

1, 1959

IN THE PRIVY COUNCIL

No. 30 of 1957

UNIVERSITY OF LONDON  
 12 MAR 1960  
 25 RUSSELL SQUARE  
 LONDON, W.C.1.

ON APPEAL

FROM THE COURT OF ORDINARY, BARBADOS

IN THE ESTATE OF ERNEST CLARENCE HILL DECEASED.

B E T W E E N :-

ERNEST CLARENCE HILL (Petitioner) Appellant

- and -

ERNEST CARLTON HILL (Respondent) Respondent

CASE FOR THE RESPONDENT

Record

10 1. This is an appeal from a Judgment dated  
 the 19th day of October 1956 of the Chief  
 Judge in the Court of Ordinary, Barbados,  
 dismissing the Appellant's Petition for a  
 declaration that a ceremony of marriage between  
 the above-named Ernest Clarence Hill deceased  
 (hereinafter called "the deceased") and one  
 Marion Allanzena Green was invalid and  
 refusing Probate of a Will made by the  
 deceased prior to the said ceremony of  
 20 marriage.

2. On the 19th day of September 1952 the  
 deceased late of Carlton Cottage, Fontabelle  
 in the Parish of Saint Michael and Island  
 of Barbados executed a Will whereby inter  
 alia he made provision for the said Marion  
 Allanzena Green with whom for many years  
 the deceased had lived in all respects as  
 husband and wife. He also by the said Will  
 made provision for several of the children  
 30 of his union with the said Marion Allanzena  
 Green. By his said Will the deceased  
 appointed the said Marion Allanzena Green  
 and the Appellant, who is the eldest child  
 of their union, executors.

3. On the 27th day of October 1954 while  
 the deceased was a patient at Dr. Bayley's  
 clinic on the Island of Barbados he went  
 through a ceremony of marriage with the  
 said Marion Allanzena Green.

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Wills Act  
1891.

4. By the law of Barbados on which Island the deceased was at all material times resident and domiciled a Will is revoked by the subsequent marriage of the testator.

5. After the said ceremony of marriage the deceased was discharged from the said clinic and returned to his home where for the remainder of his life namely for some six months he continued to live in all respects as Husband and Wife with the said Marion Allanzena Green. 10

6. On the 30th day of April 1955 the deceased died without having executed any further testamentary instrument.

7. It is accordingly alleged by the Respondent who is one of the legitimate children of the deceased that the deceased died intestate.

8. The Appellant has alleged that the said ceremony was invalid because (as he alleges):

p. 5. (a) Each of the parties did not freely consent to inter-marry with a proper understanding of the contract. 20

p. 5. (b) The said ceremony was not performed in due form as required by the Marriage Act 1904/9.

p. 6. (c) The deceased was at the time of the marriage so affected by age and physical weakness that he was mentally incapable to marry.

9. As to the first of the said allegations the Respondent says that the said marriage ceremony took place at the expressed request of the deceased that the arrangements for the said ceremony of marriage were made by the said Marion Allanzena Green and that there was ample evidence that each of the parties freely consented to intermarry and that they both had a proper understanding of the contract. 30

10. As to the second of the said allegations the Respondent contends that the said ceremony of marriage conformed in all necessary respects with the provisions of the Marriage Act 1904/9. The Respondent further, and in the alternative, relies upon the presumption that where there is 40

evidence of a ceremony of marriage having been gone through, followed by the cohabitation of the parties, everything necessary for the validity of the marriage will be presumed, in the absence of decisive evidence to the contrary.

10 11. As to the third of the said allegations the Respondent contends that there was no, and certainly no sufficient, evidence to show that the deceased was mentally incapable of being a party to a valid marriage. On the contrary there was evidence tending to show that the deceased was, notwithstanding his illness, of clear mind and fully capable of entering into the contract of marriage, more simple of comprehension in this case than in most because the deceased by such marriage was undertaking only those obligations which he had voluntarily  
20 borne for many years.

12. On the 19th day of October 1956 the Chief Judge in the Court of Ordinary dismissed the Appellant's Petition and refused Probate of the said Will on the ground that he had not been satisfied by the evidence that the said ceremony of marriage was not a valid one.

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30 13. The Respondent respectfully adopts the reasoning and the reasons contained in the Judgment of the learned Chief Judge and asserts that there was in fact abundant evidence to satisfy the Court that the said ceremony of marriage was a valid one.

14. The Respondent humbly submits that the decision of the learned Chief Judge was right and that his decision should be maintained and this appeal dismissed for the following, among other,

R E A S O N S

40 (1) Because the Appellant failed to establish by evidence that the deceased did not consent to marry with a proper understanding of the contract and because the Appellant failed to establish that the said ceremony did not conform in all necessary respects with the provisions of the Marriage Act 1904/9.

(2) Because the Appellant failed to rebut the presumptions:

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(a) That where there is evidence of a ceremony of marriage having been gone through, followed by the cohabitation of the parties, everything necessary for the validity of the marriage will be presumed in the absence of decisive evidence to the contrary.

(b) Omnia praesumuntur rite et solemniter esse acta.

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(3) Because without relying on any presumption, there was ample evidence to show (A) that the deceased was fully capable of entering into a valid marriage and (B) that the requirements as to form and essence were complied with.

(4) Because the Order appealed against is right and ought to be confirmed.

JOHN LATEY

K. BRUCE CAMPBELL

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HILL (Petitioner) Appellant

- and -

ERNEST CARLTON HILL  
(Respondent) Respondent

CASE FOR THE RESPONDENT

MINET MAY & CO.,  
5 Dowgate Hill,  
Cannon Street,  
London E.C.4.