's quarrel with his sister. She had great affection for all the M's. She was delighted to see Plaintiff's boy. She grumbled about Laredo's attitude re her food.

I first heard of my legacy on Monday of this week, from Hassan.

I went to see Laredo on 3rd June, 1953. When I got to know about 20 this 2nd will I couldn't believe it. In the street many of us met and it was spoken of—Jewish people. I met Laredo in the street, and asked him about the matter, but *not* about the 1946 will.

Lunita & Benzimra both told me to tell Laredo about the simple tombstone. We thought he was T's executor. T has told me Laredo & Benaim were her exors. I did not mention to Laredo that T had sd. she'd left me & Benzimra legacies.

I gave a statement to a lawyer about 18 months ago. All this about T's condition is in my memory. I know she was given oxygen—don't know when. 30

When on Sat. 30th T talked she talked quietly but audibly. We had to lean near her to make her hear. She spoke for a little, then lapsed into lethargy. I think she was then in a fit state to dispose of her property—briefly but not a long thing.

On the Wed. 27th Plaintiff's boy talked with her—asking about the oxygen apparatus. They conversed. Someone had to speak in a high voice to T. We got very near her and spoke in a *normal* voice on *that* day. She deteriorated later.

T's sight and hearing varied. On the left side she couldn't see, on the right she could. 40

At moments her mind was clear, as far as I could see. She sang Opera in hospital: she started humming Opera once—she was *always* very fond of music, for many years.

When T spoke of tombstone she sd. the rest was to go "for the poor."

The Notice *was* on the door on Monday and Tuesday for certain.

The story about T “ wanting the money to go to the poor ” was not made up by me.

No re-exam.

Short adjournment.

No. 24.

EVIDENCE of Rebecca Benzimra—Further cross-examined.

REBECCA BENZIMRA, further X_xmd. :—

10 We didn't regard T as a “ useful cousin.” It never occurred to me I had “ expectations.” I had no fin. help from T when I went to Morocco or when my niece was married. We simply borrowed spoons, a tray and an old carpet. I was not dissatisfied with my niece's wedding-present. I knew T had given £50 to Plaintiff as wedding-present.

A week ago Alcàntara told me £100 was left to me in the 1946 will.

On Sat. 23rd May T and Plaintiff's father conversed readily.

On Monday 25th May it was the first time I noticed T getting deaf.

On Tues. 26th I didn't have to *shout* at her : I spoke in a loud voice.

20 Coty Benyunes is not a cousin of mine. I see her every two or three months. I knew she wd. give evidence, because of the tombstone conversation. I *haven't* discussed case with her.

On Sat. 30th morning we cd. hear all T said. She spoke very weakly. She looked tired and ill. She came out of a stupor to say the words I've said, and then went into a stupor again !

On 30th the Plaintiff's boy came in *plain* clothes and spoke about the oxygen apparatus.

Re-examd.

30 T once spoke to me about Marraches. She was a bit vexed because the brother and sister had a quarrel and had to go to the police station. That was about 6 months to a yr. before she died. She wanted to make it up between them but they wouldn't pay attention.

I see Doc. 34 in *Ex.* 10. It was my mother, not I, who recd. the £50.

To the court :

T was very fond of music. She spoke to me about it often. She'd a gram. and records—Opera records.

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

No. 23.
Coty
Beyunes,
Cross-
Examina-
tion,
continued.

No. 24.
Rebecca
Benzimra,
Further
Cross-
examina-
tion.

Re-
examina-
tion.

EVIDENCE of Mazaltob Laredo.

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

No. 25.

Mazaltob
Laredo,
Examina-
tion.

MAZALTOB LAREDO, sworn, says :—

Judah Laredo's wife. Live at 222 Main St. since June, 1945. We on 1st floor. T lived on 2nd. Many visits to T.

Fri. 22nd May, 1953, T taken to hospital. Noon that day Giraldi phoned me that at 2 p.m. an Ambulance wd. arrive for T as arranged. I answered : " Impossible. They've—the Marrache family—have brought her down already to take her in a car." G sd. " Call M." M was helping 2 maids to bring her down. I told M that G wanted to speak to him. 10
M went out to street. I told G that M had gone. G didn't even answer. T was v. upset. I offered her coffee. T declined, embraced me and sd. " What neighbours ! I'll never be able to repay." The maids, Luna M and my deceased sister-in-law were present when she spoke.

I often saw Plaintiff visit T's house.

At first T sd. that the M family wanted to " take her to their house & make a life interest of it "—but that she wdn't go to a house where there were quarrels.

That was in 1946.

She sd. at every moment—" a sort of chorus "—that all her money 20 was going to the poor—it was the wish of her brothers. She sd. it before everyone.

Xxmd.

I won't help my husband by lying !

Always on best terms with T.

The only thing Defendant did was to make out cheques for T. T sent them to be cashed. I never went ; my deceased sister in law went.

I see cheque £100 22nd Nov., 1948, Ex. 24 endorsed by me—it must have been the only time I went—maybe I went other times.

Between 1948 and May, 1953, she always lived very well—always in 30 the same manner.

If in 1950 T drew only £250 and in 1951 she drew £750, it must be because she had an expensive illness.

I saw her in hospital nearly every day.

When T sd. she wdnt. go to live with the Plaintiff, she sd. it to *me alone*. But she repeated things a lot, and may have sd. it to others. From death of S in 1946 the M's visited her a lot. I don't know how T felt towards the Marraches. She was very nice with everybody. When taken to hospital, T sd. nothing about the terrible, or good, M's taking her away. 40

She had *too* strong a will of her own.

Cross-
examina-
tion.

Re-exmd.

I gave her all the £100.

To the court :

I saw T several times in hospital. The first time, I spoke with her & she sd. how ill she felt. The other times I didn't disturb her as I thought she wasn't up to it.

Adjourned to Monday 15th Nov.

*In the
Supreme
Court of
Gibraltar.*

*Defendants'
Evidence.*

No. 25.
Mazaltob
Laredo,
continued,
Re-
examina-
tion.

No. 26.

EVIDENCE of Baruj Azagury.

10 15th Nov. 1954.

BARUJ AZAGURY, sworn, says :—

3 Kingsway House. Branch Manager of shop at 221 Main St., opposite side from T's house, 200 yards from it.

In May, 1953, I happened to be at door of my shop and I saw Plaintiff's car at door of T's house. It had stopped there. Roughly at midday. Traffic obstructed. Constable moved Plaintiff's car on. Plaintiff was driving. Didn't see anyone else in car. Car returned soon after. Before it returned, T was there, held up by her two maids. Car stopped again. Plaintiff left the wheel. T fell to ground, at moment she was to be put
20 into car. Maids helped her to her feet with difficulty and then put her in the car. Car then drove off.

No XXmn.

No. 26.
Baruj
Azagury,
Examina-
tion.

No. 27.

EVIDENCE of Esther Benzecry.

ESTHER BENZECRY, sworn, says :—

School-teacher at Hebrew School (Talmud Torà) for last 8 years. Knew T for last 7 years. I paid her a yearly visit in March to collect money for a treat for Jewish school-children in connection with Purim. Went to T's house each year. She never knew me—I had to explain at
30 length my identity and reason for visit.

Last saw her in March, 1953.

She always said : " How much am I supposed to give ? " I used to say : " What you like. Last time it was £1," So in 1953 she did that and then gave me £1 from her purse. She asked me to write her name on the subscription list. She sd. : " Daughter, do not worry. Now I'm only giving you £1 but everything I have is for the poor and the Talmud Torá. Give me a kiss. You're very simpática. Come and see me whenever you can."

No. 27.
Esther
Benzecry,
Examina-
tion.

*In the
Supreme
Court of
Gibraltar.*

XXmnd.

*Defendants'
Evidence.*

No. 27.

*Esther
Benzecry,
continued,
Cross-
examina-
tion.*

Talmud Torá is a Govt. school, financed by Govt. just like any other.

The pupils at Talmud Torá are not only Jewish but non-Jewish. The yearly treat is given to *all* the children, whether rich or poor.

We have religious classes of 2 hours daily for our *Hebrew* children. All the others have a general education, with the H children as well.

It was nothing novel to me when T told me her money was going to charity.

My brother was engaged to Plaintiff's sister—officially in March, 1954. I'm very fond of my brother. My brother broke his engagement 10 with Plaintiff's sister, I think about 2 months ago.

*Re-
examina-
tion.*

Re-exmd.

I'm also employed by H community to teach H (overtime) to the H children. Four men also teach Hebrew religion.

Bulk of pupils at Talmud Torá are Hebrew : 12 Indians, and about 8 other non-Jewish children out of 95 pupils. So 75 children have religious instruction 2 hrs. per day : *not* paid by Education Dept.

Govt. calls the whole " the Hebrew School."

Jewish people call it " Talmud Torah."

No. 28.
*Elias
Belilo,
Examina-
tion.*

No. 28.

20

EVIDENCE of Elias Belilo.

ELIAS BELILO, sworn, says :—

Manager of M. I. Levy Gib. Ltd.—agents—business at 62 Irish Town.

Member of burial Society of H. Comm. (the Hebrá). Also Hon. Sec. of Synagogue in Engineer Lane. Both honorary.

On 29th May in afternoon I was at work in Irish Town. Received phone call from Plaintiff from Col. Hospl. at 3.50 p.m. Plaintiff sd. " Senora de M. who is in hospl. has got worse and they say it is necessary to have a watcher." I sd. I'd go. He sd. he'd fetch me in his car. I phoned Tobélem, head of watchers. Plaintiff arrived abt. 4 p.m. in his car. In Hospl. Hill we met one of T's maids. Plaintiff stopped & enquired " What happened ? " She said " Nothing—nothing happened." Plaintiff said to me " How one feels when a relative is dying—it's like having your heart torn out." 30

We entered Hospl. Saw Tobélem had arrived. Entered T's room. Saw Sister Dines & a nurse giving T oxygen. T was pushing the apparatus away from her face.

Plaintiff's wife and a Spanish maid there.

Tobélem left. I stayed, in the corridor with Plaintiff. Dr. Giraldi came at about 4.30 p.m. very excited. Giraldi sd. to Plaintiff. "Listen, Marrache, who gave permission to bring a lawyer here and disturb my patient without my authority." Plaintiff sd. "I acted on instructions." Giraldi sd. "Instructions de quien? I am he who is in charge here. She is my patient. I'm going to revoke this." Plaintiff sd. "Triay came and Dr. Miller was inside" (adentro). Giraldi sd. "Neither Dr. Miller nor anyone! Even if police wanted a statement they couldn't have it, because this lady wasn't in a fit state for anything today." Plaintiff stood mute
 10 (se quedó helado). Giraldi turned his back and entered T's room. Plaintiff sd. to me "But man! we phoned Giraldi."

In the
Supreme
Court of
Gibraltar.

Defendants'
Evidence.

No. 28.
Elias
Belilo,
Examina-
tion,
continued.

Plaintiff's wife came out of T's room very excited, and said "Samuel, I don't want Dr. Giraldi to come to the house any more, even if we have someone ill—He came in and cut me dead." Plaintiff sd. "Don't worry! The Dr. is excited. It must be that Laredo has got him worked up!"

Dr. Giraldi stayed in room a few minutes, came out and said: "Sam, come with me, I want to speak with you." They went into a nearby room for 10 or 15 minutes. They came out. Giraldi then said to me, taking my arm: "I was very excited, because I don't want to be ignored
 20 in relation to my patients."

I asked if I need stay as a watcher. He sd. "Definitely. The lady is very weak and at her age her heart could stop like that (clicking fingers)." Plaintiff was there when he sd. it.

Giraldi left. Plaintiff sd. nothing for 2 or 3 minutes. Then sd. "Belilo, for your children's sake say nothing to anyone of this, because if Laredo hears of it he is capable of coming up here to the hospital and kicking up a row with the old lady and killing her." I promised him to say nothing. I stayed for another 2 hours. Oxygen twice more. I left about 6.15 p.m. or 6.30 p.m.

30 I gave you (Hassan) a statement a few days later. Later I met Giraldi and told him I'd made a statement. He sd. he'd read it already. He sd. "It's very well & correct. Don't worry. Forward with the matter."

About end August, 1953, Plaintiff met me in the street and sd. "Belilo, I want to talk. You're a good Jew & father. Will you go to Triay's office & make a statement." I sd. "Sorry. I've got to take advice." I took advice.

Few weeks later Plaintiff met me in street and sd. "Man, you haven't yet been to Triay's chambers."

40 *Xxmnd.*

I see *Ex. 4* (my written statement). I agree I sd. in *it* that Giraldi had sd. "She's not in a fit state to be disturbed." Not "she's not fit for anything."

Cross-
examina-
tion.

I also agree that I didn't say in *Ex. 4* that Plaintiff sd. "For your children's sake."

I saw Hassan in his chambers Monday and Thursday evenings last week. I saw Miss Benzimra & Mrs. Benyunes there on the Thursday.

Defendants'
Evidence.

I stayed there 15 minutes, till 7 p.m. It was *then* that I remembered the words about "For your children's sake."

Re-exmd.

I speak the truth. I remembered the words recently.

No. 28.
Elias
Belilo,
continued,
Re-
examina-
tion.

To the foreman of jury. At hospital on 29 May I didn't hear anyone say anything about the state of T's mind.

No. 29.
Elias
Isaac
Gabriel
Benzaquen,
Examina-
tion.

No. 29.

EVIDENCE of Elias Isaac Gabriel Benzaquen.

ELIAS ISAAC GABRIEL BENZAQUEN, sworn, says:—

I'm of the Hebrá. I watched at T's bed on afternoon of 30th May. 10

She died in early hours of 2nd June. I was watching at 10 p.m. on 1st June and realised she was going to die.

I went off for coffee, returned and heard T screaming from outside her room.

Plaintiff told me to call him if T about to die—it was he sd. her wish that he shd. be there when she died.

At 11.30 p.m. I sent message to Plaintiff. Plaintiff arrived at 11.50 p.m. T died soon after. Then Plaintiff sd. "I want everything to be done in the best manner. I'm going to pay all the expenses, because Triay phoned me this afternoon and said I'm the sole executor & 20 beneficiary." I told Plaintiff to tell Tobélem.

Cross-
Examina-
tion.

Xamnd.

Plaintiff was already at hospital at 9 p.m. when I arrived. He told me he'd been there so long he must eat. He was there when she died. He closed her eyes and we all said the prayer. We were all upset at her death. I'm sure Plaintiff said Triay had phoned to tell him he was executor and beneficiary.

Re-
Examina-
tion.

Re-examined.

I strongly *confirm* that Plff. said that.

Hassan closes Dfts' case.

30

Jury out of court.

No. 30.
Submis-
sions and
Arguments
by Counsel
for
Plaintiff
and
Defendants.

No. 30.

SUBMISSION and ARGUMENTS by Counsel for Plaintiff and Defendants.

Ashe Lincoln : It is for Hassan to say at this stage upon what pleas or issues he relies. If he is prepared to limit the issues to the one issue as to whether T left the money on the footing that Plff. would carry out the terms of the old Will, I know where I am.

Hassan : Issues in paras. 1, 2 and 5 put burden on Plff. I stand on each and all of those paras.

I also stand on para. 3 (undue influence) and on para. 4 (fraud).

Ashe Lincoln : As to paras. 3 and 4, I submit there is no evidence at all.

As to para. 3 :—Clearly a mere cloud of suspicion shewing circumstances under which undue influence *might* have been used is of no avail to Dfts.

Craig v. Lamoureux [1920] A.C. at p. 357. It is essential for Dfts. to shew that coercion was in fact exercised.

Parfitt v. Lawless (1872) 27 L.T. 215.

In re R. Deceased [1951] P. 10 at p. 19. The whole of Dfts' evidence here is that (1) T was on terms of affection with Plff. and his family and (2) T had said at various times that she was leaving "all her money to the poor"

There must be *some* evidence of *coercion* to go to a jury. Here there is none. Some evidence of T having had or at any rate expressed a different intention there is—but that is *not* evidence of her having been coerced. *Contra*, the evidence of T having *refused* the offer of Plff. that she should live with him and his wife shows Plff. could *not* coerce T. All have said T was a woman of great determination.

Hall v. Hall (1868), 18 L.T. 152 : Persuasion appeals to affection, etc., are legitimate. But pressure acting on fears or hopes, won't do. Importunity in great degree, also. Threats or use of force won't do.

No evidence here of moral command, undue pressure, coercion. T had a number of opportunities for saying she had been forced or overborne. She never uttered a word about it.

As to para. 4 :—

First, we must now look to see the form of the amended Parlars.

(1) Where a fraudulent misrepresentation is relied on, it must be a falsity in relation to an existing fact. *These* Parlars relate to an alleged fraudulent representation as to the *future*.

(ii) Not an *iota* of evidence to support this allegation. The jury would merely be asked to deduce the fraud from what the T did—i.e. her change of mind. Obviously she changed her mind several times in the course of the years.

Per Curiam : I agree, of course, that it would be wrong to allow an issue to go to the jury in order that they make a mere guess, without evidence to support it. A difficulty here *may* be the (presumably probable) argument that the jury may properly infer fraud—*this* fraud—on the part of Plff. from the mere fact that T's *last* change of mind is otherwise inexplicable. Is there any authority directly in point ?

Midday adjournment.

Ashe Lincoln : Fraud must be proved—cannot be a mere inference from *other* facts.

*In the
Supreme
Court of
Gibraltar.*

No. 30.
Submis-
sions and
Arguments
by Counsel
for
Plaintiff
and
Defendants,
continued.

*In the
Supreme
Court of
Gibraltar.*

No. 30.

Submis-
sions and
Arguments
by Counsel
for
Plaintiff
and
Defendants,
continued.

See Hals. 2nd Edn. Vol. 23 p. 82 : action for damages for fraudulent misrepresentation.

Davey v. Garrett 7 Ch. D. 489 *per* Thesiger, L.J. Fraud cannot be inferred from the facts : it must be alleged and proved.

Submitted that you cannot *infer* a fraudulent *representation* without any evidence of any representation at all.

Le Lièvre v. Gould [1893] 1 Q.B. at p. 499 *per* Bowen, L.J. At p. 500 the proper direction to a jury on a question of fraud in the shape of fraudulent misrepresentation.

If Hassan argues that T couldn't have made this Will unless this 10 false representation had been made to her, it gets him nowhere ; for he must prove that *the Plff.* made it. Secondly, where is the *falsity* of the misrepresentation, even if it was made ? How is there *any* evidence of its falsity, when it is in the form pleaded, i.e. a species of promise which he hasn't been given a chance to carry out ?

Re para. 5 :—

I don't see how Hassan can stand on this now, if he accepts Triay's bonafides, as he says he does.

Paras. 2 and 5 are linked in a way.

It is for me to prove soundness of mind, I agree. But the evidence 20 is all one way.

Hassan : There should be a verdict from the Jury on paras. 1, 2 and 5. I stand on all three paragraphs.

As to para. 3 (undue influence) :—

“Coercion” requires defining : *Wingrove v. Wingrove* (1885) 11 P.D. 81—in the case of an old and weak person, a little coercion or pressure is enough.

The evidence :—

No proof of any blood-relationship.

Evidence that Plff. offered to look after her affairs, and to take her 30 into his home.

The evidence about revoking the other Will “El de Laredo,” is significant.

Plff. did *not* go to “a completely independent lawyer” (as opened) : Triay & Triay had acted for Plff. in that same May. J. E. Triay's Statement that he was left alone with T is not borne out by the three other witnesses, Dotto, Dines and Olivero. T therefore had no talk alone with him.

Any person who sets about having a Will made in his favour sets himself a high burden : See *Finny v. Govett* (1908) E. & E. Dig. Vol. 23 40 p. 112, c. 1060 ; 25 T.L.R. 186 C.A.

Craig v. Lamoureux (*supra*) differed from this case in these respects : see at p. 356 to top of p. 357.

Hampson v. Guy (1891) 64 L.T. 778.

The early unsigned (1946) draft Will and the 1946 Will were substantially carrying out B's wishes. There was the change from "meals" to "clothing and footwear"—

Per Curiam—and £1,900 legacies.

10 *Hassan* : The evidence of the undue influence exists—particularly the fact that, *after* making the 2nd Will, she told Benzimra & Benyunes that she'd remembered them in her Will. There were also Plaintiff's constant visits, his offer to take T into his home (refused), his presence throughout the making of the second Will and his talking to her while Triay was typing the Will, and absence of blood relationship.

*In the
Supreme
Court of
Gibraltar.*

No. 30.
Submis-
sions and
Arguments
by Counsel
for
Plaintiff
and
Defendants,
continued.

As to the fraud :—

Most of those points apply.

Per Curiam : May the Parlars be reamended by consent ?

(1) The word "and" in 6th line from end is superfluous and ungrammatical. And (2) is it agreed that the words "had the intention to" be substituted for the word "would" in the penultimate line ?

Ashe Lincoln : Yes—both agreed.

Hassan : Yes. That was what was meant.

20 Order amendments accordingly.

Hassan continues :—

If circumstantial evidence can prove murder, why not a fraudulent misrepresentation ?

Particularly relevant here are T's remarks made to Benzimra and Benyunes *after* the 2nd Will. Clearly they spoke the truth. (*Per Curiam* : That's not in question at this moment.) The evidence of Benzaquen as to Plaintiff's remark to him shows fraud on Plaintiff's part. Unless Plaintiff made this fraudt. misrepn., there is no possible explanation of T's post-2nd Will remarks.

30 See *In Estate of Osment* [1914] P. 129.

Per Curiam : That goes to knowledge of contents.

Hassan : This enquiry should be truly concluded by leaving everything to the jury.

Ashe Lincoln : All the matters mentioned in support of undue influence go, perhaps, to other issues but not to this one.

As for *Wingrove v. Wingrove* (*supra*), T was a "very determined old lady." She kept it up while in Hospl. She even there continued to try to get Plaintiff to make up his quarrel with his sister. No evidence of coercion.

40 As to fraud :—

T's statements to Benzimra and Benyunes go nowhere.

*In the
Supreme
Court of
Gibraltar.*

No. 30.
Submis-
sions and
Arguments
by Counsel
for
Plaintiff
and
Defendants,
continued.

See *Stroud v. Preston* [1950] W.N. 356 at 357, C.A. “It wd. be wrong to say that there was anything suspicious in the mere fact that a beneficiary was present when testator was giving instrus. to his solor. That would be going far beyond *Barry v. Butlin* and *Tyrrell v. Painton*.”

Per Curiam : If the parties desire it, these issues could be left to go to the jury even though I were to rule that there is at this stage no evidence to go to them—to save the expense of a new trial in the event of a successful appeal against my ruling. Are you both agreeable to that course, if I so rule on either or both of these issues? I have not yet decided on my ruling, but will give it tomorrow morning after looking again at the evidence. 10

Hassan : I am agreeable.

Ashe Lincoln : I am not. I stand on my submission, and shall not in any event call rebutting evidence.

(Note : The ct. did not put *Ashe Lincoln* to his election. Nothing had been said about it. Cf. *Young v. Rank* [1950] 2 A.E.R. 166.)

Adjourned to following day.

No. 31.
Ruling by
Bacon,
C.J., on
Submission
by Counsel,
16th
November
1954.

No. 31.

RULING by Bacon, C.J., on Submission by Counsel.

I rule on Plaintiff's submission (jury out of ct.).

(1) Undue influence :—

20

True meaning in law : pressure exerted so as to overpower the volition of a testator without convincing his judgment : overbearing importunity or threat. The real question is : was Testatrix coerced into doing what she did not wish to do? (See *Hall v. Hall*, 18 L.T. 152 ; *Baudains v. Richardson* [1906] A.C. at pp. 184–5 ; *Wingrove v. Wingrove* (1886), 11 P.D. 81 ; *Parfitt v. Lawless*, 27 L.T. at pp. 216–218).

It is not sufficient to show that Plaintiff had the power and opportunity to exercise coercion. There must be evidence to prove that it was in fact exercised and that T was thereby made to execute the Will (*Craig v. Lamoureux* [1920] A.C. at p. 357, P.C.), although comparatively little 30 coercion suffices where the testator is proved to have had some mental incapacity at the material time (*Hampson v. Guy* (1891), 64 L.T. 778).

Ingratiation, flattery, doing favours, attentiveness, offering assistance, constant social contacts—none of these amount to “undue influence” in law.

I am unable to find any evidence whatever on which a reasonable jury could find undue influence by the Plaintiff here. Any such finding would necessarily be a pure guess, unfounded on anything proved at this trial.

This issue must therefore be withdrawn from the jury.

40

(2) Fraud :—

Fraud must be clearly alleged and proved. The amended allegation here is specific, as it has to be. Defendants are bound by it. There is no question of "fraud at large"; only question is whether there is any evidence that the representation as pleaded was made by Plaintiff to T, was false and fraudulent, and caused T to execute the Will.

I have considered not only each item of evidence submitted by Defendants to be evidence of that fraud but also all the evidence adduced.

10 There is of course no direct evidence of the alleged representation ever having been made. Nor, in my view, is there any other evidence of its having been made upon which a reasonable jury could find that it had. There is doubtless plenty of evidence going to other issues, on one side and on the other, but that is beside the present point.

20 Without any proof of the basic element that the alleged representation was made the whole plea must fail. It is true that there are circumstances giving rise to some general suspicion, from which one might hazard a mere guess that some kind of fraud may possibly have been practised by someone, or indeed one might also guess that something quite different happened. But that is very far from having evidence of a particular fraudulent misrepresentation by the Plaintiff upon which a reasonable jury could act. (See, e.g., *per* Thesiger L.J. in *Davy v. Garrett* 7 Ch. D. at p. 489.)

Accordingly this issue must also be withdrawn.

Jury return to court.

*In the
Supreme
Court of
Gibraltar.*

—
No. 31.
Ruling by
Bacon,
C.J., on
Submission
by Counsel,
16th
November
1954,
continued.

No. 32.

SUMMING UP by Bacon, C.J.

30 Gentlemen, you have just had handed to you a piece of paper with three questions on it, which when you come to retire it will be your duty to answer; and before you retire you will further be provided with a list of all the exhibits in the case, arranged as nearly as possible in chronological order. I think that would assist you better than having a list in the order in which the exhibits came in, because they came in very much out of chronological order; and of course you will take with you all the exhibits themselves and look at them to any extent which you desire.

40 Gentlemen, you have listened with great patience and attention to a long case, but I am afraid that I must ask you to give me your attention for some substantial time more, because it is the inescapable duty of a judge presiding in a case such as this to sum it up to the jury so as to bring to their minds all the appropriate matters of law which they should have in mind and apply to the case, and also to bring to their minds the salient features of the evidence which they may or may not think apply to the problems which they have to decide. Now, you have been appealed to already in the course of this case, very rightly, by Counsel, I think on

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954.

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

both sides, to rivet your attention upon the evidence. Once more I would say to you: abandon all thought of rumours, gossip, comment or conversations outside this Court. You are not concerned with anything like that. You have here a doubly solemn duty to perform, not only the duty which arises out of having taken the juror's oath, but also the duty of deciding as to the disposal of this deceased lady's considerable estate, a lady who is not here to help us but to whose wishes full effect must be given to the extent that they can properly be supported in law.

Now, so that I may clear your minds of any doubts that may possibly have arisen in your minds in the course of this hearing as to what a person 10 can do by way of making a Will, let me very briefly remind you of the general position. These are some of the things that the law does permit. First, you may make any number of wills secondly, you may change your mind as often as you like; thirdly, you may make a Will at any age from 21 upwards; fourthly, you may make a Will an hour, half an hour, five minutes, one minute before death; fifthly, you may leave your property to anybody you wish—I am not concerned with the law of England which now is slightly different; that does not concern us; sixthly, you may show favour to anyone whom you wish to prefer above others; and finally you may disregard anyone else's wishes as to what should happen 20 to your money. All these things you are at liberty to do under the law. Accordingly I say to you, and this is most important: abandon also all your personal views, prejudices or preferences. There is no question here as to which of a number of claimants are the most worthy or righteous or desirable or in any other way preferable as legatees of this lady from your point of view or from mine. Nothing like that arises. Nothing would be more disastrous, nothing more wrong, than to have any such question as that in your minds. It was the testatrix's money and it was the Testatrix's business, not yours or mine, to select her legatees or beneficiaries to whom she would leave it. Now, remember this also; a court of law 30 sitting in Probate Jurisdiction does not attempt to write a deceased person's Will for him or her. In a case like the present it is for the jury to decide, first, whether the deceased was fit, that is to say mentally fit, to make the disputed Will, fully capable of understanding what her property was, the various people or institutions she might or might not favour and the decision she was making, whether she was thus mentally fit during the time when she gave instructions for her Will and executed it: and secondly, whether it was duly executed according to legal requirements; and thirdly, whether at that time, the time of its execution, she knew and approved the contents of the Will. If the answers to those three 40 questions are "Yes," in such a case as this, it is a good and valid Will, whatever favour it bestowed on whatever person or persons.

Now, to conclude these preliminary observations I am going to give you two brief quotations, each taken from the words of a judge of great experience in these matters and in each case uttered in the course of a trial of this kind.

First of all a passage taken from the summing-up of Lord Kenyon in *Greenwood's* case (a) "There is nothing that is more apt to seduce one than one's wishes respecting the propriety of a measure, and therefore,

(a) Quoted in *Frere v. Peacock* (1846), 1 Robertson's Eccles. Rep. at pp. 450-451.

there is nothing upon earth that one ought to be more careful to get rid of, when one applies one's mind to judge of a question, than all those circumstances which might lead to one's wishes, and, therefore, debauch and seduce one's judgment."

*In the
Supreme
Court of
Gibraltar.*

And secondly this from Sir John Nicholl in the case of *Kinleside v. Harrison (b)* where he said that one should rely but little upon the mere opinion of witnesses—one should look at the grounds upon which those opinions were formed—one should be guided by facts proved and acts done.

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

10 Now a word as to the specific issues which are left to you in this case. There are three though really, as we shall see in a moment, only two are in dispute. In each instance the burden rests upon the Plaintiff, for there is a rule of law for trials of this kind: he who propounds a Will, that is to say, he who brings it to court for affirmation of its validity bears the burden of proving, first, its due execution and, secondly, the soundness of the testator's mind and, thirdly, the knowledge and approval of the testator as to the contents of the Will when he signed it. If those questions are raised in the pleadings of those who oppose the Will, the burden is on the Plaintiff. Of course, in the present case these issues are raised in
20 the pleadings. So your task is to look to see whether the Plaintiff has proved each of those matters to you by a satisfactory preponderance of evidence, that is to say by evidence—whether that of the Plaintiff's own witnesses or that which was elicited from the Defendants' witnesses or by the documents exhibited—evidence which effectively outweighed the opposing evidence. That is what it comes to. Nothing matters except the evidence given in the box and contained in the documents put in, and the legitimate arguments addressed to you on that evidence.

30 Now, the question of credibility of witnesses, the extent to which you believe any given witness, is entirely a matter for you. I shall not attempt to give you the slightest guidance or hint as to whether you believe Mr. A or Mr. B, Miss C or Mrs. D. All that is for you. You have heard them and you have seen them. You have to draw your own conclusions from what they have said, the way they said it, and the proved circumstances in which they came here to say it if any question of bias or prejudice may arise in connection with their giving evidence.

40 Now I pass to consider these issues separately. The first issue I can deal with extremely briefly. In the defence this is what is pleaded: the Defendants say the alleged Will was not duly executed according to the provisions of the Statute. The Defendants put the Plaintiff to the proof that the provisions of the Statute were complied with. Mr. Hassan, in the course of his final address to you, has very rightly admitted that the evidence on that issue is all one way; and of course there was, as you observed, no cross-examination of either Mr. J. E. Triay or Mr. Dotto suggesting in any sense that any doubt exists on this particular issue. Accordingly, your duty will be to answer that first question in the affirmative, to answer it "Yes."

Now the second issue is a longer matter. I will read to you first of all how it is raised in the defence: "The deceased at the time of the said

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

alleged Will purports to have been executed was not of sound mind, memory or understanding. At the time the deceased executed the said alleged Will she was of the age of 89 years, suffering from senile decay. Her memory was so defective and untrustworthy that there was an almost total loss of memory for recent events. She was at the time of the execution of said alleged Will in such a condition of mind and memory as to be unable to understand the nature of the act and its effects, the extent of the property of which she was disposing, or to comprehend and appreciate the claims to which she ought to give effect." That means that at the time when the said alleged Will was signed the testatrix was of unsound mind. Then the Defendants, when asked for particulars, gave these particulars: "As to paragraph 2 of the defence, the Defendants will say that the deceased was suffering from senile decay and that for some time before being taken to the Colonial Hospital on the 23rd day of May, 1953, she was suffering from loss of memory for recent events. Though she was, throughout her lifetime a very Orthodox Jewess, on the 20th day of May, 1953, at her house, she forgot the feast of Pentecost and did not realise the meaning or did not know the nature or importance of this very important Jewish feast of Shabuot, which she had always observed. A month previous to this incident, on a Friday, she did not know or seem to realise what day of the week it was and on another occasion about that time she started to sing operatic songs."

That is what is pleaded. First I must take you to this extremely important question of the legal definition of "unsound mind, memory and understanding," a phrase which is always used to raise this plea. In other words, what is testamentary capacity or, as it is sometimes called, a disposing mind, a mind fit to dispose of property by Will? Now the law says this. First of all the testator must understand the nature of the act and its effect. Here, in this present case, as admitted by the defence the testatrix knew that she was making her Will. There is no doubt about that much. Secondly, the testator must have no insane delusion which influences his mind as regards disposing of his property; there must not be any disorder of the mind perverting his sense of right or preventing the exercise of his natural faculties. Thirdly, the testator must have the capacity to understand the extent of the property of which he is disposing. That of course does not mean that the testator must actually know the exact value of his estate, not the detail of it all, but the capacity to understand the main substance of the matter, the state of his affairs, with reasonable clarity. And lastly the testator must have the capacity to comprehend the nature of the claims of others whom he is excluding from his Will.

Now, I cannot do better than read to you here two extracts from judgments in leading cases which will put all that before you, I hope with the utmost clarity.

First of all there is a passage in the judgment of the Privy Council in the case of *Harwood v. Baker (c)*, a case of a very similar nature to the present one, and this is what they said: "But their Lordships are of opinion that in order to constitute a sound disposing mind, a testator must not only be able to understand that he is by his Will giving the whole

of his property to one object of his regard ; but that he must also have capacity to comprehend the extent of his property, and the nature of the claims of others, whom by his Will, he is excluding from all participation in that property ; and that the protection of the law is in no cases more needed, than it is in those where the mind has been too much enfeebled to comprehend more objects than one, and most especially when that one object may be so forced upon the attention of the invalid, as to shut out all others that might require consideration ; and, therefore, the question which their Lordships propose to decide in this case, is not whether

10 Mr. Baker knew when he was giving all his property to his wife, and excluding all his other relations from any share in it, but whether he was at that time capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and of deliberately forming an intelligent purpose of excluding them from any share of his property. If he had not the capacity required, the propriety of the disposition made by the Will is a matter of no importance. If he had it, the injustice of the exclusion would not affect the validity of the disposition, though the justice or injustice might cast some light upon the question as to his capacity.” The last part of the passage which I have

20 just read to you is by way of confirming what I mentioned to you at an earlier stage. It is not a question of your having prejudices or wishes as to whom the property should have been left ; the propriety of the disposition made by the Will is a matter of no importance, if the testamentary capacity was there.

Now, the other passage is a very brief one which I propose to read to you from the judgment of Sir Alexander Cockburn, Chief Justice, in the case of *Banks v. Goodfellow* (*d*). This is what he said : “ It is essential to the exercise of such a power ”—that is to say the power to dispose of property by Will—“ that a testator shall understand the nature of the act

30 and its effects ; shall understand the extent of the property of which he is disposing ; shall be able to comprehend and appreciate the claims to which he ought to give effect ; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties—that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made. Here, then, we have the measure of the degree of mental power which should be insisted on. If the human instincts and affections, or the moral sense, become perverted by mental disease ; if insane suspicion, or aversion,

40 take the place of natural affection ; if reason and judgment are lost, and the mind becomes a prey to insane delusions calculated to interfere with and disturb its functions, and to lead to a testamentary disposition, due only to their baneful influence—in such a case it is obvious that the condition of the testamentary power fails, and that a Will made under such circumstances ought not to stand.” I draw your attention in particular to those words “ no disorder of the mind shall poison his affections,” “ no insane delusion shall influence his will,” the question being whether the mind was sound. You will notice in that judgment again that no importance is given to the preferences or wishes, good, bad

50 or indifferent, of the testator. All the importance is given to the question

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

(*d*) (1870), L.R. 5 Q.B. at p. 565.

*In the
Supreme
Court of
Gibraltar.*

as to whether the testator was of sound mind. If he was of perfectly sound mind in the respects mentioned in those judgments, of perfect mental capacity for that purpose, then whatever he did was entirely his business.

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

There is a further point which I think I should mention. It was also decided in that case of *Banks v. Goodfellow* that even a partial unsoundness of mind which does not affect the general faculties and which does not operate on the mind of the testator with regard to the particular testamentary disposition in question is not sufficient to deprive him of the capacity to make a valid Will to that effect. Let me give you one very simple illustration. Suppose a person, completely sound in mind, memory and understanding in all other respects, is suffering from one delusion and one delusion only, namely, that whenever he sees a canary he thinks it is a duck. Now, in such a case as that, if that were the one only thing which was wrong with his mind, the only thing, and in all other respects he was of sound mind, memory and understanding, the validity of his will would not be upset by the fact that he had that peculiar single delusion which had nothing to do, nothing whatever to do, with the disposition of his property. 10

Now, I have dealt as best I can with the law on the second issue and now pass on to the third issue. First of all, let us see how it is pleaded in the defence. I will tell you in a minute why it is very important for you to know and to remember how these matters are set out in the defence, in these written documents which form the defence. This is the way it is pleaded on this third issue. "The deceased at the time of the execution of the said alleged Will neither knew nor approved of the contents thereof. The deceased never gave any instructions for the alleged Will and the said alleged Will was neither read over nor explained to her nor did she read it herself before it was executed, and she was not aware of its nature and effect." That is plain English: the deceased neither knew nor approved the contents of the Will. That is the way the Defendants put their case and that is the pleading on which they stand. Now, I must pause a moment to observe to you a point of practice in the Courts. When a person pleads his case he does so under the Rules in order that his case shall be clear and concise and known to his opponents. We have the rule in all civil proceedings that we must have a clear, concise statement of the parties' cases put upon paper so that not only the Court but also the opposing party or parties know the case they have to meet. The whole virtue of what are called the pleadings—these written documents—and the reason for them is that each party to any civil proceedings must state the framework of his case so that the opposing party knows what he has to meet. Apparently, however, in the course of this case—and you will recall the trend which the case has taken—apparently there has been an attempt to set up a very different case on this issue. However, you must deal with the matter as it has been put before you. Now, you will notice that the first matter that was raised in the "substance of the case" was, I remind you, that the deceased never gave any instructions for the alleged Will, and then it went on to say that the alleged Will was neither read nor explained to her nor did she read it herself before it was executed, and that she was not aware of its nature and effect. You must, however, as I say, take the evidence on this issue as it has been presented to you and you must 40 50

consider your answer to that third question on the form in which the question is framed.

Now I pass to consider the evidence itself which may have a bearing on either or both of the issues, the only two which are now in dispute, the question of soundness of mind and the question of knowledge and approval of the Will. It is of course for you to attach what weight you think fit to any particular evidence or any part of the evidence given by any particular witness. So I shall omit all reference to any part of the evidence which goes solely to the prejudice of those witnesses, that is to
 10 say, which was elicited solely for the purpose of discrediting them as accurate and dependable witnesses. You will recall all that. It would be keeping you unnecessarily long to remind you in detail of all the matters that were put to those witnesses, and the points which were made, as to their credibility. I shall deal with the substantive evidence which goes to the issues themselves.

But I must mention one preliminary matter ; a point was raised as to the desirability of having a medical man present when a Will is made in circumstances such as these. I dare say no one would deny that desirability, but, however welcome as valuable testimony the evidence of a doctor
 20 present at the actual moment might be, you must remember that of course it is not a legal necessity. There is no necessity whatever as a matter of law for a doctor to be present when anybody is making a Will. The real question is whether the evidence available in the case, given here either orally or by the documents, is sufficient to satisfy you as a reasonable and reasoning jury that the testatrix was of sound mind.

First of all, I am going to deal with this whole question of what has been called Benjamin Marache's wishes. It is true, of course, that there is no evidence identifying Benjamin Marache's handwriting but, assuming that you are satisfied that the late Benjamin Marache's entries in Exhibit 7,
 30 the notebook, do represent Mr. Marache's wishes as expressed in 1945, the question is what significance has the story of those wishes of his in this case. I think it is very important that you should get this quite right, because we are not dealing with Mr. Benjamin Marache's Will ; we are dealing with Miss Simy Marache's Will. So I would ask you to view this matter of the history of Benjamin's wishes only in so far as it is connected with or throws light upon these two questions which are before you : the testatrix's sanity and the testatrix's knowledge and approval of her own Will of May, 1953. It is only in that connection, therefore, that it is necessary to consider and examine the story of what is called Benjamin's
 40 wishes and the effect given or not given to them.

First of all, you have the notebook, Exhibit 7, and it contains two passages : first, the list of what are called " donatives "—presents, gifts—totalling £1,000, and secondly, the entry as to the meaning of which there has been some discussion. You may come to the conclusion when you look at it—it is entirely for you—you may come to the conclusion that the reasonable interpretation of it is that Benjamin had noted down that he wished that on the death of the four of them, that is to say, the testatrix, her two then surviving brothers including Benjamin himself, and Benjamin's wife, the family estate—the house and furniture—should be sold and turned
 50 into War Loan and added to the War Loan which already existed, and

*In the
Supreme
Court of
Gibraltar.*

—
No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

that half the income should go to the Talmud Torah for general purposes of education in religion and the other half for meals to be provided for children attending there. Now, the "donatives" were indicated in favour of eight different people. I will come to them in a moment.

The next thing is that Samuel Marache, who survived his brother Benjamin, having carried out part of those wishes, that is to say, given four of the "donatives" out of the eight, did one thing more. A draft Will was produced for him and no doubt on his instructions—Exhibit 8—dated blank except for the year "1946." The day and the month were left blank and the year "1946" was written in, and that Will was prepared not only in draft but in the form of what we call engrossment, the final form ready for signature. You have it in this case before you, Exhibit 8. Mr. Laredo in his evidence said this: "I was always on very good terms with Miss Simy Marache and Samuel. Samuel shewed me a copy of a Will he had prepared and said he was keen to legalize the Will as soon as possible." He said that happened about a year before he died. Now, Mr. Laredo may or may not be right about it being a year before Samuel died. Presumably it must have been some considerable time before Samuel died or Mr. Laredo would not have recollected it as being a period as long as a year. Now look at Exhibit 8 and compare it with the testatrix's prepared but unsigned Will, Exhibit 18, and it is obvious on the face of it that it had been prepared at the same time, that is to say, prepared some time in 1946, for they are identical except for the exchange of the name of Simy Marache in Samuel's Will for Samuel in Simy's Will. They were twin documents. Now note this: Benjamin had died in February, 1945, and Samuel died on the 22nd June, 1946, without having signed that Will. There was thus a long period, something like 16 months in which he did not give effect to Benjamin's wishes as to the charitable bequests. I say he did not because he did not sign that Will which had been prepared to give effect to them. Nor did Samuel "practically immediately", to use the words of Mr. Laredo in the witness box, pay out the "donatives" indicated by Benjamin in the notebook. What happened in fact was that he paid out four of them between 15th September, 1945, and the 15th April, 1946, and the testatrix paid out the other four between 16th February, 1947, and the 23rd August, 1951. They had a form of receipt prepared which was obviously done with deliberation and care. I remind you of this by taking one of the eight receipts which are before you in Exhibit 10; it reads like this: "Received from Miss Simy Marache, of Main Street, Gibraltar the sum of £150 (one hundred and fifty pounds sterling) which she gives me without any legal obligation on her part as her brother Mr. Benjamin Marache died intestate, but she does so of her own free Will out of a desire to respect the wishes of her said brother who she knows was desirous that the above mentioned sum should be given to me the undersigned Rachel Laredo of Main Street, Gibraltar." The receipts were drawn up in that form, the receipts for the monies paid out by Samuel and for the monies paid out by the testatrix.

Meanwhile, in the course of that being done, the testatrix had made her first Will on the 4th July, 1946, Exhibit 15. She had also meanwhile made her first Codicil on the 5th September, 1946, Exhibit 16, and her second Codicil on the 20th July, 1951, Exhibit 17, the second Codicil being made shortly before she completed the final paying out of each of the eight "donatives."

You must look carefully at the contents of the testamentary documents of this testatrix, and you will see that by the first Will, produced on the 4th July, 1946, the testatrix lost no time after her brother's Samuel's death in making a Will. She made it in fact within 13 days of his death and she was then aged 79. Now, the question arises: did she give effect to "the wishes of Benjamin," as they are called, in the notebook? The answer is that in two respects she did not—in two respects, namely, as regards the individual legatees to whom money was left, and secondly, as regards the terms of the charitable bequests. It is perfectly true that

10 she did not alter the position inasmuch as all money was to go to the Talmud Torah for one purpose or another. What she did do was to say "No, it is not to go for meals for children, it is to go for clothing and footwear." Now as to the individual legatees, I call attention to what the testatrix did in her first Will. She gave legacies free of duty to a total of £1,900. First of all £600 to Mr. Judah Laredo, who had already received £300 according to Benjamin's wish. Secondly, £100 to Donna Elmaleh, who had already received £50 by Benjamin's wish. Next she gave £100 to the Plaintiff, £100 to the Plaintiff's brother and £200 to the Plaintiff's sister: entirely new ideas departing from anything that Benjamin ever

20 thought of—indeed, according to the evidence not at all desired by her deceased brother Benjamin who is said to have disliked, actively disliked, the Plaintiff. That was a striking departure of her own, of the testatrix's own. Then comes Rebecca Benzimra, one of the witnesses in this case, for £100 and Freja Benzimra for another £100. Their mother had already received £50 by Benjamin's wish: then came Esther Bendelac and Estrella Bendelac for £50 each. A person called Esther Bendelac—I do not know whether that was the mother of these two girls—had already received £50 according to Benjamin's wish. Then came another new idea of the testatrix: £100 to Coty Benyunes, another witness in this case. Then

30 came £50 each to Esther Pariente, Clara Pariente and Rachel Pariente. Now, these three were due to receive £50 all told, £50 between them, by Benjamin's wish and they actually received it later, in 1951, by the hand of the testatrix herself. So that these £150 here were her own idea, additional to the £50 left by Benjamin's wish. Then you get £50 to Esther Laredo and £50 to Rachel Laredo, the first Defendant's sisters. These also received £300 in February, 1947, from the testatrix herself in accordance with the wishes expressed in the notebook. Then finally came another new idea of the testatrix: £100 to the Nefusot Jeudah Synagogue and £50 to her servant Maria Origo. That is what she did by her first Will. She

40 was obviously already, thirteen days after her brother Samuel's death, thinking independently—no one can deny that—to a considerable extent. She was quite clearly not saying "I am going to execute the draft Will, or rather the engrossed Will, which was prepared before my brother Samuel's death." What she did say was "I am going to make my own bequests for £1,900 and I am going to make an alteration in half of the residuary part of the estate." Perhaps most significant of all is that on that day in 1946 she gave £400 to the Plaintiff, his brother and his sister between them, and that was certainly a considerable departure from anything that might have been done before.

50 Then came her first Codicil; what did she do by that? In September, 1946, only two months after her first Will, some more new

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

ideas of her's appeared. She gave away £550 more. What she did was to double the legacies of eight out of the original legatees under her Will, whom I have mentioned to you by name, and those eight included Mr. Judah Laredo's two sisters, the Plaintiff and the Plaintiff's brother. So that at that stage in September, 1946, she gave all told to the Plaintiff, his brother and sister £600 between them.

Now comes the second Codicil. This was years later, on the 20th July, 1951—five years later—and she was aged 84. Here she had some more new ideas. She gave £500 away because she discovered that three of her original legatees had in the meantime died, releasing, so to speak, the £500 which she had left to them. Did she say to herself "These people are dead; let the money go as Benjamin wished"? No, she did not. She said to herself "I shall give it all to others whom I wish to favour," and what she did was to double some of the legacies; she doubled the legacy of the Synagogue; she doubled the legacies of Mr. Laredo's two sisters who now had £200 each instead of £100 each; and she doubled the legacy of the Plaintiff—she gave him the £200 which would have gone to his brother if he had lived. So that now the Plaintiff stood to have £400 for himself from the estate of the testatrix and the Plaintiff's sister, Luna, stood to have another £200. 10

Thus the position at the end of that story was that she had provided for specific legacies totalling £2,450, all additional to the £1,000 which had been expressed as Benjamin's wishes and which were given quite apart from these £2,450. Of these £2,450, £600 of it was to go to those whom Benjamin is said to have detested, £300 more of it to other legatees whom Benjamin had never made mention of—none at all—and the remaining £1,550 of it to persons already provided for by Benjamin's desire. And of course she made a change as to half the charity-money as regards the purposes for which the money was to be used. Now it must be obvious to you—by the evidence as a whole—I suggest to you—that the testatrix 30 knew what her deceased brother had noted in that notebook, because she herself had been paying out his "donatives." Did she not complete the matter by paying out the last four, her brother Samuel having paid out the other four during his life? She completed the job a month later than the second Codicil. She completed the job, in other words, in August, 1951, by giving to the Pariente daughters their £50 between them, additional to her own bequest of £150 which she left them in her own Will.

In that connection you will recall that there was evidence as to this old lady's character, and this of course is material on the issues that you have to decide. 40

Nurse Olivero described her as "difficult to lead." Dr. Giraldi and Sister Dines described her as a "very determined" old lady. What appears clearly from the history inescapably displayed upon these documents is that at any rate she certainly had some ideas of her own and gave effect to them. No one can say that she altogether disregarded Benjamin's wishes, and equally nobody can say that she altogether regarded them; she took her own course to some considerable extent, from the very beginning. That was of course despite the prepared Will, prepared for her signature early in 1946. Whether it was prepared by her or for her by somebody else we shall never know. There is no evidence as to that. 50

It came into existence prepared for her signature as a twin to the document that was prepared for the signature of her brother Samuel at that time. Neither of them executed his or her document. She put it aside, and within a few days of Samuel's death she substituted something which was at any rate substantially different and executed it. And the last phase of the story of course comes in May, 1953. It is perfectly clear that her second Will was a very substantial departure from anything that she had done before, a very substantial departure. Those are the facts established beyond dispute by that series of evidence relating to
10 them.

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

I pass now to the last stage of what I have to tell you—to the evidence given orally on the other relevant matters. And here I must take you to my notes for I cannot do better than read to you a note I took at the time of what I conceive to be the outstanding points relating to these two issues. I shall take you through the witnesses in the order in which they were called into the box.

First of all there appeared Mr. Joseph Emanuel Triay. He said :
“ The testatrix was in a private room. The Plaintiff went in. I followed. The Testatrix was in bed. When she heard my name she told me about
20 my great-uncle and told me to live up to the name of Triay. She told me she had made a previous Will by Serfaty and that Alcantara had taken over his practice. She also mentioned that since Serfaty's death Laredo had asked her to change from Alcantara to Benady, but that she did not think much of the idea. She said she wanted her old Will completely revoked and a new one made in the Plaintiff's favour. I asked her whom she wanted as Executor. She said the plaintiff had been extremely kind to her ; she spoke very highly of him and of his family including his child, saying he was the only relative she could rely on. She said the Plaintiff was to be her Executor. The Plaintiff took no part in that
30 conversation. I sat on a chair and started typing the formal parts. As I came to the operative parts—the revocation, appointment of an Executor and bequest of the estate—I put each point to her and asked her open questions. She told me again. I typed it all out.”

I pause there to comment on what is an “ open question,” which is different to a “ leading question ” ; it is a question in a perfectly open form with no hint as to the answer that should be given.

Then Mr. Triay said later : “ Dotto the Secretary came to the testatrix's room. I then laid the Will before the testatrix and asked her if she preferred to read the Will or have it explained to her. The
40 Testatrix said she preferred explanation. I then made these points, in Spanish, as before : revocation, appointment of an Executor, bequest of everything to the Plaintiff. I was in some doubt as to whether the testatrix had acknowledged the Will then, so I asked the Plaintiff to repeat it all to her. The Plaintiff explained it all, correctly. The testatrix said ‘ Si ’ and nodded. Dotto was present.”

Then comes the evidence as to the signing : “ I asked her to sign. She said she would, and that she thought her signature might be a little weak. She signed I saw her do it. Dotto and I then each signed as witnesses in her and each other's presence. The testatrix then asked

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

who Dotto was. The Plaintiff told her. The testatrix then said Dr. Dotto—Dotto's brother—had attended her brother in that very same room. When I went to see Miller and to get Dotto, the Plaintiff came with me. I was absolutely satisfied that the testatrix understood it was her Will, and understood its contents too. She seemed very happy to make it. I had no doubt whatsoever she understood it."

Then in cross-examination he said: "The testatrix told me the Plaintiff was the only person in whom she had confidence and for whom she had affection. I had already known a sound disposing mind was essential, and that that included appreciation of the various claims of kinship, etc. 10
But I did not expressly ask her about anyone else. I was quite satisfied the testatrix knew what she was doing, and had made up her mind to favour the Plaintiff. I didn't cross-examine her as to her past Will. I am aware of certain forms of questions that text-books mention should be put to testators. The testatrix's conversation was very natural and normal."

Later again he said: "I was completely satisfied that the testatrix had a clear view and wish. When the Plaintiff explained the Will to the testatrix he said 'By this you revoke the previous Will, that of Laredo.' I was satisfied that the Plaintiff explained her present Will properly. The testatrix needed no prompting when I arrived. She knew what she 20
wanted and said it."

Those are the salient features of Mr. Triay's evidence. Then comes Sister Dines; Sister Dines said: "I saw the testatrix a little before, and afterwards"—that is to say a little before and a little after the making of the Will. "I think she was mentally quite alright—a very determined person. My duty was to make a report in writing on my patients. I have it here."

At that stage Exhibit 2 went in and Exhibit 2 consists of the Nurse's records, the dosage sheets, the temperature sheet and Dr. Giraldi's medical 30
record. All these documents will be before you; look to the extent you wish, and look carefully, at the relevant entries for the relevant days. I will not take you through them word by word because you have them before you and it would be detaining you unnecessarily. Remember there are what are called "night reports" and "day reports" in the Nurse's reports; and you must remember this, that the "night report" of the date 29th May, the date when the Will was made, covers the period from 8 p.m. on the 28th to 8 a.m. on the 29th. In other words it is the night during which the 29th of May commenced, the night before the day of the 29th; that is because the "day report" is from 8 a.m. on the 29th up 40
to 8 p.m. on the 29th. That applies to the reports on each day. Look at those carefully to remind yourselves of the evidence appearing therein and look also of course at the medical notes made by Dr. Giraldi who was in charge of this case.

Now, in cross-examination Sister Dines said this: "I suggested they should contact Dr. Giraldi. One of them then asked me to contact him. I 'phoned him at King George V Hospital and explained the situation to him. He said he was far too busy to come. I told the Plaintiff and Triay, and suggested they go to Dr. Miller."

Then after that comes a good deal of evidence relating to these day and night reports which you have before you and which I need not repeat. 50

Then she said this with regard to the day-time of the 29th of May, the day on which the Will was made : “ On that day she still knew what was going on. She didn’t want to be moved, or her back to be treated, or to be bothered with drinks.”

*In the
Supreme
Court of
Gibraltar.*

10 Then she referred to the Nurse’s reports with which I will not trouble you. Then she said : “ She was seen by Dr. Giraldi at 5.50 p.m. The doctor usually came also in the morning. He was called at 5.50 p.m. If there is any slight change the doctor is called. The testatrix had very many visitors. We don’t think it is good for patients. Children are not allowed in, but sometimes they get in unnoticed. We keep a notice and put it up sometimes. The notice says : ‘ No visitors—Doctor’s orders.’

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

As regards the 29th of May she said : “ On the 29th of May ‘ condition poor at 3.20 p.m.’ is noted. The change for the worse was that afternoon.”

On the 29th of May it is noted—she said in the report—that the condition of the patient was poor at 3.20 p.m. ; and there was a change for the worse that afternoon. You will recall that the evidence of Mr. Triay is that he went to the testatrix’s room somewhere about 10.30 to 11 o’clock in the morning, possibly a little earlier than 10.30.

20 Now Dr. Giraldi. He said : “ I knew the testatrix as a patient from 1946 until her death. There was no sign of affliction of the mind or mental incapacity up to her death. Singing operatic songs is no sign of mental incapacity. She was a little odd, and could sing songs. Shortly before her death I knew she had no chance of recovery and advised her she should go to the Colonial Hospital for better nursing.”

30 Later he said : “ Up to her death I observed no sign of her mental incapacity. On the 28th of May I noted ‘ Losing ground. Mentally clear though wandering at times.’ I meant she was fully mentally capacitated but tending to digress from subject to subject. On the 29th of May, if I did as I always do, I visited her about 8.30 a.m. I found her mental condition quite clear.”

Then he spoke of the telephone call and said that he was unwilling to be, as he put it, ordered about and brought from one hospital to another at a moment’s notice.

40 Then he said : “ At about 11.30 to 12 noon I went again to the Colonial Hospital and saw Miss Marache again. Her condition was practically the same as in the morning. There was no change in her mental condition. ‘ Reported ’—or ‘ reputed ’—‘ to be mentally disorientated ’ means I was told so, but I did not agree with it, according to my own observation. It was not any medically qualified person who told me the testatrix was ‘ mentally disorientated.’ I must have seen her later again on the 29th of May. There was no change in her mental condition. She died on the 2nd of June.”

In cross-examination he said : “ I never had any doubt about the testatrix’s mental capacity.”

Later he gave evidence about his own statement on this case, a statement of the evidence that he was prepared to give ; and he said that the statement had by his insistence been provided to both sides, not only to

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

one side. He said that Mr. Triay, Senior, for about six months tried to get him to make a statement for him and "I declined; I only made a statement later, on condition that a copy was sent to the other side. I did it because it was obvious that the case would come to Court." In the witness-box, you will remember, he adopted the proper attitude, in answer to a question put to him, by saying "I do not appear for either side; I appear here as a medical practitioner giving evidence of an expert nature on this case."

There was then the incident of Dr. Giraldi's very considerable annoyance, and of course, it was proposed by the defence, quite naturally, to make something of it. He was unquestionably, according to the evidence, considerably annoyed that his patient had been disturbed by the visitors, Mr. Triay and Mr. Dotto, brought there by the Plaintiff without his knowledge or consent, and he gave evidence about that saying: "I was annoyed because under proper hospital etiquette, in my view, I should have been asked for permission for the patient to be disturbed. Obviously, that is a matter of principle; even relatives have to ask permission to visit a patient. It is clear to me now, from the fact that I made no report to the Chief Medical Officer about Sister Dines' conduct, that I have not told her that Miss Marache was mentally unfit to sign any legal document." Thus, you may think it is quite clear what happened in that respect. 10

Now later he said: "on the 29th May the note may have been made in the morning or the evening: 'Lucid with doctor, but reported mentally disorientated.' It is an unusual note—not very relevant at the time. It meant that I thought her lucid but someone was trying to impress me with the contrary. I cannot be sure who told me. I am almost sure it was one of the Hebrew watchers. I think it was. The entry could have been made on any of my three visits to the testatrix on the 29th, but it is not likely to have been made the time when I was annoyed. Maybe it was in the early morning or at 5.50 p.m. when I visited. 30

Then later in his cross-examination he said: "To be definite as to her state of mind at a given moment I should have had to examine her immediately before and after."

Then in re-examination he said: "I did examine her early that day and later. In my view she was of a disposing mind that day"; and to the Court he said: "I cannot be sure as to the exact time I went for the second time to see Miss Marache on the 29th May. It may not have been till 5.50 p.m. Miss Marache had a strong will. It was difficult to persuade her as to treatment; she had to be convinced. She definitely understood argument. In hospital she had her own ideas about nursing and expressed them. Up to and including the 29th of May she never seemed to me unable to recognise people or to talk sensibly—and it was never pointed out to me by any private nurse or nurse in the hospital that she was unable to do so." 40

Then he was further re-examined, with leave, and he said: "I visited Miss Marache certainly on one occasion, possibly on two, after the Will on the 29th of May. I examined her in the presence of the Sister alone after the Will. She made no complaint to me about anything that had happened that day." 50

Then we go to Nurse Teresa Olivero. She had very little to tell you on this. She said that all the testatrix's family came every day to see her, confirming the evidence of Sister Dines that she had a large number of visitors. She said: "All Miss Marache's family came every day to see her. I attended her. She often talked with me. She was very fond of all the Marrache family. The Plaintiff's sister was often there. The Plaintiff's son was there twice. Miss Marache was very pleased to see him there. She was a bit difficult to lead; she used to refuse treatment and so on."

10 Then in cross-examination she said: "Miss Marache was difficult to lead as regards treatment. I don't know about anything else."

Then came Mr. Dotto, the last witness called on the Plaintiff's behalf. He first of all confirmed the fact that the Plaintiff had not been left alone with the testatrix just prior to the signing of her Will. He said: "I have been Secretary of the Colonial Hospital for 27 years, and was still there on the 29th of May, 1953. I remember J. E. Triay and the Plaintiff coming to my office. They wanted to see the Chief Medical Officer. I went to the testatrix's room, entering with the Plaintiff and Triay. She was sitting in bed against pillows. Triay produced a document and laid
20 it on the bed for the testatrix to read and sign. Then the testatrix intimated that she would rather have it explained to her. So Triay started to explain it. At this stage the Plaintiff intervened to tell Triay that Miss Marache was rather deaf and to lift his voice. Triay then said 'Will you explain it yourself—three things: first, that she is making her last Will and revoking all former Wills; secondly, that she is appointing you Sole Executor; thirdly, that she is leaving all she possesses to you.' Triay said all that in Spanish. Then the Plaintiff repeated more or less what Triay had told him, in Spanish. Miss Marache assented. In my opinion there could be no doubt that she understood what was said. After the
30 signing Miss Marache asked the Plaintiff who I was. The Plaintiff told her my name. Then Miss Marache said her brother had been attended by my brother, which I knew to be correct. Then I left her."

Then in cross-examination he said: "The Plaintiff was nearest to Miss Marache in her room. He explained the Will into her ear in Spanish: 'You revoke your former Will, the Laredo one. You make me sole Executor and leave me all you possess. Don't fear—you will live 100 years'." That was his evidence.

I now pass to the witnesses called for the defence. First came
40 Mr. Judah Isaac Laredo. Much of his evidence I have already dealt with in connection with the story of Benjamin's wishes. I shall not of course refer to them again or to any part of his evidence that deals only with that or is only in regard to any answers to questions which were put merely to discredit him as a witness. That you will recall, and you will deal with them as you think fit, attaching as much or as little importance to his evidence or any part of it—just as you will deal with any other witnesses—as you think fit.

The first thing in his evidence which I want to call your attention to is that he spoke of having managed the business of the testatrix's affairs over a considerable period to the extent of writing cheques for her to sign,

*In the
Supreme
Court of
Gibraltar.*

—
No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

sending them to her bank, sometimes checking the bigger bills that came in, and so on. He said that he was always friendly with the testatrix and that he saw her regularly for this purpose, and indeed, I think, for general social purposes. He also said that the Plaintiff and his family were also frequent visitors during the last years of the testatrix's life.

Now, he spoke of the question of the testatrix's state of health. He said that she had been three months in bed before going to hospital in May, 1953. "She was," he said "sick often, very thin, weak. She has generally been a weak lady. She was deaf—considerably so just before going to hospital. About the 15th of May"—note that date; 10 I shall come back to that later—"it was the Pentecost. I had advised her a few days before. At Pentecost I found her looking very pale. I shouted at her 'It is Pentecost.' She said 'I don't know.' She was in a very abnormal state. On a Friday night shortly before the 22nd of May I went to her for the blessing of the wine. I told her it was Friday. She couldn't understand. I gave up the ceremony."

Later he said: "I see this Will of the 4th of July, 1946, and these two Codicils. I first saw this after her death; Alcantara shewed me them. Miss Marache called me her 'Trustee' during her life. I knew nothing of their terms during her life. Most of the beneficiaries are not relations of 20 mine. The charitable bequest, that is the residue, was often mentioned by Miss Marache; she said she was happy to have completed the desire of Benjamin whom she regarded as a father. She said her desire was the same as her brothers'."

Later he said: "I visited Miss Marache practically every day in hospital, nearly always with my wife. Sometimes my wife visited her alone."

He never made any suggestion of any delusion or any form of insanity on the part of the testatrix while she was in hospital. His evidence in support of the plea of unsound mind—with its meaning in law which I 30 have explained to you—is that evidence which I have just read to you relating to those instances which are said to have occurred during the month of May at her home.

In cross-examination he said: "I noticed Miss Marache was stone deaf some months before she went to hospital. If there is nothing in the pleadings about deafness I told Hassan about it several times." You will compare that with the evidence of the various witnesses who speak to having had various conversations with the testatrix actually while she was in hospital as well as before she went there.

He further said: "I complain about this second Will because it 40 does not resemble Benjamin's wishes. Samuel told me about the notebook just after Benjamin's death. Samuel told me the "donatives" were intended to come out of the sale of Stock of the shop in Gibraltar." Then a question was put to him by Counsel in this form: Was Benjamin able to make a Will if he wished? And to that the witness gave a long answer without really answering the question.

Later he said: "Samuel never made his Will. He shewed me Exhibit 8 about a year before his death." It was on that that I observed

to you that apparently he may have been incorrect because the date on the engrossment was 1946, although possibly he may have seen a draft in 1945. At any rate, he says it was a year before Samuel's death when he saw that Will prepared. And it was never signed.

*In the
Supreme
Court of
Gibraltar.*

10 Later he said: "Miss Marache has told me that she was 'happy to have completed her brother's wishes in respect of her building and estate'—those were the words she used. She meant as to the residue of her estate. She said 'for the poor.' She told me 'for the Talmud Torah.' I didn't say that she said 'for the poor'." That is the passage, you will remember, in which he purported to go back on what he had said about the testatrix's statement to him, about having left money "for the poor."

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

Then later he said: "When I found her lying on her bed with a pale face and unable to understand me I didn't think that she was ill, so I took no steps."

Later he said "The day of the funeral I went to the Solicitor's office and arranged for a caveat to be entered. I agree I had not seen her Will of July, 1946. I thought I was helping a charitable lady."

20 Then later he said something else relating to the 15th of May, and that is why I asked you to keep that date in mind as being the date on which he says that he was called upstairs and found her singing what seemed like an opera. He said this: "I see this cheque dated the 15th of May, 1953 for £30 which I made out on her instructions. I have no doubt she knew what she was doing. I cannot say why it was not cashed till the 18th of May."

That I think is the substance of his evidence, other than the evidence relating to Benjamin's wishes to which I referred at an earlier stage.

30 Then came Miss Rebecca Benzimra. She said: "In 1946 I went to Morocco for about six months. After my mother's death Miss Marache gave me £1 per month and my sister £1 per month as pocket money. I didn't need it. I took it to please her. She said she could not afford more. She was living on her income. She was charitable. She said her capital didn't belong to her—it belonged to the Talmud Torah. She said that constantly after 1946."

40 Then the witness passed on to deal with the period in the hospital and said: "On Friday the 22nd of May I went to the Colonial Hospital to see Miss Marache. She complained about a pain in her arm. She had a bad fall as she was entering her car to go to the hospital. She also complained about her stomach. I stayed with her an hour and talked with her. I went again on Saturday the 23rd. Her maids were there—they always were. The Plaintiff's father came in too. When he sat next to her I heard her for the first time speaking against Mr. Laredo. I had heard her praise him previously. She said 'I don't want to see him. He doesn't take an interest in me. And I have him as my trustee.' The Plaintiff's father said 'You've got him because you want him'."

Then in relation to her visit to hospital on the 26th the witness said: "Miss Marache said 'I think I am dying.' I said 'No—you look well.' She said 'You tell me that because you love me'."

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

Then with regard to the 28th of May she said: "On Thursday the 28th in the afternoon I went to the hospital. The Plaintiff and his wife were there. Also Mr. Massias a Hebrew watcher, the Plaintiff's brother-in-law, who said he was from the Hebra. I stayed about an hour. She recognised me. On Friday the 29th I met one of her maids, carrying a bowl, about 4.30 or 5 p.m. I went straight to the hospital meeting the Plaintiff's father on the way. Miss Marache looked very very ill. Luna Marrache was there, and the maids. Mrs. Benyunes was there. Mr. and Mrs. Laredo came in about 6.30 p.m. Also Mr. Tobelem, a watcher. I didn't talk with Miss Marache—only a sign of recognition." That was 10 between 5 p.m. or so and something like 6.30 or 7 p.m. on the 29th.

She then gave evidence relating to what she said was her visit on the following day, Saturday the 30th. First of all I will read to you what she said about that: "I stayed a while, then went out into the corridor with Mr. Tobelem. While I was outside Mrs. Benyunes called me in. I went in. I heard Miss Marache say to Luna 'The radiogram and the records for your fiancé. Then Miss Marache looked at me and said 'For you the small picture in the wardrobe; Marie knows where it is.' Then she turned and looked at Mrs. Benyunes and said 'I've also remembered you in my Will.' Then she looked at me and said 'I have remembered 20 you also.' I didn't know at that time that I was mentioned in any Will. She said 'I don't want luxuries. My tombstone should be humble and simple, because I want all the money for the poor. They need it more than I do.' We decided that Mrs. Benyunes should tell Mr. Laredo about the tombstone. I left Miss Marache for lunch. I returned at about 3.30 to 4 o'clock. Luna, the maids, Mrs. Benyunes and Mr. Laredo came later. The Plaintiff's wife came in alone while I was there. She said her boy was downstairs, and should she bring him? I said I thought prima Simy wasn't fit for it. The boy came; he was brought in. Prima Simy seemed asleep. The Plaintiff's wife said 'Prima Simy, here is my boy.' 30 She opened her eyes, looked at the boy and looked happy. She said 'Do the salute.'" And then, having spoken of her brief visits when no conversation took place, she said: "Previously prima Simy often talked of her brothers as being affectionate and charitable. She said their wishes were that all the money should go to Jewish charities."

I pause to make this comment—you must make up your minds about it in all respects: first of all, the extent to which you believe it; secondly, whether you believe that it took place on Saturday the 30th, that is to say the day after this Will was made; and you should attach such importance to that evidence as you think fit, but bearing this in mind, 40 that you are not concerned primarily with the state of the testatrix's mind, or indeed her condition of physical health either, on the 30th of May. You are primarily concerned with her mental state on the morning of the 29th of May. It is beyond dispute, of course, that she was a very sick woman; and it is beyond dispute that within a short time after this Will was executed she declined, and that she died a few days later. But you are primarily concerned with her mental state on the 29th of May and not her condition on the 30th, and you must make up your minds what importance you attach to that evidence, to which I have just referred, bearing that in mind and bearing in mind the other evidence relating to 50 the testatrix's condition on the 30th.

Now, in cross-examination, Miss Benzimra said: "Miss Marache never discussed with me any of her legacies, but did constantly mention the Talmud Torah. I cannot remember at all when she last mentioned it."

Then later she said: "I was not dissatisfied with my niece's wedding present. I knew Miss Marache had given £50 to the Plaintiff as a wedding present." So that came out in cross-examination. That is another little bit of evidence throwing light on the relationship between the testatrix and the Plaintiff.

Then she said: "A week ago Mr. Alcantara told me that £100 was
10 left to me in the 1946 Will." That of course is one of those points which go to the question of whether or not she was a prejudiced or biased witness.

Later she said: "On Saturday the 30th of May in the morning we could hear all Miss Marache said. She spoke very weakly. She looked tired and ill. She came out of a stupor to say the words I have said, and then went into a stupor again." That evidence was given in relation to the whole of the passage relating to the testatrix's alleged statement that she had remembered those two ladies in her Will, and so on." She came out of a stupor to say the words I have said, and then went into a stupor again."

20 Then in re-examination this witness said: "Miss Marache once spoke to me about the Marraches. She was a bit vexed because the brother and sister had a quarrel and had to go to the Police Station. That was about six months to a year before she died. She wanted to make it up between them but they would not pay attention." There again is something that throws light on the testatrix's relations with the Plaintiff's family.

And then in answer to a question which I put to her she said: "Miss
30 Marache was very fond of music. She spoke to me about it often. She had a gramophone and records—opera records." You may think that that throws some considerable light on the evidence as to the singing or humming of airs from Italian operas.

Now came the witness Mrs. Coty Benyunes. She said: "I saw
Miss Marache some five or six months before she went to hospital. On the
22nd of May I saw her there. I loved her much, so went at once. I found
her in bad health. She was talkative. On Monday the 25th I went to
hospital. There was a notice on the door against visitors. As a cousin,
I knocked and opened. A maid let me in. Miss Marache was ill but talked.
Once she addressed me by name and asked me to stay by her. Visitors
came and went. Always the Marraches went to see her. On the Monday
40 Luna Marrache went. On Tuesday the 26th I went again. There was
still the notice. I went into her room. She was asleep or in a lethargy
and I could not talk with her. I stayed from 5 to 7 p.m. No others came.
On Wednesday the 27th I went again. Miss Marache was seriously ill.
At first she didn't talk much. Later the Plaintiff's boy came in fancy
dress with Mrs. Massias, the boy's grandmother, and the Marraches all
came. Miss Marache and the boy talked about the fancy dress. I remained
all evening. The Plaintiff's father was there. Miss Marache said to him
'Abraham kiss your daughter.' That was because there was a bit of
trouble between him and his daughter Luna. Abraham Marrache and the

*In the
Supreme
Court of
Gibraltar.*

—
No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954.

continued.

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

Plaintiff then left. On Friday the 29th I went again, at 5 p.m. as always. I stayed till 10.30 p.m. She was very ill. At moments it seemed she would have a collapse. The Plaintiff's wife, Luna Marrache, the Misses Laredo and the Misses Benzimra all came at one time or another."

Then comes her evidence substantiating the same story as you have heard from the mouth of Miss Benzimra. She said substantially the same thing: "On Saturday the 30th in the morning I went to see her because I had left her so ill on the 29th. Rebecca Benzimra and Luna Marrache came to see her. Luna went near the bed and Miss Benzimra went outside. Miss Marache said something and I went out to speak to Miss Benzimra. 10
Miss Benzimra and I then went back into the room. Miss Marache was telling Luna that she had a gramophone and records and wanted them to be given to Luna's fiancé, Jack Benzecry, because he understood them. Jack has a radio shop. Then Miss Marache said to Rebecca Benzimra: 'A little picture—the maid knows where it is—is for you.' Then Miss Marache said to me: 'Cotita, I remembered you in my Will.' Turning to Miss Benzimra she said: 'Also you.' Then she cried and said: 'I don't want luxuries. I want a simple stone. All my money is for the poor. They need it more than I.' We consoled her and left half an hour later. She had gone back into lethargy. On Saturday the 30th I went to see 20
her again. Miss Benzimra and Luna were there. We decided to tell Mr. Laredo about the tombstone. I told him. The Plaintiff's boy came to see Miss Marache. Miss Marache was always very happy to see him. After the boy left she said to the Plaintiff: 'Samuel, speak to your sister'."

Then she gave further evidence about visits on the subsequent days. Then she gave some evidence about what the testatrix said to her in the year 1946. This is what the witness said: "In 1946 after Samuel's death I visited Miss Marache daily. She was in mourning. She said one day: 'What troubles when death comes! I have already settled my affairs. All my money—my capital—for the poor. My brothers wanted to form a 30
canteen in the Talmud Torah, but since the war we have no space. So that money should be kept for the poor—for the school—for the clothing. Mr. Serfaty knows that all I have is for the poor. Some presents for some acquaintances.' She never told me that I had an interest. In 1946 or 1947 she used to say that Benjamin didn't want to have anything to do, alive or dead, with the Marraches. About early 1953 Miss Marache was very upset about the quarrel between the Plaintiff and his sister. She suffered great sorrow, and great pity for Lunita Marrache."

Then came her cross-examination, when she said: "Miss Marache was very upset about Plaintiff's quarrel with his sister. She had great 40
affection for all the Marraches. She was delighted to see the Plaintiff's boy. She grumbled about Mr. Laredo's attitude concerning her food. I first heard of my legacy on Monday of this week from Mr. Hassan."

Then later she said: "When on Saturday the 30th of May Miss Marache talked, she talked quietly but audibly. We had to lean over her to make her hear. She spoke for a little, then lapsed into lethargy. I think she was then in a fit state to dispose of her property—briefly but not for a long time. At moments her mind was clear, as far as I could see. She sang opera in hospital. She started humming opera once. She was always very fond of music, for many years." 50

We now pass to Mrs. Mazaltob Laredo's evidence. She said that the testatrix had "said at every moment—a sort of chorus—that all her money was going to the poor. It was the wish of her brothers. She said it before everyone."

*In the
Supreme
Court of
Gibraltar.*

Then in cross-examination she said: "From the death of Samuel Marache in 1946 the Marraches visited Miss Marache a lot. I do not know how Miss Marache felt towards the Marraches. She was very nice with everybody. When taken to hospital, she said nothing about either the terrible, or the good, Marraches taking her away. She had too strong
10 a will of her own."

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

Then in answer to a question which I put to her she said: "I saw Miss Marache several times in hospital. The first time, I spoke with her and she said how ill she felt. The other times I didn't disturb her as I thought she wasn't up to it."

Then came the witness Mr. Baruj Azagury who gave, I think you will agree, no evidence of any substantial value. He told the story only about the Plaintiff's motor car having gone to the door of the house at Main Street and taken the testatrix away to hospital, and of the testatrix having been allowed to fall to the ground by her maids who were supporting
20 her.

Then came Miss Esther Benzecry, a school-teacher at the Hebrew School. She said: "I last saw Miss Marache in March, 1953. She said 'Daughter, don't worry. Now I am only giving you a pound, but everything I have is for the poor and the Talmud Torah. Give me a kiss. You are very "simpática." Come and see me whenever you can.'" That was all the material evidence on that matter.

Then came Mr. Elias Belilo. He said: "On the 29th May in the afternoon I was at work in Irish Town. I received a telephone call from the Plaintiff from the Colonial Hospital at 3.50 p.m. The Plaintiff said
30 'Senora de Marache who is in hospital has got worse and they say it is necessary to have a watcher.' I said I would go. Dr. Giraldi came at about 4.30 p.m., very excited. Dr. Giraldi said to the Plaintiff 'Listen Marrache, who gave permission to bring a lawyer here and disturb my patient without my authority?' The Plaintiff said 'I acted on instructions.' Giraldi said 'Instructions de quien? I am he who is in charge here. She is my patient. I am going to revoke this.' The Plaintiff said 'Triay came here and Dr. Miller was inside'"—the expression was "adentro" whatever that may have meant. "Dr. Giraldi said 'Neither
40 Dr. Miller nor anyone! Even if the Police wanted a statement they couldn't have it, because this lady was not in a fit state for anything today.' The Plaintiff stood mute. Dr. Giraldi turned his back and entered Miss Marache's room. The Plaintiff said to me 'But, man! We telephoned Giraldi.'" "

I pause there to bring to your notice the fact that Dr. Giraldi had been telephoned for, according to the undisputed evidence, to come to witness this Will. That was the purpose for which he was being telephoned; he declined, of course, to come, saying that he was not going to be brought out of hospital at a moment's notice, when he was working at the King George V Hospital.

*In the
Supreme
Court of
Gibraltar.*

No. 32.
Summing
Up by
Bacon,
C.J., 17th
November
1954,
continued.

Then Mr. Belilo said later : “ Dr. Giraldi then said to me, taking my arm ‘ I was very excited because I don’t want to be ignored in relation to my patients.’ ”

Then in cross-examination he was shown a document which was already an exhibit, Exhibit 4, a statement that he had given some time before, some considerable time before to the Defendants’ lawyers : and he said : “ I see Exhibit 4—my written statement. I agree that I said in it that Dr. Giraldi had said ‘ She is not in a fit state to be disturbed ’ —*not* ‘ she is not fit for anything.’ ”

And then later in answer to a question put by you, the jury, he said : 10
“ At the hospital on the 29th of May I didn’t hear anyone say anything about the state of Miss Marache’s mind.”

Then finally came Mr. Elias Isaac Gabriel Benzaquen who said :
“ I am of the Hebra. I watched at Miss Marache’s bedside on the afternoon of the 30th of May. She died in the early hours of the 2nd of June. I was watching at 10 p.m. on the 1st of June and realised that she was going to die. At 11.30 p.m. I sent a message to the Plaintiff. The Plaintiff arrived at 11.50 p.m. Miss Marache died soon after that. Then the Plaintiff said ‘ I want everything to be done in the best manner. I am going to pay all the expenses, because Triay telephoned me this afternoon and said 20
I am the sole Executor and beneficiary.’ ” That was the last point made in the evidence.

Now, gentlemen, you have once more listened with very great patience and I can only tell you that it is not only, of course, your duty to carry out your oath but, as I mentioned before, you have a very solemn duty to find in all truth on the evidence before you, and on that alone, and by applying the principles of law to which I have referred, what value should be given to the deceased lady’s signature on her Will on the 29th May, 1953. It is a question of the full value or no value ; that is the choice, and the answer depends upon your replies to these three questions put to you in writing. Your reply to the first question should undoubtedly be 30
“ Yes ” ; your replies to the second and third are matters entirely for your decision. You may retire to consider your verdict.

No. 33.
Jury’s
Verdict,
17th
November
1954.

No. 33.
JURY’S VERDICT.

Answers to questions (1) Yes (due execution).
(2) Yes (capacity).

(All by majority of

7 jurors to 2) (3) Yes (knowledge & approval).

No. 34.

SUBMISSION by Plaintiff's Counsel regarding costs.

Ashe Lincoln : I ask for costs to be paid by Defendants. Fraud and undue influence were pleaded.

The pleadings were substantially amended. No evidence supported either charge. Lord MacMillan has observed that no such charges, unsupported by evidence, should ever be made.

I submit that Defendants should personally pay the costs. See *Spiers v. English* [1907] P. 122. Here the caveat was entered hurriedly and the charges launched without evidence. Possibly Defendants should only bear personally a proportion of their costs.

Alcàntara : I agree that costs usually follow the event but subject to the two exceptions in *Tristram & Coote* p. 624. And see at p. 625 top, and 625 bottom. The whole matter is a question of whether Defendants had reasonable grounds for opposing the Will.

See *Davies v. Jones* [1899] P. 161.

See Annual Pract. 1954 p. 1431.

Per Curiam : At the moment my view is that Plaintiff's costs should come out of the estate and $\frac{3}{4}$ of Defendants' also—Defendants to bear the other $\frac{1}{4}$ of their costs on the ground that the pleas of fraud and undue influence were unwarranted.

Alcàntara : I don't press anything more.

Ashe Lincoln : Nor I. I apply for a Certificate for a Special Jury. I ask for a pronouncement in favour of the Will of 29th May, 1953.

*In the
Supreme
Court of
Gibraltar.*

No. 34.
Submission
by
Plaintiff's
Counsel
regarding
costs,
17th
November
1954.

No. 35.

JUDGMENT.

The ct. pronounces in favour of the Will of 29th May, 1953.

Plaintiff's costs to come out of the estate.

Defendants' costs to be taxed and $\frac{3}{4}$ of the taxed costs to come out of the estate, $\frac{1}{4}$ thereof to be borne by themselves.

Certificate for Special Jury.

(Sgd.) ROGER BACON,
C.J.

17th Nov. 1954.

No. 35.
Judgment,
17th
November
1954.

*In the
Supreme
Court of
Gibraltar.*

No. 36.

FORMAL JUDGMENT.

On the 17th day of November, 1954.

No. 36.
Formal
Judgment,
17th
November
1954.
(L.S.)

A Special Jury having been sworn to try the questions of fact arising from the pleadings in this action, and the Honourable the Chief Justice having in their presence taken the oral evidence of the witnesses produced on behalf of the Plaintiff and Defendants, and having heard Counsel thereon on behalf of both parties and the Jury aforesaid by their verdict having found :

- (1) That the Will dated the 29th day of May, 1953 of Simy 10
Marache of No. 222, Main Street, Gibraltar, Spinster, was duly
executed by the testatrix ;
- (2) That at the time of such execution the testatrix was of
sound mind, memory and understanding ;
- (3) That at the time of such execution the testatrix did know
and approve of the contents of the said Will ;

The Honourable the Chief Justice on the application of Counsel for the Plaintiff pronounced for the validity of the said Will and decreed probate thereof in solemn form of law.

And on the application of Counsel for the Plaintiff and Defendants 20
the Honourable the Chief Justice ordered that the costs incurred or to be
incurred by the Plaintiff be paid out of the Estate and that the costs
incurred or to be incurred by the Defendants in this action be taxed and
be paid as to three fourths out of the Estate. Certified fit for Special Jury.

By the Court,
(Sgd.) E. PIZZARELLO,
Registrar.

No. 37.
Notice of
Motion for
New Trial,
3rd
December
1954.

No. 37.

NOTICE OF MOTION for new Trial.

TAKE NOTICE that this Honourable Court will be moved on 30
Wednesday the 8th day of December, 1954, at 10.30 o'clock in the forenoon
or so soon thereafter as Counsel can be heard on behalf of the Defendants
for an Order that the Judgment herein dated the 17th day of November,
1954, in favour of the Plaintiff be set aside and a new trial be heard between
the parties or alternatively, that judgment be entered in the action for the
defendants with costs of the action. And for an Order that the Plaintiff
pay to the Defendants the costs of and incidental to and occasioned by
this application.

Dated the 3rd day of December, 1954.

(Sgd.) JOHN E. ALCANTARA, 40
Solicitor for the Defendants.

To : The above-named Plaintiff,
And to : Messrs. Triay & Triay,
his Solicitors.

No. 38.
 NOTES of Bacon, C.J., on hearing of First Motion.
 Probate Jurisdiction.

*In the
 Supreme
 Court of
 Gibraltar.*

1953.—M.—No. 1.

No. 38.
 Notes of
 Bacon,
 C.J., on
 Hearing of
 First
 Motion,
 8th
 December
 1954.

IN THE ESTATE of SIMY MARACHE, deceased.

Between SAMUEL ABRAHAM MARRACHE, Exor. &
 Sole Beneficiary of Will of SIMY MARACHE decd.
 dated 29th May, 1953 Plaintiff
 and

10 JUDAH I. LAREDO and DAVID M. BENAİM
 Merchants, Executors & Trustees of Will of
 a/m dated 4th July, 1946, and two Codicils
 dated 5th Sep., 1946, and 20th July, 1951 . Defendants.

(1) Motion that Judgment dated 17th November, 1954, be set aside and for a new trial.

J.J. Triay for Plaintiff (Respondent).

Hassan for Defendants (Applicants).

J.J. Triay : I raise objection to this Motion.

20 The Motion is pursuant to R.S.C. Gib. 1948, Rule 17 (B) (viii) : there should have been 7 days' notice of the Motion. See Rule 16 (xvii) also, and R.S.C. Order 39 Rules 1 and 3. The latter (English) Rules apply here, by virtue of R.S.C. Gib. 1948, Rules 14 and 16 (xvii). See *Murfett v. Smith* 12 P.D. 116 : there held that R.S.C. O. 39 applies to Probate Division. Perfectly clear decision. See also *Pfeiffer v. Midland Rly.* 18 Q.B.D. 243. This Motion should be dismissed *in limine*—it cannot be heard on its merits because (A) the requisite 8 days' notice was not given—only 5, and (B) *no* grounds are stated in the Notice.

30 *Hassan* : Triay's approach to this matter is "artificial". In England the grounds must be stated because the C.A. goes into the merits. As to the 5 days instead of 8, the date of today's hearing was, as usual here, suggested by this court itself. On the other point, the application for leave to appeal is within time.

R.S.C. Gib. 1948 Rule 14 : "so far as circumstances in Gibraltar may permit" : that excludes need to state grounds.

J. J. Triay is not called on.

I rule that Notice of Motion for new trial is not in proper form and must be dismissed *in limine* : grounds must be stated therein.

J. J. Triay : I ask for costs of this Motion.

Per Curiam : Costs reserved till the hearing of a new Motion.

*In the
Supreme
Court of
Gibraltar.*

(2) Motion that leave to appeal be given.

J. J. Triay for Plaintiff (Respondent).

Hassan for Defendants (Applicants)

No. 38.
Notes of
Bacon,
C.J., on
Hearing of
First
Motion,
8th
December
1954,
continued.

J. J. Triay : I raise objection to the Motion. The Notice states no grounds, and it should. See R.S.C. Gib. 1948 Rule 49, which relates to the Appellate Jurisdiction of this court. This matter is in the Appellate Jurisdiction : and the Rule lays it down that grounds must be stated in the Notice.

Per Curiam : No. Rule 49 and the succeeding Rules of Part IX apply only to "a civil proceeding otherwise than on a case stated to be taken in the Court *by way of appeal* from the decision of any . . . lower tribunal." Part IX has no application to proceedings under section 84 of the Supreme Court Order. And I know of no provision anywhere that this particular notice of motion must contain grounds. At any rate that is clearly unnecessary where an appeal lies as of right, as in the present case.

Hassan is not called on.

Hearing of this Motion adjourned *sine die*, pending giving of new Notice of Motion for new trial in proper form and with proper lapse of time between Notice and hearing.

(Sgd.) ROGER BACON 20
Chief Justice.
8th Dec., 1954.

No. 39.
Order
dismissing
First
Motion for
New Trial,
8th
December
1954.

No. 39.

ORDER dismissing first motion for new Trial.

Wednesday the 8th day of December, 1954.

Before

The HONOURABLE MR. JUSTICE ROGER SEWELL BACON,
Chief Justice.

In Court.

UPON HEARING Joshua A. Hassan and John E. Alcantara Counsel for the Defendants and John Joseph Triay Counsel for the Plaintiff AND UPON READING the Notice of Motion for a new trial dated the 3rd day of December, 1954, IT IS ORDERED that the said Motion be dismissed and that the costs of and incidental to this Motion be reserved. 30

(Sgd.) E. PIZZARELLO
Registrar.

No. 40.

SECOND NOTICE OF MOTION for new Trial.

*In the
Supreme
Court of
Gibraltar.*No. 40.
Second
Notice of
Motion for
New Trial,
8th
December
1954.

TAKE NOTICE that this Honourable Court will be moved on Friday the 17th day of December, 1954, at 10.30 o'clock in the forenoon, or soon thereafter as Counsel can be heard on behalf of the Defendants for an order that the verdict given and directed on the trial of this action before the Honourable Mr. Justice Bacon and a special jury at Gibraltar, on the 17th day of November, 1954, be set aside, and a new trial be had between the parties; or alternatively that judgment be entered in the action for the Defendants with costs of the action. And for an order that the Plaintiff pay to the Defendants the costs of and occasioned by this application.

AND FURTHER TAKE NOTICE that the grounds of the application are that :—

1. That the verdict was against the weight of the evidence.
2. That the learned judge misdirected the Jury on the question of whether the testatrix was of a sound mind, memory and understanding and on the question of whether the testatrix had full knowledge and approved the contents of the will.
3. That the learned Judge was wrong in refusing to leave to the Jury the question whether (A) The execution of the said alleged Will was obtained by the undue influence of the Plaintiff, and (B) the execution of the said alleged Will was obtained by the fraud of the Plaintiff.
4. That the learned Judge wrongly refused to re-call and admit the following evidence, by Dr. J. J. J. Giraldi : " That the deceased due to her old age and condition was very susceptible of being unduly influenced."
5. That the learned Judge was wrong in sending a letter to the Jury after Counsel for the Defendants had objected to part of it where it stated that notwithstanding the fact that he was aware that there was no likelihood of the Jury coming to a conclusion they should continue with their deliberation and try and reach a decision and that they should take into account the heavy costs incurred in this action and further the costs that the parties would incur should the trial prove abortive.

AND FURTHER TAKE NOTICE that the Defendants complain of part only of the findings of the Jury, viz. :—

(A) That the deceased at the time of the said alleged will purports to have been executed was of sound mind, memory and understanding, and

(B) That the deceased at the time of the execution of the said alleged Will knew and approved of the contents thereof.

Dated the 8th day of December, 1954.

(Sgd.) JOHN E. ALCANTARA,
Solicitor for the Defendants.

To : The above-named Plaintiff.
And to : Messrs. Triay & Triay,
His Solicitors.

*In the
Supreme
Court of
Gibraltar.*

No. 41.

NOTES of Bacon, C.J., on Hearing of Second Motion.

Probate Jurisdiction.

1953.—M.—No. 1.

No. 41.
Notes of
Bacon,
C.J., on
Hearing of
Second
Motion,
17th
December
1954.

IN THE ESTATE of SIMY MARACHE, deceased.

Between SAMUEL ABRAHAM MARRACHE, Exor. and
Sole Beneficiary of Will of Simy Marache
deceased dated 29th May 1953 . . . Plaintiff

and

JUDAH I. LAREDO and DAVID M. BENAİM, 10
Merchants, Executors and Trustees of Will of
a/m dated 4th July 1946 and two Codicils dated
5th Sep. 1946 and 20th July 1951 . . . Defendants.

(1) Motion that Judgment dated 17th Nov., 1954, be set aside and for a new trial.

J. J. Triay for Plaintiff (Respondent).

Hassan for Defendants (Applicants).

Hassan : I don't propose to argue the grounds at length. As regards the fourth ground. I have included " a statement of the further evidence itself " because there appears to be a precedent for so doing (not cited). 20 I'm not quite happy about having included that statement of further evidence. It was not disclosed to the court at the trial. I felt that, if I did not include it in the ground, Plaintiff would complain that the ground was inadequately stated. As regards the fifth ground, it is drafted from recollection as best we could.

J. J. Triay not called on.

Per Curiam : I have looked through the whole case and considered each ground in Notice of Motion. In my view the Motion should be refused, but it is desirable to record my reasons, which I will state later to-day. As regards the fifth ground, the recollection of whoever drafted it was very 30 materially faulty. I have recovered the original note from the Foreman of Jury.

Motion refused.

Hearing adjourned to 4 p.m. this day, for stating reasons for refusal and dealing with costs.

(2) Motion that leave to appeal be given. (Hearing adjourned from 8th December, 1954).

Hassan : Supreme Court Order, s. 84. This is an appeal " as of right ". No submission as to the amount of security—cannot argue

against the £500 maximum. I ask for time till 15th January, 1955, to find the security. I ask for time till end of March, 1955, for "taking the necessary steps" under s. 84 (3) (b). I ask for stay of execution pending determination of appeal.

*In the
Supreme
Court of
Gibraltar.*

J. J. Triay: As for time to be allowed: there is an administrator *pendente lite*, which involves his remuneration. See Ann. Prac. p. 3256-7: the court may grant the administrator such reasonable remuneration as it thinks fit. It is in the interest of all concerned that the time should be as short as possible. Three months (or more) to take steps is far too long.

10 As regards the giving of the security for costs, the period should be short.

No. 41.
Notes of
Bacon,
C.J., on
Hearing of
Second
Motion,
17th
December
1954,
continued.

Hassan: There might be *some* difficulty in preparing the record. A substantial time should be allowed. Remuneration of administrator is an unknown quantity at present: can't base anything on that: not a strong ground for cutting the time.

Per Curiam: It is the Registry of the Court which has the great bulk of the work to do in preparing the Record for appeal. The "steps" to be taken by the parties are few and relatively easy.

Order: Conditional leave to appeal; £500 security to be given by Defendants on or before 15th January, 1955, in form of bond with two sureties satisfactory to the court or payment of the said sum into court; two months (i.e., up to 17th Feb., 1955) for taking the necessary steps. Stay of execution pending determination of appeal. Costs of this Motion to abide result of the Appeal.

20

*Adjournment to prepare record in
writing of reasons for refusal of
Motion for new trial.*

(1) Motion for new trial (adjourned from earlier this day).

REASONS for refusing Motion (delivered):

As regards the first three grounds, having re-read my Note of the evidence and proceedings, and having read the transcript of the summing-up. I think that the verdict was clearly not "against the weight of the evidence," I am not aware of any misdirection, and I think it was right to rule as I did on the issues of undue influence and fraud.

30

Neither does the fourth ground, in my opinion, afford any good reason for allowing this Motion. When application was made that Dr. Giraldi be recalled, the ground stated by Counsel for Defendants was that he "had information that the witness had made a remark, out of court and after giving his evidence, which indicated that he could have given further evidence," or words to that exact effect. Counsel for Plaintiff, who had called Dr. Giraldi as a witness opposed the application. I declined to exercise the discretionary power to allow the recall because, as I then stated, it would in my view have been wrong to exercise it on the strength of gossip or of an alleged remark on the part of an ex-witness out of court, and particularly so in the present instance. As to the trial Judge's powers, he has complete judicial discretion. "It is quite clear that it is merely

40

*In the
Supreme
Court of
Gibraltar.*

No. 41.
Notes of
Bacon,
C.J., on
Hearing of
Second
Motion,
17th
December
1954,
continued.

matter of discretion": per Lord Abinger, C.B., in *Adams v. Bankart* (1835) 1 Cr. M. & Roscoe at p. 682. No modern authority has doubted that.

Dr. Giraldi had testified on the 10 Nov. for $2\frac{1}{2}$ hours (of which about $1\frac{3}{4}$ hours were cross-examn.), excluding a midday adjournment of $1\frac{3}{4}$ hours *during* his cross-examn. Moreover he had given a written statement of his proposed evidence to both sides some months before the trial. Thus there was no possibility of unpreparedness or surprise, and the witness had been cross-examd. at considerable length. Before he left the box the court asked him two questions, the second of which invited him to sum-up 10 his views as to testatrix's mental characteristics and capacity. He did so, as recorded in my Note. After many opportunities during his examn. and cross-examn., there was thus yet another for him to express any opinion which he thought it right to record on those matters.

The application for Dr. Giraldi's recall was made at 10.30 a.m. on 12th November—without any warning and in the presence of the jury—and the witness was named by Counsel for Defendants. No mention was made of what the nature of the alleged additional evidence was or was thought to be, though the terms of this fourth ground of the present Motion strongly suggest the contrary. 20

On the application being so made before the jury I said it was most undesirable as it might well tend to prejudice them against the witness named. My view as to that, and as to the exercise of the discretion, remain unchanged.

This present revival of the matter, with the fresh inclusion of a hypothetical statement which the witness had ample opportunity to make but never made—and which Counsel had ample opportunity to elicit from him if he could—does not in my view afford any ground upon which I should order a new trial.

As to the propriety (questioned by Mr. Hassan himself this morning) 30 of introducing this hypothetical statement into the case in this particular way, I leave that aspect, without expressing any view, to their Lordships of the Judicial Committee.

In any event the hypothetical statement relates to the issue of undue influence, and merely seeks to reopen that question upon which I ruled on the evidence given at the trial. It is an attempt to shew that, at a new trial, Defendants might succeed on undue influence on the strength of an established principle cited by Counsel and referred to by the court when ruling on this issue (see *Hampson v. Guy* [1891] 64 L.T. 778, C.A., 2nd para. of headnote). But if the hypothetical statement had been given 40 in evidence, together with all the evidence actually given, there would still have been a total absence of evidence that any coercion in any form was in fact exercised by Plaintiff on the testatrix, which would have been fatal to the defence (see *Craig v. Lamoureux* [1920] A.C. at p. 357, P.C.).

Finally there is the fifth ground. As set out in the Notice of Motion, the paraphrase of my note to the Jury is so wide of the mark as to be considerably misleading. Somebody's recollection is very much at fault.

Fortunately, on my enquiring of the Foreman, it transpired that he preserved my original note, and at my request he has produced it. I have placed this original in the Record of the Action. It reads as follows :—

*In the
Supreme
Court of
Gibraltar.*

10 “ 17.11.54. 3.20 p.m. Mr. Foreman : I have received your message to the effect that the jury has not yet reached a decision with the requisite majority. I must ask you to continue your deliberation, with a view to reaching a lawful verdict if possible. I venture to remind you that these proceedings are burdensome and costly and that therefore it is most desirable that this trial should not prove to be abortive. If you desire any further guidance on any matter within my province let me know and I will give it in open court.”

No. 41.
Notes of
Bacon,
C.J., on
Hearing of
Second
Motion,
17th
December
1954,
continued.

I was not (to quote from the Notice of Motion) “ aware that there was no likelihood of the Jury coming to a conclusion,” and of course (contrary to what is set out in the Notice) I did not say anything to that effect in my note to the Foreman. Nor did Counsel for Dfts. (as alleged in the Notice) object to any such passage (since it did not exist) or to that part of my note which asked the Jury to continue with their deliberations with a view to reaching a lawful verdict if possible.

20 That being so, it is advisable to record the facts. They were as follows. Having received a message from the Jury that they had not reached agreement and that they stood 6 jurors to 3, I wrote the note. I then sent for Counsel and they came to my Chambers. I told them the message received and added (as was the fact) that I had no idea as to which view the 6 jurors took. I then asked them whether they would be prepared to accept a majority of 6 to 3 rather than have no verdict. Mr. Ashe Lincoln said he himself would be prepared to do so but that he had asked Mr. Hassan (who had had to leave the trial during the summing-up to go to London on a public engagement) and Mr. Hassan had said he would
30 not be so prepared. I then shewed Counsel the note to the Foreman and asked for their approval. Mr. Ashe Lincoln said he approved. Mr. Alcantara said he “ did not like ” the reference to the burden and costliness of the proceedings. He did not mention any other part of the note. I said that in my view it accorded with quite a common practice and was, as far as I knew, unobjectionable. Mr. Ashe Lincoln observed that in his experience that was so. I then invited Mr. Alcantara to state any reason he had for his objection. He said “ It’s more ‘ a hunch ’ than a reason.” I then said that I was unable to take a “ hunch ” into
40 account, but that if he would give me a reason I would consider it. Mr. Alcantara replied that he had no other reason to offer. I thereupon decided to send the note to the Jury, placed it in its envelope, and handed it to the Registrar who had been present throughout. The Registrar despatched it forthwith and it was delivered to the Foreman by the Bailiff who had been sworn to take charge of the Jury.

50 The Jury had retired at 12.35 p.m. The note was written at 3.20 p.m. and despatched about 3.30 p.m., i.e. after 34 working hours of the trial and at a time when it was within my discretion, if I was “ satisfied that there was no reasonable prospect of the jury agreeing upon a verdict,” to discharge them (see The Supreme Court Order, Cap. 122 of the Laws of Gibraltar, section 70 (2)). I was far from being so satisfied, which was

*In the
Supreme
Court of
Gibraltar.*

No. 41.
Notes of
Bacon,
C.J., on
Hearing of
Second
Motion,
17th
December
1954,
continued.

my reason for sending the note. In my opinion that step was perfectly regular. I called for Counsel to see the note *ex abundanti cautela*, so that it could not be said that I had sent it secretly. If any reasoned objection had been raised there would have been something to deal with judicially. No such objection was in fact raised.

In my view this fifth ground affords no reason for ordering a new trial.

Per Curiam : Is there any submission as to the costs of the previous Motion for a new trial (reserved to today), or of this Motion ?

Hassan : I should be prepared to concede that costs of previous 10
Motion be Plaintiff's in any event, but those of this Motion should abide
the result of appeal.

Per Curiam : Perhaps that concession would be unnecessary. The Records of appeals to the P.C. from Gibraltar for 25 years past shew that grounds have never been stated in Motions for a new trial leading up to Motions for leave to appeal. No previous objection, during that period, appears to have been taken regarding that omission. Thus an erroneous practice has crept in, calculated to mislead practitioners.

J. J. Triay : Nevertheless costs should follow the event in that first Motion. 20

Hassan : If that be so, then costs of the Motion for leave to appeal, which Motion was allowed, should have been given to Dfts. in any event. But that is not the practice.

Per Curiam : The true view is that the Motion for a new trial, where it is sought to obtain leave to appeal to the P.C., is an ancillary proceeding necessitated by law (see *Dagnino v. Belotti* (1886) 11 App. Cas. 684). For the purpose of costs, the Motion for a new trial and the Motion for leave to appeal should be regarded as one proceeding. In the circs. of the present case (and of this case only—not in future) the costs of the abortive Motion for new trial should be treated on same footing as the 30
other Motions.

Order : Costs of each Motion for new trial to abide result of appeal.

(Sgd.) ROGER BACON
C.J.

17th Dec., 1954.

No. 42.

ORDER dismissing Second Motion for new Trial.

Friday the 17th day of December, 1954.

Before

The HONOURABLE MR. JUSTICE ROGER SEWELL BACON,
Chief Justice.

In Court.

UPON HEARING Joshua A. Hassan and John E. Alcantara Counsel
for the Defendants and John Joseph Triay Counsel for the Plaintiff
10 AND UPON READING the Notice of Motion for a new trial dated the
8th day of December, 1954, IT IS ORDERED that the said Motion be
dismissed and that the costs of and incidental to this Motion and to the
Motion heard on the 8th day of December, 1954, abide the result of the
appeal to Her Majesty in Council.

(Sgd.) E. PIZZARELLO,
Registrar.

*In the
Supreme
Court of
Gibraltar.*

No. 42.
Order
dismissing
Second
Motion for
New Trial,
17th
December
1954.

No. 43.

ORDER giving Conditional Leave to Appeal.

Friday, the 17th day of December, 1954.

Before

20 THE HONOURABLE MR. JUSTICE BACON, Chief Justice.

In Court.

UPON HEARING Counsel for the Defendants and for the Plaintiff
IT IS ORDERED that the Defendants have conditional leave to appeal
to Her Majesty in Council from the Judgment herein dated the 17th day
of November, 1954, upon the following conditions:—

1. Entering not later than the 15th day of January, 1955 into good
and sufficient security to the satisfaction of the Court in the sum of £500
or paying into Court the said sum for the due prosecution of the appeal and
30 the payment of all such costs as may become payable to the Respondent
in the event of the Appellants not obtaining an Order granting them final
leave to appeal or of the appeal being dismissed for non-prosecution or of
Her Majesty in Council ordering the Appellants to pay the Respondent's
costs of the appeal.

2. Procuring within two months from the 17th day of December,
1954, the preparation of the record and the despatch thereof to England.

No. 43.
Order
giving
Con-
ditional
Leave to
Appeal,
17th
December
1954.

(L.S.)

*In the
Supreme
Court of
Gibraltar.*

3. Execution of the judgment to be stayed pending the hearing of the appeal.

4. The costs of this motion to abide the result of the appeal.

No. 43.
Order
giving
Con-
ditional
Leave to
Appeal,
17th
December
1954,
continued.

(Sgd.) E. PIZZARELLO,
Registrar.



No. 44.
Order
giving
Final
Leave to
Appeal,
14th
February
1955.

No. 44.

ORDER giving Final Leave to Appeal.

Monday, the 14th day of February, 1955.

Before

THE HONOURABLE MR. JUSTICE BACON, Chief Justice.

10

In Court.

UPON HEARING Counsel for the Defendants and for the Plaintiff AND the Court being satisfied that the conditions imposed by the Order of this Court of the 17th day of December, 1954, have been complied with IT IS ORDERED that the Defendants have final leave to appeal to Her Majesty in Council from the Judgment herein dated the 17th day of November, 1954. Costs to abide the result of the Appeal.

(Sgd.) E. PIZZARELLO,
Registrar.



EXHIBITS.

EXHIBIT No. 1.

2nd WILL of Simy Marache—Plaintiff Sole Executor and Beneficiary.

Exhibits.

No. 1.
2nd Will
of Simy
Marache—
Plaintiff
Sole
Executor
and
Beneficiary,
29th May
1953.

THIS IS THE LAST WILL AND TESTAMENT of me SIMY MARACHE OF 222 Main Street Gibraltar I hereby revoke all wills ~~testaments~~ codicils and testamentary dispositions heretofore made by me I hereby appoint Samuel Abraham Marache of 22 Turnbull's Lane Gibraltar executor of this my will

I GIVE DEVISE AND BEQUEATH all my real and personal property of whatsoever kind and wheresoever situate to my said executor Samuel Abraham Marrache for his absolute use and benefit after payment of debts and testamentary expenses.

IN WITNESS whereof I have hereunto set my hand this Twenty Ninth day of May One thousand nine hundred and fifty three

Simy Marache

Signed and acknowledged by the said testatrix as her last Will and Testament in the presence of us present at the same time who at her request in her presence and in the presence of each other have hereunto subscribed our names as attesting witnesses

A. J. Costa

Secretary Colonial Hospital Gibraltar.

N. J. P. Barrister-at-Law

IN THE SUPREME COURT OF GIBRALTAR
Prob. Tm. 534
Marache, Laredo & Co
Lincoln
9th day of November 1954
Witness

EXHIBIT No. 2.

COLONIAL HOSPITAL SISTERS' REPORTS.—Covering period of Testatrix's stay in Hospital from 22/5/53 to Date of Death 2/6/53.

Exhibits.

No. 2.
Colonial
Hospital
Sisters'
Reports.—
Covering
period of
Testatrix's
stay in
Hospital
from
22/5/53
to Date of
Death
2/6/53.

COLONIAL HOSPITAL — GIBRALTAR

Ward 1

Medical Officer Dr. Green

Name Henry Marache
 Address 222 Chain Street
 Age 89 Civil State: S.M.W.
 Religion Hebrew
 Nationality British
 Occupation -
 Date of Admission 22.5.53

Next of Kin A.S. Marache ⁰⁻⁴⁻
 Address Consul of Venezuela ¹¹⁸
 Diagnosis Carcinoma of Stomach
 Date of Discharge 24/5
 Condition death
 M.O.'s Signature [Signature]

HISTORY AND NOTES

TREATMENT, DIET AND EXTRAS

Vomiting etc.
 for observation & medical
 re-implantation.

25/5/53, Odema legs, more
 ? hypoproteinaemia,
 ? cardiac.

X-rays + Swallow - suggestion
 fracture of fundus stomach
 obstructing lower end of
 oesophagus.

27/5/53 Will D. Foomey
 please see?

28/5/53, long firm - usually clear with
 tho' wandering at times

29/5/53 App to be irradiated & treated
 Thence with Do. but refused to be
 irradiated

30/5/53. Stupor - difference to some.

Frequent feeds,
 Jellies,
 soups of chicken,
 egg flaps
 minced chicken & fish
 etc etc.

1. urine - neg.
2. blood tests - 8 spec. protein
 5 spec. red cells
 8 spec. white cells
- 1) heparin 1cc - alternate days
- 2) Digoxin 0.25 tabs tid.
- 3) Linn extract (under) daily.
 (amps)

Rectal drip, c KCl.

Humoral for 3 (1.m)
 Sos

Day Report22.6.53.

V.V.P. Mrs. Simy Marache, 89 yrs. Hebrew. British
 admitted at 12 M.D. under Dr Giacaldi
 for investigation, nil by mouth
 after 12 M.N. for Barium meal & screening
 of chest mani. On a special diet
 (please see chart) patient has a bed褥
 from home, please treat & truly,
 On fluids & truly, T.H.,
 difficulty in taking diet,
 if any vomiting during the night please
 save it for Dr inspection mani,

1. admission4. patientT. H.Night Report.23.5.53.

P.R. II MRS. Marache. T/V. Fluid intake encouraged, patient
 says she is unable to swallow properly and
 keeps on bringing up an excessive amount
 of clear saliva. Has only taken about
 6 ozs of water & orangeade before 12 mn,
 Nil given by mouth after. Pressure
 areas treated; and also small sore on
 back. No vomiting during night.
 H.V.P.U. Slept fairly well all night
 1/4 m. Lettadin 50 mg at 5 a.m. for epigastric pain.
 P.R. I MRS. Povedano. T/V. Luminal gr. i at 10 pm & good
 effect. Pressure areas treated.

Night Report (Cont)

23.5.53.

P.R. VI Miss Gonzales.

T/W 1/4 Penicillin 200,000 units 6 hrs
cont. last at 6 am. next due 12 mid.
Somenyl pro iii 1/2 ii Codeine given at 11 pm
1/2 good effect. Comfortable on reporting.

P.R. VII Mr. Latin.

T/W. Slept well. Urteric catheter in situ,
not draining. Passed 8 oz of concentrated
urine per urethra (at 11 pm). at 2 15 am.
passed 5 oz only of blood stained urine.
1/4 Streptomycin. b.c. last at 6 am.
Wound still draining same, dressed
P.R. IV. Appears comfortable on reporting.
Urteric catheter ^{came} out this am.
4 Patients Ed. Barton.

Day Report.

23.5.53

3. Mrs. March.

T. N Has been X-rayed this am.
Has taken fluids chicken essence & jelly.
Appears bright & talkative
Back treatment & pressure over hump.

5. Mrs. Povedana

T. N Nause cross & unstable to day.
taken diet. well.

6. Miss Gonzales

T. 99 No pain in arm A B C iii given
at 3.0 pm. Dressing renewed.
slight discharge. Rt leg swollen.
Penicillin 1/4

7. Mr. Latin.

T. 99 Dressing P. R. N Loss drainage
loose wound. Streptomycin .0.5 mg.
B.D.
4 Patients Ed. Barton

Night Report.24.5.53.PR. II MRS. Marache.

T/V. Slept well, has taken little fluid & ovals. Pressure areas treated. Has oedema of legs & arms. Appears comfortable on reporting.

PR. V MRS. Povedano.

T/V Luminal grs i at 10 pm. Slept well. pressure points treated

PR. VI MISS. Gonzalez.

1/M Penicillin 200,000 units Cont. 6 hly. last given at 6 am. Tabs Codeine Co ii given at 9 pm. for pain in arm. Soneryl grs iii at 10.30 pm. "c good effect.

PR. VII MR. Latin.

Very little oozing from wound, same dressed p.r.v. Slept well all night. Passed urine well. Comfortable on reporting. 1/M. Streptomycin 0.5 gm bd due 6 pm.

4 PatientsEd Boulton

Day Report.

24-6-63

- Miss Maracke T.N. Has taken very little fluids,
Has had a miserable day, please encourage
fluids during the night,
Back treatment + pressure areas 4 hrsly.
- Miss Povedano T.N. Very cross + miserable day,
pressure areas 4 hrsly.
- Miss Gonzalez T.N. Dressing renewed, slight discharge
good day, Penicillin 6 hrsly. due at
12 M.N.
- Mr Latin T.N. Dressing P.R.N. Less drainage
1/1 M. Streptomycin 0.5 gms. ^{P.D.} due at 6 AM
? for discharge man.?
- W.P. Margaret Goldwing 26 yrs. R/C. Gibraltarian
transferred from Maternity Ward. 8.40 AM.
at 12 M.D. Fully dilated Dr. Lockhart informed,
4 or 5 hrs delivery of Stillborn Infant: ~~by~~
no sign of life at birth, cord around
neck once. = Episiotomy 3 Nylons:
3rd stage complete, ice Fermesquin P.P.
Infant dead. 6 lbs.

1- Admission
5- Patients

A. Lewis

X
Night Report

25-5-53.

- P.R. II Miss Marache. Fluid intake encouraged, but taken very little, only sips at a time. T/W. Seen by Dr. Page last night, condition remains unchanged. % pain in 1) shoulder, also headache 1/4. Lethidine 50 mg given at 10 pm % effect. H.V.P.U. Back and pressure areas treated, mouth p.r.v.
- P.R. III Mrs. Goldwing. Nembutal grⁱⁱⁱ % ii Codeine Tabs given at 10 pm slept well, swabbed p.r.v. normal loss p.v. Appears comfortable on reporting H.P.U. 1/4.
- R.V. Mrs. Povedano. Luminal grⁱ at 10 pm. % effect. Pressure areas treated.
- R.VI Miss. Gonzalez. Serevyl grⁱⁱⁱ % Codeine ii at 10 pm. slept well all night 1/4. Penicillin 200,000 units cont. 6 hly. last at 6 pm.
- P.R. VII MR. Latin. T/W. Wound still draining + r. re-dressed p.r.v. 1/4. Streptomycin 0.5 gm. i.d. last at 6 am

5. Patients

Ed Bullin.

5. Mrs Goldring. T. 100^H / You depressed & miserable.
 Stilboestrol \bar{i} sup tab. T. D.S.
 Luca Sulphur mane
 Swabbed. T. D.S. Penicillin pulv to
 salines: P. U.
 Penicillin B.D. Clopans 6 Opn Pelledine ^{50mg} tab
- 5 Mrs Condana. T. N. You difficult all day.
 Pressure areas 4 hourly.
 On liver dx. 1. c.c. given.
 H.P.T. 50g. P.H.
 Spec tabs \bar{i} daily, not yet obtained any cultures.
- 6 Miss Gonzalez. T. N. No change. Penicillin 200 000 0
 6 hourly. completed at 6 Opn.
 Clopans 7.0 pm Pelledine 50mg tab
 Discharged. 10.0 am
- 7 Mr Salin
- 8 Mrs Marade. T. N. Jean du 2 Gualdi. to
 blood count de
 Au Mersalg. 1. c.c. alternate days
 Digoxin T. D.S. (0.25mg)
 Liver Extract (crude) daily.
 Urine Spec - anytime possible convenient
 Pressure areas 4 hourly. Bed sore no change
 Intake & Output chart
 Intake fluids + jellies only,
 Prunum 40mg today.
 Fed so well this pm.
1. Eileen Gonzalez age 27-70. P.H. 9.0 pm adv 5.0 pm
 Threatened $\frac{3}{7}$ abortion - faint bright red
 loss. felt faint. Pelledine 100mg still

Day Report

25 5 53.

at time of report. very little loss & pads comfortable.

Please save pads

199.80.20

S. Dines

No. 5.

Night Report.

26 5 53.

P.R. I MRS. Gonzalez

T/V. Unable to sleep Caps Nembutal given at 10 pm 1/2 effect. Slight loss only P/V. swabbed P.R.V. pads saved.

Patient has not been seen by Dr. Page comfortable on reporting.

P.R. II Miss Inarado

T/V. Slept fairly well. No pain in R. shoulder, also headache, Pethidine 50 mg given at 10 pm. Pressure areas treated and also sore on back. No spec. of urine obtained. 4 clunks given, but

taken very little only 4 gms during night, same charted. Appears comfortable on reporting.

P.R. III MRS. Johnson

T/V. Penicillin. b.d. lost at 6 am. Swabbed. P.R.V. Pen. pd. 8 sutures Caps Nembutal given 1/2 Pethidine ii at 10 15 pm. Slept all night Mag sulph mane.

P.R. V MRS. Povedano

Luminal given at 10 50 pm

Slept well. Pressure areas treated

P.R. VI Miss Gonzalez

No pain in arm ii Codeine tabs given. Soneryl given at 11 pm comfortable on reporting

S. Patients

S. D. Dines

Day Report.

- Mrs. Gonzalez T.N. Better day, up to toilet,
 Suminal gr 1/2 T.D.S.
 Pethidine 100 mgms. P.R.N.
 please save all pads No loss P.V.
No drugs nocte. Dr Page's orders
- Mrs. Marache T.N. Seen by Dr Gualde,
 for blood count + X Ray.
 On Mersalyl 1cc alt days
 Luvidox 2cc daily, Digoxin 0.5 mgms B.D.
 pressure areas 4 hly. Bedsores no change
 On Intake + output,
 Spec. Urine - Any time possible - incontinent
 Taken fluids + jelly only.
 Not so well this P.M.
- Mrs. Goldstein T.N. Penicillin B.D. due at 6 P.M.
 Stillbaesal 0.5 mgms T.D.S.
 Mag Sulph mane;
 Swabbed tabs, penicillin pubv to
 sutures, comfortable, much brighter
- Mrs. Paredano T.N. Luvidox 1cc daily, M.P.P. 2oz P.R.N.
 pressure areas 4 hly.
 Very difficult all day.
- Mrs. Gonzalez T.N. No change. On lodome ii tabs P.R.N.
- Mrs. Peggy Sacarello 36 yrs. R.C. British transferred
 from Maternity at 9:30 AM AT 6:02 AM.
 Normal delivery (2.0 A) of living male infant
 Cried well. appears healthy, normal,
 4 hrd - Stage complete, Normal loss - 1/17

7 28 .

Eve report.

26 5:53

1. Mrs Sacarella T.N

Breast abscess normal

Swabbing's along.

Babe put to breast & hungry secret well
glucose given

2. Miss Manete T.N

seen by Dr Gualdi - Blood taken

sent to Path. Lab.

Condition poor at 10.0 am Curamine 2 cc
given. Dr Gualdi informed. Rep in
2 hrs. ~~lucokambine~~ 1 cc given.
improved -

Luedex 2 - cc daily.

Digoxin 0.5 mg B.D.

1 cc Mersalyl alternate days.

Intake & Output chart.

Pressure near normal back with
improving.Urine N.A.D. passed urine 1st during
day. B.O.

04/115 also

Ring 511 if pt becomes worse
seen by Dr Gualdi at 7.30 pm -
Luminal 1/2 i u.c.

Pto 6-

S.D. me's

1 Cont 1

Ferrergerin 1cc given. Perineum intact
 At 8-45 AM. oozing, Dr. Lockhart informs
 Ferrergerin 1cc given, Normal form during
 the day, Swabbing 1ds
 c/o pain this AM. Pethidine 50 mgms
 given at 11 AM.
 to the breast 6 hly. due at 6.30 AM
 glucose during the night

Baley

1- admission
 6- patients

1 nurseNight Report.27 5.53.

P.R. I. Mrs. Gonzalez. Slept fairly well. No drugs given.
 Swabbed. no further loss P/V. T/V
 Appears comfortable on reporting.

P.R. II Miss Marade. Unable to sleep. Pethidine 50 mgms given
 at 10 pm. " no effect. Had Mersalyl injection
 given at 7.30 pm, patient has been passing urine
 all night. Pethidine repeated at 2.15 a
 " very little effect. Fluid intake encouraged
 same taken well, but in small quantities.
 Intake & output charted. Pressure
 areas treated p.r.v.

P.R. V MRS. Lovedane. Luminal given at 10 pm. slept well
 pressure areas treated.

Night Report. (Cont)27. 5. 55.

P.R. III MRS. Goldwin T/W. 1/01. Penicillin: cont. b.d. last at 6 am.
Swabbed. p.r.v. Normal loss p/v. Penicillin
pd. applied to sutures. Mag. sulph. mane.
Comfortable on reporting. Nembutal
gr^{III} at 10 p. Slept very well after.

P.R. VI Miss. Gonzalez T/W. Soneyl gr^{III} given at 11 p. "c
good effect. Arm not so painful
B.V. O. Lig. Paraffin gr^{III} given.

P.R. VII MRS. Sacarello T/W. Soneyl gr^{III} "c ii Codeine tabs at
11 p. Slept well. Swabbed. p.r.v.
Normal loss p/v.

Baby. Cried during night. glucose water 1 oz
given. To breast at 6.30 am. Sucked
very well. 3 minutes.

6. Patients.1 Baby.Boulton

Day Dept.

26. 5. 55

Miss Gonzalez transferred to Segregation at 11.30 am.

Mrs Goldwin: T. N. Breasts & lochia normal
Subnormal T. vit. I.D.S.
Mag. sulph. mane.
Swabs kept. Whorl f. Penicillin
p.r.v. de am... mane 40 to 100 units
Penicillin B.D

Miss Pineda: T. N. Better done. Usual medicines
abstained given.

Miss Gonzalez: T. N. Subnormal. Seen by D. Toomey

Night Report.28. 5. 55.

P.R. III Mrs. Goldwing Nembutal gr^{III} given at 11 pm sleep well all night. swabbed p.a.v. Penicillin pub. to sutures. 1/11. Penicillin b.d. last at 6 am. Mag. Sulph mani.

P.R. V Mrs. Povedano Luminal gr^I at 9.30 pm. 1/2 effect. Pressure areas treated.

P.R. VI Miss Gonzalez T/11 Soneryl gr^{III} at 11 pm. slept well. 1/2 pain in arm at 4 am ii- Codeine tabs given 1/2 relief. (100) appears comfortable on reporting

P.R. VII Mrs. Sacarella T/11. Slept well for long periods. 1/2 abd. pain Codeine tabs ii given at 10 pm & 3.30 am. 1/2 relief Swabbed p.a.v.
Baby Put to breast. sucking well. cried during night, had glucose water given.

P.R. VIII Miss Marache T/11 Condition remains unchanged. 1/11. Lethidine 50 mg. given at 10 pm slept better for short periods. Still passing urine +1. but not so frequently B.O. + fluid intake encouraged, but has taken very little.

1 Baby

5 PatientsElkington

Day Report

28-6-63

Mrs. Marcade

I. N. Condition unchanged, seen by Dr. Guilde this A.M.
 Swider acc daily, choralyl all days
 Digoxin 0.05 mgms bid. Myokombin 1cc daily,
 Pressure areas 4 hly, back not improving
 Passed urine +++ during the day.
 B.O. On intake & output chart
 Luminal qd + noct.

Mrs. Margaret Baldwin - discharged at 10 A.M.

Mrs. Pineda

I. N. Better day, B.O. usual medicine,
 treatment given,

Mrs. Gonzalez

I. N. Satisfactory, seen by Dr. Toomey,

Mrs. Sacarello

I. N. Breasts & Lactia normal,
 swallows 4 hly,
 baby put to breast 4 hly, sucks
 well. glucose given

1- discharged
 4- Patients

D. Lewis

Night Report.

29 5 53

2/ Miss. Marache.

Has slept for longer periods. T/V
Pulse weak & irregular. Back &
pressure areas treated p.r.v. Passing
urine +. less frequent. B.O. +.

Intake & out put charted, has taken
very little fluids only 4½ qz. during
night. No drugs given. Condition
remains the same.

5/ Mrs. Povedano

Luminal given at 10pm slept well
Back & pressure areas treated.

6/ Miss Gonzalez.

T/V. Was rather depressed last pm &
unable to sleep. Tab. Sereyl given
at 11pm in good effect. Appears
comfortable on reporting.

7/ Mrs. Sacarello.

T/V Slept fairly well all night.
Breasts full & draining well. Swabbed.
Baby Put to breast, sucks well & appears
to be satisfied. Glucose water given
this am.

+ Patients

E. H. Sullivan

Dose. Report.

29. 5 53

5 Mrs. Povedano.

No change. Pressure areas + hyp.

6 Miss. Gonzalez

No change. Dry dressing.

7 Mrs. Sacarello.

Breasts full. Lochia normal.
Baby feeding well.

Day Report

2. Miss Marache.

Condition deteriorating.
 Take some fluids. Still rational &
 very talkative
 All treatment given.
 Condition poor at 3.30 pm. Curamine
 1 cc. given relatives informed.
 Curamine rep at 5.00 pm. Insulin given
 Seen by Dr Sivaldi at 5.50 pm
 To be called upon if condition
 becomes worse.

No 4.

8 Dues

Night Report.30.5.53.P.R. V Mrs. Povedano

Luminal grs i at 10 pm slept well.
 Pressure areas treated.

P.R. VI Miss Jozzalg

1/2 epigastric pain Mag. Trisilicate
 given at 11 pm for relief. Soneryl grs ii
 given at 11.15 pm, slept well all
 night and appears comfortable.

P.R. VII Mrs. Sacarello

1/2 after pain ii Codeines given Slept
 well all night. Swabbed p.r.v.
 normal loss p/v. Breasts full.
 Sucking well. cried during night,
 had glucose water given.

BabyP.R. II Miss Marache.

Seen by Dr Toomey at 8.45 pm
 1/11 Luminal grs 1 1/2 given ^{at 10 PM.} little
 effect. Pressure areas treated

Night Report. (Cont)30. 5. 53.Miss Marache. (Cont.)

Pulse weak & irregular. Very noisy & % pain in stomach i/m. Pethidine 50 mgs at 12.45 pm. Has slept for long periods. Taken sip of fluids only. General condition appears slightly worse at time of report.

4 Patients.AbbottDay Report.30. 5. 53.Elizabeth Ann Dine 12.12.48

British declined from 8.45 am 2.0 pm Umbilical hernia
no change. Pressure across Abdy

5. Mrs Pavodano6. Miss Gonzalez

no change. Dry dressing.

7. Mrs Sacarello.

Breasts full. Lochia normal.
Swabbings x/hdy.
Baby feeding well.

2. Miss Marache.

Condition slightly worse. Taken sip of water only. Seen by Dr Givaldi this am. may have 1.0 Pethidine 50 mgs for Epigastri pain. Luvata 2cc daily
* Digoxin 0.5 mgs B.D.
myokombone 1.0 cc daily
Pressure across Abdy. Has passed urine xx during the day In Intake & output chart

4 patientsD. Gallone.

X

Night Report.

31. 5. 53.

P.R. IV Mrs. Povedano.

T/W. Luminal grs i at 10 pm. Slept well all night. Pressure areas treated

P.R. VI Miss Gonzalez.

T/W. Soneryl grs iii + ii Codeine tab given at 11 pm slept well. Appears comfortable on reporting.

P.R. VII Mrs. Sacarello.

Baby.

Swabbed p.r.v. Slept well all night Breasts full & flowing well. Cried during night, had glucose water given. Sucking well at breast.

P.R. II Marade.

Condition deteriorating. Taken rifs 5) fluids only. 1/17. Pethidine 50 mg at 9 pm " little effect. Had 1/17. Luminal grs 1 1/2 at 11:45 pm " good effect. Pressure areas treated Pulse still weak & irregular

4 Patients

E. M. Boulter

Day Report

31. 5. 53

5. Mrs Povedano

6. Miss Gonzalez

7. Mrs. Sacarello

} no change.

2 Mrs Marade.

Condition weaker. Seen by Dr. Guadri Rectal drip commenced at 10:30 am. absorbed. General nursing care given. Pethidine 100 mg at 11:0 am. No pain. No change at time of report.

Dina

X

Night Report.

1. 6 53.

P.R. V. Mrs. Poiedano.

Taken luminal gr^{ss} at 9:30 pm. Slept well all night B.O. Pressure areas treated p.r.v.

P.R. VI Miss. Gonzalez.

T/IV Soneryl gr^{ssiii} & ii Eudene Tabs at 11 pm. Slept fairly well for long periods.

P.R. VII Mrs. Sacarello.

Slept well all night, breasts full and flowing well. Swabbed. P.R.V.

Baby.

Put to breast. Sucked well. Had glucose given orally.

P.R. VIII Miss. Marach.

Condition weaker. Very noisy & restless. 1/4. Pethidine 50 mg at 9 pm. No effect. Still 1/2 pain 1/4. Chembarb. gr^{ss} given at 11:15 pm. No effect. Pressure areas treated p.r.v. & also sore on back. 1/4. Pethidine repeated at 1 am. 50 mg given. No effect. Has taken sips of water only. Condition remains unchanged at time of report.

4 Patients

Ed Boulton

Day Report1st June 1955.5. Mrs. Poreclano no change. Pressure areas treated as baby.6. Miss Gonzales no change. Dry dressing.Mrs. Peggy Dacavella & baby Discharged at 11:00 AM.

2. Miss Marache Condition weaker. Seen by Dr. Givaldi
 Rectal drip discontinued at 12 MD. General
 nursing care given. Has taken sips of
 water only. Condition remains unchanged
 at time of report. Seen by Dr. Givaldi this AM.
 Rectal drip recommenced at 7:30 PM
 to be continued for 4 hours. then released for 4 hrs.

1 Discharge.3 Patients20 GallonsNight Report.

2 - 6 - 55.

P.R. II Miss. Senny Marache. Condition deteriorating,
~~she~~ died at 12 10 am. Relatives
 present.

P.R. V Mrs. Poreclano Luminal grⁱⁱ at 10 pm slept
 well all night. Pressure areas treated.

P.R. VI Miss Gonzales Tabo Soneryl grⁱⁱⁱ "c" ii Podem.
 given at 10 pm. slept well all
 night and appears comfortable

2 Patients

1 Death

Edgworth

EXHIBIT No. 3.

LETTER from Dr. J. J. Giraldi to Mr. J. E. Alcantara.

From Dr. J. J. Giraldi
 4 Pitman's Alley,
 Gibraltar.
 6th June, 1953.

Exhibits.

No. 3.
 Letter
 from
 Dr. J. J.
 Giraldi to
 Mr. J. E.
 Alcantara,
 6th June
 1953.

Dear Mr. Alcantara,

I am very sorry, but I am not in the position to sign the statement that you have produced to me or any of the questions you have attached thereto. I feel that this would place me in a very unfortunate position if this case goes to court, and I want to have a clear conscience and outlook if that comes to pass; the information you are seeking of me would at once place me as a witness for the Plaintiffs which at the moment I am not prepared to be.

Yours sincerely,
 (Sgd.) J. J. GIRALDI.

In the Supreme Court of Gibraltar
 Prob. Jur.

53M. No. 1

20 Marrache v. Laredo & Anr.
 Exhibit 3

Filed by Mr. Hassan
 10th Nov. 54.
 Sgd.,

Please give the following information :

1. Give short history of illness, with special reference to mental capacity of deceased from two months previous to her death.
2. Is it not a fact that since Wednesday, the 27th May, 1953, Miss Marache was on her death-bed and that all hopes had been lost ?
- 30 3. Was Miss Marache on the day she signed the will or previous thereto suffering from either insanity, imbecility of age, or natural failing of the mind which is often observed to occur from disease or on approach of death ?
4. Was Miss Marache on the day she signed the will or previous thereto below the average mental strength ?
5. Was Miss Marache on the day she signed the will or previous thereto suffering from incipient dementia or other mental derangement ?
- 40 6. Is it not a fact that the will power of a person whose mental strength is below average can be very easily overcome and that such person has no power to exert her mind in opposition to the wishes of people surrounding her or to resist their importunities ?

Exhibits.

No. 3.
Letter
from
Dr. J. J.
Giraldi to
Mr. J. F.
Alcantara,
6th June
1953,
continued.

7. Is it not a fact that persuasion used to a person who is on her deathbed may be equivalent to force inspiring fear ?

8. Is it not a fact that you have witnessed the signature of the last will of person on their deathbed ?

9. Please relate briefly the procedure adopted in those cases by both the lawyer attending and the medical practitioner present.

EXHIBIT No. 4.

COPY LETTER from Mr. J. E. Alcantara to Dr. J. J. Giraldi and Statement of Elias Belilo, a witness.

8th June, 1953. 10

No. 4.
Copy
Letter
from
Mr. J. E.
Alcantara
to Dr. J. J.
Giraldi and
Statement
of Elias
Belilo, a
witness,
8th June
1953.

Dear Mr. Giraldi,

Many thanks for your letter of the 6th instant. I fully understand your position, but as you will realise I only put in the statement the substance of what you told me at the interview you were kind enough to grant me. The second part was purely technical.

In view of the turn things are taking I think it is only fair that I should enclose herewith, for your very confidential information, statement taken from Mr. Belilo by Hassan who is acting with me in this matter.

Yours faithfully,

(Sgd.) J. E. ALCANTARA. 20

In the Supreme Court of Gibraltar
Prob. Jur.

53 M No. 1

Marrache v. Laredo & Anor
Exhibit 4

Filed by Mr. Hassan
10th day of Nov. 1954.

Sgd. ?

ELIAS BELILO states :—

I am a member of the Burial Society of the Hebrew Community. 30

On Friday the 29th May at about 3.50 I was at my Office in Irish Town and Mr. Samuel Marrache called me on the phone and said "Miss Marrache who is in Hospital has got worse and I have been told here that a watch should be kept."

He spoke in Spanish and his actual words were : "Miss Marrache que esta aqui en el Hospital se ha puesto peor y me han dicho que venga alguien de la Hebra." A ti te importa venir ? I replied. "Voy enseguida para arriba." He said "Yo voy por ti con el coche."

Whilst he arrived I phoned Mr. Tobelem who is the head of this section of the brotherhood and he said I should go.

Marrache came with his car and fetched me shortly after.

On the way to Hospital—as we got into Hospital Hill, one of the maids of Miss Marrache was coming down. He asked “What is the matter?” She said “nothing.” Then he said “Hay que ver lo que siente uno cuando alguien que se quiere se esta muriendo, parece que le estan arrancando el corazon a uno.”

10 We got to the Hospital to a Private Room. I looked over a screen and Sister Spicer and a nurse were applying oxygen to the patient. They could not fix the apparatus because she could not stand it. Sister Spicer came out and I asked her “how is she.” She replied “so so.”

I asked “Does she need a watch?” She said “Definitely.”

Inside was Mrs. Samuel Marrache and another maid.

Mr. Tobelem who had arrived just before us, told me to stay and he went away.

I remained there and about 15 minutes after we arrived I was in the corridor with Mr. Samuel Marrache when Dr. Giraldi appeared.

20 When Dr. Giraldi arrived, Sister Spicer made signs to me—meaning there is going to be trouble.

Dr. Giraldi addressed Mr. Samuel Marrache and said “Oye Marrache quien dio permiso para que se trajera un abogado a esta señora y molestarla sin mi permiso?” Marrache replied “I act on instructions.”

Dr. Giraldi said “Instructions de nadie. Yo soy el que mando aqui, es mi paciente and I am going to revoke this.” Marrache said “Vino Mr. Triay y estuvo Dr. Miller dentro.” Dr. Giraldi replied “Dr. Miller ni nadie. Aunque esta señora tuviera que declarar para un crimen para la Policia, la Policia no podria tomarle declaracion sin mi permiso porque no esta en condicion de que se la moleste.”

30 Marrache stayed like petrified.

Dr. Giraldi went in and Marrache told me “se le hizo telefono al Dr. Giraldi.”

Mrs. S. Marrache came out very blushed and told the husband “Yo no quiero nada con Giraldi mas, en mi casa que no venga aunque este alguien malo. A mi me ha ingorado ahi dentro por completo.”

Marrache told her “No te apures, esto es que Laredo le ha calentado la cabeza a Giraldi.”

40 Dr. Giraldi came out after and told him “Sam, ven conmigo” and took him to an office in the corridor and stayed there for about 15/20 minutes. I could hear he was talking but could not understand anything.

Both came out and got near me. Dr. Giraldi said “Estaba yo un poquito nervioso de eso, pues no quiero que se me ignore con ninguna paciente mia.”

Exhibits.

No. 4.

Copy
Letter
from
Mr. J. E.
Alcantara
to Dr. J. J.
Giraldi and
Statement
of Elias
Belilo, a
witness,
8th June
1953,
continued.

Exhibits.

No. 4.

Copy
Letter
from

Mr. J. E.
Alcantara
to Dr. J. J.
Giraldi and
Statement
of Elias

Belilo, a
witness,
8th June
1953,
continued.

Before we left I told him "Dr. is there need for a watch here?"
He said "definitely."

Dr. Giraldi left.

When he left, Marrache told me "Yo espero que tu no digas nada
de esto ni lo repitas, porque si se entera Judah Laredo es capaz de venir
al Hospital darle una sofocacion a la vieja y matarla."

It was 6.45 I called for a relief and I was told to come down whilst
another was sent.

EXHIBIT No. 7.

EXTRACT of Note Book said to be of Benjamin Marache.

Exhibits.

—
No. 7.
Extract
of Note
Book said
to be of
Benjamin
Marache.

+

del producto de la	
cuentas por ar	
esta de los	
Salvador	£ 200 .
J. Laredo	300 "
J. P. Laredo	200 "
Elmald	50 -
Hijos de Tabiente	50 .
J. B. S. S. S. S.	50 .
Ronditas	50 -

+

a la muerte de nosotros
 la casa y todo los
 muebles que yo
 pueden en la casa
 vendidos y pagar
 en el War Loan
 el resto
 del total que
 resulte la mitad
 del total que para
 a mi propiedad
 de James de J. W. L.
 y la otra mitad
 para dar una
 suma a las
 criaturas de J. W. L.
 número 2 abejas

+

a la muerte
 de nosotros cuatro
 la casa que
 la tienda
 - subasta
 y el resultado
 en el
 W. Loan

EXHIBIT No. 8.

UNSIGNED WILL of Samuel Marache.

*Exhibits.*No. 8.
Unsigned
Will of
Samuel
Marache.

THIS IS THE LAST WILL AND TESTAMENT of me SAMUEL MARRACHE of No. 224, Main Street, Gibraltar, Landowner.

1. I REVOKE all former wills and testamentary dispositions heretofore made by me.

2. I APPOINT my sister Simy Marache of Main Street Gibraltar aforesaid Spinster and Judah I. Laredo of Main Street Gibraltar Merchant (hereinafter called my Trustees) Executors and Trustees of this my Will.

10 3. I DIRECT my Trustees to pay all my just debts funeral and testamentary expenses as soon as convenient may be after my death.

4. I GIVE DEVISE AND BEQUEATH all my real and personal estate whatsoever or wheresoever the same may be or over which I may have a general power of disposition exercisable by will to my Trustees UPON TRUST to pay the income thereof to my said sister Simy Marache during the term of her natural life and from and after her death I GIVE DEVISE AND BEQUEATH all my aforesaid real and personal estate UNTO the Trustees for the time being of the Hebrew Poor Fund of Gibraltar Upon the following trusts that is to say that the Trustees of the
20 said Hebrew Poor Fund of Gibraltar shall sell call in and convert into money such parts thereof as shall not consist of money and invest the moneys arising from such sale calling in and conversion and all other moneys arising from or forming part of my residuary estate in War Loan or such other Trustee Securities authorised by law and to apply half of the income thereof for the purpose of the teaching of the Hebrew Religion and the Hebrew Language in the Hebrew School known as "Talmud Tora" and to apply the other half thereof of the said income for the purpose of providing a meal to the Poor children attending at the said "Talmud Tora" the Jewish religious classes.

30 5. I DECLARE that the Trustees of the Hebrew Poor Fund of Gibraltar shall have a discretionary power to postpone for such period as to them shall seem expedient the sale calling in or conversion of any parts of my real or personal estate but the unsold real estate and the outstanding personal estate shall be subject to the trusts hereinbefore contained concerning the investments aforesaid and the rents and yearly produce thereof shall be deemed annual income for the purposes of such trusts and the unsold real estate shall be deemed to be converted as from the time of my death and be transmissible as personal estate accordingly.

40 I DECLARE that the expression "my Trustees" shall in this my Will and in any and every codicil hereto save where such interpretation is precluded by the context include the trustees or trustee for the time being of this my Will.

IN WITNESS whereof I have hereunto set my hand at Gibraltar
this day of One thousand nine hundred and forty-six.

Exhibits.
 ———
 No. 8.
 Unsigned
 Will of
 Samuel
 Marache,
continued.

Signed by the above named testator as his last Will and Testament in the presence of us present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as attesting witnesses.

In the Supreme Court of Gibraltar
 Prob. Jur.

Marrache v. Laredo & anor.
 Ex. No. 8.

Put in by Mr. Hassan
 11th day of November 54.

Sgd. ?

10

No. 10
 8 Receipts
 (1st dated
 15th Sept.
 1945) from
 persons
 who
 received
 money
 from
 Samuel or
 Simy
 Marache in
 accordance
 with
 wishes con-
 tained in
 Note Book
 Exhibit
 No. 7.

EXHIBIT No. 10.

8 RECEIPTS (1st dated 15th Sept. 1945) from persons who received money from Samuel or Simy Marache in accordance with wishes contained in Note Book Exhibit No. 7.

RECEIVED from Mr. Samuel Marache, of Main Street, Gibraltar, the sum of £50 (fifty pounds sterling) which he gives me without any legal obligation on his part as his brother Mr. Benjamin Marrache died intestate, but he does so of his own free will out of a desire to respect the wishes of his said brother who he knows was desirous that the above mentioned sum should be given to me the undersigned Bonina Attias de Benzimra. 20

Gibraltar this 15th day of September, 1945.

2d. Stamp

(Sgd.) BONINA ATTIAS DE BENZIMRA.

In the Supreme Court of Gibraltar.
 Prob. Jur.

53 M No. 1.

Marrache v. Laredo & Anor.

Exhibit No. 10 by Mr. Hassan (Agreed Bundle).

11th Novem. 54.

(Sgd.) ?

30

RECEIVED from Mr. Samuel Marache of Main Street, Gibraltar, the sum of £50 (Fifty pounds sterling) which he gives me without any legal obligation on his part as his brother Mr. Benjamin Marache died intestate, but he does so of his own free will and out of a desire to respect the wishes of his said brother who he knows was desirous that the above mentioned sum should be given to me.

Gibraltar this 15th day of September, 1945.

2d. stamp.

(Sgd.) ESTHER S. BENDELAK.

40

RECEIVED from Mr. Samuel Marache, of Main Street, Gibraltar the sum of £300 (Three hundred pounds Sterling) which he gives me without any legal obligation on his part as his brother Mr. Benjamin Marache died intestate, but he does so of his own free will but of a desire to respect the wishes of his said brother who he knows was desirous that the above mentioned sum should be given to me the undersigned Judah I. Laredo.

Gibraltar this 22nd day of October, 1945.

(Sgd.) JUDAH I. LAREDO.

£300.0.0.

10 2d. Stamp.

RECEIVED from Mr. Samuel Marache of Main Street, Gibraltar, the sum of £50 (fifty pounds sterling) which he gives me without any legal obligation on his part as his brother Mr. Benjamin Marache died intestate, but he does so of his own free will out of a desire to respect the wishes of his said brother who he knows was desirous that the above mentioned sum should be given to me the undersigned Donna Wahnnon de Elmaleh.

Gibraltar this 15th day of April, 1946.

(Sgd.) DONNA WAHNON DE ELMALEH.

Stamp. 2d.

20 (Sgd.) D. E. 15/4/46.

RECEIVED from Miss Simy Marache, of Main Street, Gibraltar the sum of £150 (One hundred and fifty pounds sterling) which she gives me without any legal obligation on her part as her brother Mr. Benjamin Marache died intestate, but she does so of her own free will out of a desire to respect the wishes of her said brother who she knows was desirous that the above mentioned sum should be given to me the undersigned Rachel Laredo of Main Street, Gibraltar.

(Signed by the said Rachel Laredo in the presence of F. I. Carado Witness).

30

RACHEL LAREDO.

Stamp 2d.

RECEIVED from Miss Simy Marache, of Main Street, Gibraltar, the sum of £150 (One hundred and fifty pounds sterling) which she gives me without any legal obligation on her part as her brother Mr. Benjamin Marache died intestate, but she does so of her own free will out of a desire to respect the wishes of her said brother who she knows was desirous that the above mentioned sum should be given to me the undersigned Esther Laredo of Main Street, Gibraltar.

Signed by the said Esther Laredo in the presence of

40 F. I. Carado (Witness)

ESTHER LAREDO.

Stamp 2d.

Exhibits.
 No. 10.
 8 Receipts
 (1st dated
 15th Sept.
 1945) from
 persons
 who
 received
 money
 from
 Samuel or
 Simy
 Marache in
 accordance
 with
 wishes con-
 tained in
 Note Book
 Exhibit
 No. 7,
continued.

Exhibits.

No. 10
8 Receipts
(1st dated
15th Sept.
1945) from
persons
who
received
money
from
Samuel or
Simy
Marache in
accordance
with
wishes con-
tained in
Note Book
Exhibit
No. 7,
continued.

RECEIVED from Miss Simy Marache of No. 222 Main Street, Gibraltar, on my behalf and on behalf of my two sisters Clara de Joshua Pariente and Rachel de Joshua Pariente, both at present residing in London the sum of £50.0.0 (fifty pounds sterling) which she gives us without any legal obligation on her part as her brother Mr. Benjamin Marache died intestate but she does so of her own free will out of a desire to respect the wishes of her said brother who she knows was desirous that the above mentioned sum be given to me the undersigned, Esther de Joshua Pariente, at present temporarily in Gibraltar and to both my said sisters Clara de Joshua Pariente and Rachel de Joshua Pariente.

10

Stamp 2d.

(Sgd.) E. P.

23.8.51.

Dated the 23rd day of August, 1951.

E. PARIENTE.

Signed by the said Esther de Joshua Pariente on her own behalf and on behalf of her two sisters Clara de Joshua Pariente and Rachel de Joshua Pariente in the presence of

(Sgd.) A. B. M. SERFATY,
Barrister-at-law.

20

To :—A. B. M. Serfaty Esq.

With the Compliments of

Barclays Bank (Dominion Colonial and Overseas), Gibraltar.

Ref. :—Your letter 5.3.47.

RECEIVED from Miss Simy Marache, of No. 222, Main Street, Gibraltar, the sum of £200 (Two hundred pounds sterling) which she gives me without any legal obligation on her part as her brother Mr. Benjamin Marache died intestate, but she does so of her own free will out of a desire to respect the wishes of her said brother who she knows was desirous that the above mentioned sum be given to me the undersigned Esther Sequerra de Levy, of 37, Rua Duque Palmella, Lisbon.

30

Lisbon this 26th day of March 1947.

Stamp.

(Sgd.) ESTHER SEQUERRA DE LEVY.

26.3.47.

Signed by the said Esther Sequerra de Levy in the presence of
Bank of London & South America Ltd.

(Sgd.) ?

EXHIBIT No. 11.

RECEIPTS for Rent paid by Judah I. Laredo.

Exhibits.

—
No. 11.
Receipts
for Rent
paid by
Judah I.
Laredo.

31st January 1953

Received from Mr. Judah Laredo

the sum of six pounds.

for rent due on premises situate No. 222 Main Street

for month ending the 31st January 1953.

£6.0.0

Siny Muraady

28th February 1953

Received from Mr. Judah Laredo

the sum of six pounds

for rent due on premises situate No. 222 Main Street

for month ending the 28th Feb. 1953

£6.0.0

Siny Muraady

31st March 1953

Received from Mr. Judah Laredo

the sum of six pounds

for rent due on premises situate No. 222 Main Street

for month ending the 31st March 1953

£6.0.0

Siny Muraady

Gibraltar, 30th April 1953

RECEIVED from Mr. Judah Laredo

the sum of six pounds

for Rent due on premises situate at 222 Main Street

for one month Rent to the end of April 1953

£6.0.0

Siny Muraady

Exhibit No 11

ON THE MAJESTY'S SERVICE

THE SUPREME COURT OF GIBRALTAR

Prob. Jur. 1954

Muraady v. Laredo

11

11th day of November 1953

EXHIBIT No. 15.

1st WILL of Simy Marache (Laredo and Benaim Executors), 4th July 1946.

Exhibits.

—
No. 15.
1st Will of
Simy
Marache
(Laredo and
Benaim
Executors),
4th July
1946.

THIS IS THE LAST WILL AND TESTAMENT of me SIMY
MARACHE of No.224, Main Street, Gibraltar, Spinster.

1. I REVOKE all former Wills and testamentary dispositions
heretofore made by me.

2. I APPOINT JUDAH I. LAREDO of Main Street Gibraltar
Merchant and DAVID M. BENAİM of Main Street Gibraltar
Merchant (hereinafter called my Trustees) Executors and
Trustees of this my Will.

3. I DIRECT my Trustees to pay all my just debts funeral
and testamentary expenses as soon as convenient may be after
my death.

4. I BEQUEATH to my Executor and Trustee Judah I. Laredo
the sum of Six hundred pounds Sterling and the Gold chain
which I inherited from my brother Benjamin and without
reference to office.

5. I BEQUEATH to Samuel A. Marrache of Cannon Lane
Gibraltar Merchant the sum of One hundred pounds Sterling
and the Gold Watch and chain and Gold ring with Black
Stone which belonged to my father.

6. I BEQUEATH to Rachel Laredo of Main Street Gibraltar
the sum of Fifty pounds Sterling and my Gold chain
bracelet with padlock and Gold ring with pearl and
amethyst.

7. I BEQUEATH to Esther Laredo of Main Street Gibraltar
the sum of Fifty pounds Sterling and my Gold Watch and
chain.

8. I BEQUEATH to Rebecca benzimra of College Lane
Gibraltar the sum of One hundred pounds Sterling and my
Round Pearl Earrings.

9. I BEQUEATH to Freja benzimra of College Lane Gibraltar
the sum of One hundred pounds Sterling and my Long Pearl
Earrings.

10. I BEQUEATH to Mazaltob Laredo the wife of the said
Judah I. Laredo my Gold wrist watch.

Marrache v. Laredo & others
1829
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020

11. I BEQUEATH to Donna Elmaleh of Gibraltar tempora.
residing at Fangier my Gold Pearl Studded Medallion with
Gold Cordon and the sum of One hundred pounds Sterling.
12. I BEQUEATH to Joshua A. Marrache commonly known as
Salvador Marrache of Cannon Lane Gibraltar Merchant the
sum of One hundred pounds Sterling. _____
13. I BEQUEATH to Luna Marrache of Cannon Lane Gibraltar
the sum of Two hundred pounds Sterling. _____
14. I BEQUEATH to Estrella Bendelac and to Esther
Bendelac of John Mackintosh Square both Spinsters the
sum of Fifty pounds Sterling to each of them. _____
15. I BEQUEATH to Coty Benyunes the wife. of Mojluf
Benyunes of Main Street Gibraltar Photographer the sum of
One hundred pounds Sterling. _____
16. I BEQUEATH to Esther Pariente, Clara Pariente and
Rachel Pariente of Gibraltar temporarily residing in
Northern Ireland the sum of Fifty pounds Sterling to each
of them. _____
17. I BEQUEATH to my servant Maria Origo of Gibraltar
Widow the sum of Fifty pounds Sterling. _____
18. I BEQUEATH unto the Treasurer for the time being of
the Synagogue Nefusot Yeudah of Gibraltar the sum of One
hundred pounds Sterling. _____

I DECLARE that the receipt of the Treasurer or other
proper Officer for the time being of such Synagogue
Institution shall be a sufficient discharge for such
legacy. _____

I DECLARE that all legacies bequeathed by this my Will
or any codicil hereto shall be free from all duties
payable in respect of my death whether legacy duty
succession duty estate duty or other duty now in force
or at any time before my death imposed AND I DIRECT that
such duties and also that all duties (if any) payable in
r t of property of which I have disposed during the

last three years of my life shall be paid on
residuary estate. _____

I GIVE DEVISE AND BEQUEATH all the rest and residue
my real and personal estate UNTO the Trustees for the time
being of the Hebrew Poor Fund of Gibraltar UPON the
following trusts that is to say that the Trustees of the
said Hebrew Poor Fund of Gibraltar shall sell call in and
convert into money such parts thereof as shall not consist
of money and invest the moneys arising from such sale
calling in and conversion and all other moneys arising
from or forming part of my residuary estate in War Loan or
such other Trustee Securities authorised by law and to
apply half of the income thereof for the purpose of the
teaching of the Hebrew Religion and the Hebrew Language in
the Hebrew School known as "Talmud Tora" and to apply the
other half thereof of the said income for the purpose of
providing clothing and or footwear to the Jewish Poor
children attending the Jewish religious classes at the said
"Talmud Tora".

I DECLARE that the Trustees of the Hebrew Poor Fund of
Gibraltar shall have a discretionary power to postpone for
such period as to them shall seem expedient the sale
calling in or conversion of any parts of my real or
personal estate but the unsold real estate and the
outstanding personal estate shall be subject to the trusts
hereinbefore contained concerning the investments
aforesaid and the rents and yearly produce thereof shall be
deemed annual income for the purposes of such trusts and
the unsold real estate shall be deemed to be converted as
from the time of my death and be transmissible as personal
estate accordingly. _____ :

I DECLARE that the expression "my Trustees" shall in
this my Will and in any and every codicil hereto save where
such interpretation is precluded by the context include the
Trustees or Trustee for the time being of this my Will.

IN WITNESS whereof I have hereunto set my hand at
 Gibraltar this *fourth* day of *July* One
 thousand nine hundred and forty six. _____

Sing Marade

SIGNED by the above named testatrix as her last Will and
 Testament in the presence of us present at the same time
 who at her request in her presence and in the presence
 of each other have hereunto subscribed our names as
 attesting witnesses. _____

Attest
Barrett at Law

C. H. Smith

 5, Governon's Lane,
 Gibraltar.

EXHIBIT No. 16.

1st CODICIL of Will of Simy Marache, 5th September 1946.

Exhibits.

—
No. 16.
1st Codicil
of Will of
Simy
Marache,
5th
September
1946.

addition to the legacy of Fifty pounds Sterling given to her by my said Will. _____

9. In all other respects I confirm my said Will. _____

IN WITNESS whereof I have hereunto set my hand at Gibraltar this *fourth* day of *September* One thousand nine hundred and forty-six. _____

Jimmy Harache

SIGNED by the above named testatrix as a Codicil to her last Will in the presence of us both present at the same time who in her presence at her request and in the presence of each other have hereunto subscribed our names as witnesses. _____

A. M. S. S. S.
Barrister-at-Law — *A. D. S. S. S.*
Clark

EXHIBIT No. 17.

SECOND CODICIL of Will of Simy Marache, 20th July 1951.

Exhibits.

No. 17.
Second
Codicil of
Will of
Simy
Marache,
20th
July 1951.

Original Copy

THIS IS A SECOND CODICIL made by me SIMY MARACHE of No. 224, Main Street, Gibraltar, Spinster, to my Will dated the fourth day of July, 1946, and my former Codicil to which bears date the fifth day of September, 1946.

WHEREAS JOSHUA MARRACHE, commonly known as Salvador Marrache, late of Cannon Lane, Gibraltar, died since the execution of my aforesaid Will and Codicil AND WHEREAS DONNA ELMALEH late of Gibraltar, then temporarily residing in Tangier has also died since the execution of my aforesaid Will and Codicil AND WHEREAS my servant MARIA ORIGO, late of Gibraltar, widow, has also died since the execution of my aforesaid Will and Codicil

1. I HEREBY REVOKE the legacy of One hundred pounds sterling by my aforesaid Will and the additional sum of One hundred pounds sterling given by my aforesaid Codicil to JOSHUA MARRACHE, commonly known as Salvador Marrache, deceased, late of Gibraltar, aforesaid.

2. I HEREBY REVOKE the legacy of my Gold Pearl Studded Medallion with Gold Cordon and the sum of One hundred pounds sterling given by my aforesaid Will and the additional sum of One hundred pounds sterling given by my aforesaid Codicil to DONNA ELMALEH late of Gibraltar, aforesaid, and then temporarily residing in Tangier.

3. I HEREBY REVOKE the legacy of fifty pounds sterling given by my Will and the additional sum of fifty pounds sterling given by my aforesaid Codicil to my servant MARIA ORIGO, late of Gibraltar, aforesaid.

4. I BEQUEATH the sum of Two hundred pounds sterling to SAMUEL A. MARRACHE, of Cannon Lane, Gibraltar, Merchant, in addition to the sum of One hundred pounds sterling given to him by my aforesaid Will and also in addition to the sum of One hundred pounds sterling given to him by my aforesaid Codicil.

5. I BEQUEATH the sum of One hundred pounds sterling to

Handwritten notes:
Marrache v. Marrache
Prof. J. J. ...
1954
11/18/46
11/18/46

RACHEL LAREDO, of Main Street, Gibraltar, in addition to the fifty pounds sterling given to her by my aforesaid Will, and also in addition to the sum of fifty pounds sterling given to her by my aforesaid Codicil. _____

6. I BEQUEATH the sum of One hundred pounds sterling to ESTHER LAREDO of Main Street, Gibraltar, Spinster, in addition to the sum of fifty pounds sterling given to her by my aforesaid Will, and also in addition to the fifty pounds sterling given to her by my aforesaid Codicil. _____

7. I BEQUEATH the sum of One hundred pounds sterling unto the Treasurer for the time being of the Synagogue Hefuset Joudah of Gibraltar in addition to the legacy of One hundred pounds sterling given to such Treasurer in my aforesaid Will, both legacies to be dedicated for the purposes of the said Synagogue. _____

8. In all other respects I confirm my aforesaid Will and Codicil. _____

IN WITNESS WHEREOF I have hereunto set my hand at _____ Gibraltar this *twentieth* day of July, One thousand nine hundred and fifty one. _____

Sissy Laredo

SIGNED by the above named Testatrix as a Second Codicil to her aforesaid last Will and Codicil in the presence of us both present at the same time who in her presence and in the presence of each other have hereunto _____ subscribed our names as attesting witnesses. _____

A. M. Lopez
Barister at Law
[Signature]
Barister at Law

EXHIBIT No. 18.

UNSIGNED WILL of Simy Marache.

Defendants.

*Exhibits.*No. 18.
Unsigned
Will of
Simy
Marache.

" D "

THIS IS THE LAST WILL AND TESTAMENT of me SIMY MARACHE of No. 224, Main Street, Gibraltar, Spinster.

1. I REVOKE all former wills and testamentary dispositions heretofore made by me.

2. I APPOINT my brother Samuel Marache of Main Street Gibraltar aforesaid Landowner and Judah I. Laredo of Main Street Gibraltar
10 Merchant (hereinafter called my Trustees) Executors and Trustees of this my Will.

3. I DIRECT my Trustees to pay all my just debts funeral and testamentary expenses as soon as convenient may be after my death.

4. I GIVE DEVISE AND BEQUEATH all my real and personal estate whatsoever or wheresoever the same may be or over which I may have a general power of disposition exerciseable by Will to my Trustees UPON TRUST to pay the income thereof to my said brother Samuel Marache during the term of his natural life and from and after his death I GIVE DEVISE AND BEQUEATH all my aforesaid real and personal estate UNTO the
20 Trustees for the time being of the Hebrew Poor Fund of Gibraltar Upon the following trusts that is to say that the Trustees of the said Hebrew Poor Fund of Gibraltar shall sell call in and convert into money such parts thereof as shall not consist of money and invest the moneys arising from such sale calling in and conversion and all other moneys arising from or forming part of my residuary estate in War Loan or such other Trustee Securities authorized by law and to apply half of the income thereof for the purpose of the teaching of the Hebrew Religion and the Hebrew Language in the Hebrew School known as " Talmud Tora " and to apply the other half thereof of the said income for the purpose of providing a meal to the
30 Poor children attending at the said " Talmud Tora " the Jewish religious classes.

5. I DECLARE that the Trustees of the Hebrew Poor Fund of Gibraltar shall have a discretionary power to postpone for such period as to them shall seem expedient the sale calling in or conversion of any parts of my real or personal estate but the unsold real estate and the outstanding personal estate shall be subject to the trusts hereinbefore contained concerning the investments aforesaid and the rents and yearly produce thereof shall be deemed annual income for the purposes of such trusts and the unsold real estate shall be deemed to be converted as from the time of
40 my death and be transmissible as personal estate accordingly.

I DECLARE that the expression " my Trustees " shall in this my Will and in any and every codicil hereto save where such interpretation is precluded by the context include the trustees or trustee for the time being of this my Will.

EXHIBIT No. 19.

**CHEQUE to Bearer for £100 signed by Simy Marache (endorsed by Esther Laredo)
12th March 51.**

Exhibits.

No. 19.
Cheque
to Bearer
for £100
signed by
Simy
Marache
(endorsed
by Esther
Laredo),
12th
March 51.

EXHIBIT No. 24.

**CHEQUE to Bearer for £100 signed by Simy Marache (endorsed by Mrs. Laredo)
22nd Nov. 48.**

No. 24.
Cheque to
Bearer for
£100 signed
by Simy
Marache
(endorsed
by Mrs.
Laredo),
22nd
November
48.

EXHIBIT No. 21.

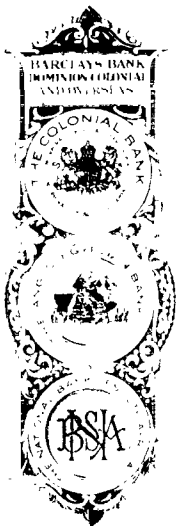
CHEQUE to Bearer for £30 signed by Simy Marache 15th May 53.

No. 21.
Cheque to
Bearer for
£30 signed
by Simy
Marache,
15th May
53.

19 142

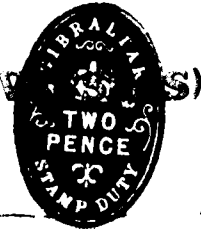
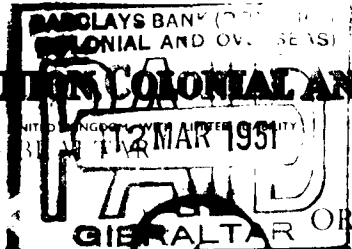
GIBRALTAR, 12th March 1955

No 09/ 939257



BARCLAYS BANK (DOMINION COLONIAL AND OVERSEAS)

INCORPORATED IN THE UNITED KINGDOM WITH LIMITED LIABILITY



PAY *Please*
one hundred pounds only

£ 100 . 0 . 0 *Sirmy Maresch*

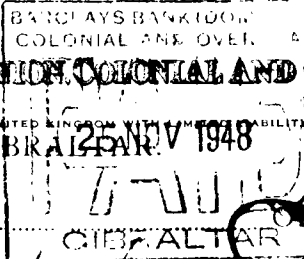
Exhibit No 24

No H1/ 910194 GIBRALTAR, 22nd / 100 1948



BARCLAYS BANK (DOMINION COLONIAL AND OVERSEAS)

INCORPORATED IN THE UNITED KINGDOM WITH LIMITED LIABILITY

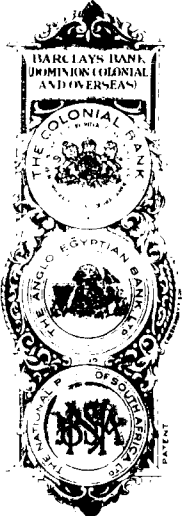


PAY *Please*
one hundred pounds only

£ 100 . 0 . 0 *Sirmy Maresch*

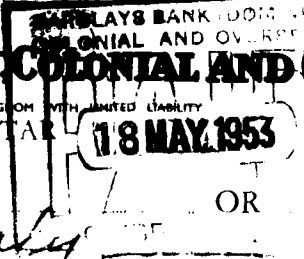
Exhibit No 21

No C1/0 288865 GIBRALTAR, 15th May 1953



BARCLAYS BANK (DOMINION COLONIAL AND OVERSEAS)

INCORPORATED IN THE UNITED KINGDOM WITH LIMITED LIABILITY



PAY *Please*
thirty pounds only

£ 30 . 0 . 0 *x Sirmy Maresch*

Esther Laredo

IN THE SUPREME COURT OF DISTRICT OF COLUMBIA
 Prob. Term. 534 No. 1
Marrache v. Laredo + anor
 RECALL - 19
 DEC 12 11th
 NOV 11th 1954
 EST
 Laredo

100

M Laredo
 (wife of José de los Angeles Laredo)
 \$1,100

IN THE SUPREME COURT OF DISTRICT OF COLUMBIA
 Prob. Term. 534 No. 1
Marrache v. Laredo + anor
 RECALL - 24
 DEC 12 11th
 NOV 12th 1954
 EST
 Laredo

IN THE SUPREME COURT OF DISTRICT OF COLUMBIA
 Prob. Term. 534 No. 1
Marrache v. Laredo + anor
 RECALL - 21
 DEC 12 11th
 NOV 12th 1954
 EST
 Laredo

100

No. 25.

QUESTIONS to the Jury and their Replies.

IN THE ESTATE of SIMY MARACHE, deceased.

MARRACHE V. LAREDO & ANOR.

Questions for the Jury

Finding of the Jury

- | | | |
|----|--|------|
| 10 | 1. Was the Will of the 29th May, 1953, duly executed by the Testatrix ? | Yes. |
| | 2. Was the Testatrix of sound mind, memory and understanding at the time of the execution of the said Will ? | Yes. |
| | 3. Did the Testatrix know and approve the contents of the said Will at the time of execution ? | Yes. |

(Sgd.) G. M. GONZALEZ,
Foreman.

Other Documents.

No. 25.
Questions to the Jury and their Replies.

No. 26.

LETTER from Chief Justice Bacon to Foreman of Jury.

17.11.54.

3.20 p.m.

20 Mr. Foreman,

I have received your message to the effect that the jury has not yet reached a decision with the requisite majority. I must ask you to continue your deliberations, with a view to reaching a lawful verdict if possible. I venture to remind you that these proceedings are burdensome and costly and that therefore it is most desirable that this trial should not prove to be abortive.

If you desire any further guidance on any matter within my province let me know and I will give it in open court.

(Sgd.) ROGER BACON,
C.J.

30

On envelope :—

G. M. Gonzalez, Esq.,
Foreman of the Jury.

No. 26.
Letter from Chief Justice Bacon to Foreman of Jury, 17th November 1954.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF GIBRALTAR.

BETWEEN

JUDAH I. LAREDO and DAVID M. BENAIM, Executors
and Trustees of the Will of Simy Marache, deceased . *Appellants*

AND

SAMUEL ABRAHAM MARRACHE, Executor and Sole
Beneficiary of the Will of Simy Marache, deceased . . *Respondent.*

RECORD OF PROCEEDINGS

ALAN, EDMUNDS & PHILLIPS,
415 OXFORD STREET,
LONDON, W.1,
Appellants' Solicitors.

HY. S. L. POLAK & CO.,
20-21 TOOKS COURT,
CURSITOR STREET,
LONDON, W.C.2,
Respondent's Solicitors.